
STATUTORY INSTRUMENTS

1996 No. 1756

**Act of Sederunt (Rules of the Court of Session
Amendment No.3) (Miscellaneous) 1996**

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994⁽¹⁾ shall be amended in accordance with the following sub-paragraphs.

(2) In rule 4.7 (lodging of documents in Inner House causes), in paragraph (1)(d), omit the words “or 38.7(3)”.

(3) In rule 14.2 (applications by petition in the Outer House)—

- (a) at the end of paragraph (g), omit the word “and”;
- (b) at the end of paragraph (h), for the full-stop, substitute “; and”;
- (c) after paragraph (h), insert the following paragraph:—

“(i) an application to the court in exercise of its *parens patriae* jurisdiction.”.

(4) In rule 14.7 (intimation and service of petitions), after paragraph (2), insert the following paragraph:—

“(3) A petition to the court in exercise of its *parens patriae* jurisdiction shall not be intimated on the walls of the court.”.

(5) In rule 40.1 (application and interpretation of this Chapter), in paragraph (2)(c)—

- (a) in head (i), at the end, insert the word “or”;
- (b) in head (ii), for “; or” substitute a full-stop; and
- (c) omit head (iii).

(6) In rule 40.12 (objections to competency of appeals), in paragraph (4), for the words “whether or not any other party has opposed the motion for grounds of appeal under paragraph (1), he may,” substitute the words “he may, at any time”.

(7) In rule 41.1 (application and interpretation of this Chapter), in paragraph (2)—

- (a) in the definition of “appeal”, after the word “submission”, insert the words “; or an application under an enactment by virtue of which a person may question the validity of a decision”; and
- (b) in the definition of “decision”, for the words “determination or assessment”, substitute the words “assessment, determination, order or scheme”.

(8) In rule 41.2 (applications for leave to appeal)—

- (a) in paragraph (1), for the words from “unless” to “court”, substitute the following:—

“unless—

- (a) the enactment allowing the appeal requires the application to be made to the court; or

- (b) there are special circumstances which make it impracticable or impossible to apply to the tribunal”;
 - (b) in paragraph (3)(b), for the words from “within 14 days” to “paragraph (4)”, substitute the words “within the period mentioned in paragraph (1)(b) of rule 41.20 (lodging of appeal in court)”;
 - (c) omit paragraph (4); and
 - (d) paragraphs (5) and (6) shall become, respectively, paragraphs (4) and (5).
- (9) In rule 41.5 (applications for case)—
- (a) in paragraph (2)(b), for the words from “14 days” to “as the case may be”, substitute the words “the period mentioned in paragraph (3)”;
 - (b) after paragraph (2), insert the following paragraph:—
 - “(3) The period referred to in paragraph (2)(b) is—
 - (a) the period prescribed by the enactment under which the appeal is made; or
 - (b) where no such period is prescribed, within 14 days after the issue of the decision or statement of reasons, as the case may be.”
- (10) In rule 41.20 (lodging of appeal in court)—
- (a) in paragraph (1), for the words “paragraph (2)”, substitute the words “paragraphs (2) and (3)”;
 - (b) in sub-paragraph (b) of paragraph (1)—
 - (i) in head (i), after “appellant;”, insert the word “or”;
 - (ii) in head (ii), for “; or”, substitute a full-stop; and
 - (iii) omit head (iii);
 - (c) paragraph (2) shall become paragraph (4); and
 - (d) after paragraph (1), insert the following paragraphs:—
 - “(2) Where leave to appeal to the court has been granted by the tribunal under any of the following enactments, the appeal shall be lodged in the General Department within 42 days after the date on which the decision to grant leave was intimated to the appellant:—
 - (a) section 25 of the Child Support Act 1991⁽²⁾ (appeal from decision of a commissioner on a question of law with leave of the commissioner);
 - (b) section 24 of the Social Security Administration Act 1992⁽³⁾ (appeal from decision of a commissioner on a question of law with leave of the commissioner); and
 - (c) section 9 of the Asylum and Immigration Appeals Act 1993⁽⁴⁾ (appeal on a question of law from a final determination of an immigration appeals tribunal with leave of the tribunal).
 - (3) Where an application for leave to appeal was made to the court within the period specified in paragraph (1)(b) but that period has expired before leave has been granted, the appeal may be lodged within 7 days after the date on which that leave was granted.”
- (11) In rule 41.21 (orders for service and answers), in paragraph (3)—
- (a) after the words “to an appeal under”, insert the words “section 25(1) of the Child Support Act 1991 (appeal from Child Support Commissioner) or”;

⁽²⁾ 1991 c. 48; section 25 was amended by the Child Support Act 1995 (c. 34), Schedule 3, paragraph 8.

⁽³⁾ 1992 c. 5.

⁽⁴⁾ 1993 c. 23.

(b) in sub-paragraph (a), for the word “Services”, substitute the words “Security and the Chief Child Support Officer or the Chief Adjudication Officer, as the case may be”.

(12) In rule 42.1(5) (remit to the Auditor), in paragraph (2)(a), for the words “a final interlocutor in which a finding for”, substitute the words “the final interlocutor in which a finding in respect of”.

(13) In rule 42.4 (objections to report of the Auditor), in paragraph (2)(a), for the words “the party liable in expenses”, substitute the words “any other party who appeared or was represented at the diet of taxation”.

(14) In rule 42.13(6) (charges for witnesses)—

(a) in paragraph (2), omit the words “or (2A)”; and

(b) in paragraph (3)—

(i) after the words “paragraph (2)”, insert the words “or (2A)”; and

(ii) for the words from “granted a motion” to the words “(b) recording”, substitute the following words:—

“, on granting a motion made for the purpose, not later than the time at which it awarded expenses—

(a) certified that the witness was a skilled witness; and

(b) recorded”.

(15) In rule 46.9 (International Oil Pollution Compensation Fund)—

(a) in paragraph (1)—

(i) for the definition of “the Act of 1974”, substitute the following definition:—

““the Act of 1995” means the Merchant Shipping Act 1995(7)

(ii) for the words “International Oil Pollution Compensation Fund referred to in section 1(1) of the Act of 1974”, substitute the words “International Fund established by the Fund Convention referred to in section 172(1)(b) of the Act of 1995”;

(b) in paragraph (2)—

(i) for the words “section 1 of the Merchant Shipping (Oil Pollution) Act 1971”, substitute the words “section 153 of the Act of 1995”; and

(ii) for the words “section 6(2) of the Act of 1974”, substitute the words “section 177(2) of that Act”;

(c) in paragraph (6), for the words “section 4 of the Act of 1974”, substitute the words “section 175 of the Act of 1995”;

(d) in paragraph (7), for the words “section 4A(3)(b) of the Act of 1974”, substitute the words “section 176(3)(b) of the Act of 1995”; and

(e) in paragraph (8), for the words “section 4A(3)(a) of the Act of 1974”, substitute the words “section 176(3)(a) of the Act of 1995”.

(16) In rule 49.8 (warrants for intimation in family actions)—

(a) in paragraph (1)—

(i) at the end of sub-paragraph (j), omit the word “and”;

(ii) at the end of sub-paragraph (k), for the full-stop, substitute “; and”; and

(iii) after sub-paragraph (k), insert the following sub-paragraph:—

(5) Rule 42.1(2)(a) was amended by [S.I.1995/1396](#).

(6) Rule 42.13 was amended by [S.I. 1995/1396](#).

(7) [1995 c. 21](#).

- “(1) in an action where the pursuer makes an application for an order under section 8(1)(ba) of the Act of 1985⁽⁸⁾ (orders under section 12A of the Act of 1985 for pension lump sum), to the trustees or managers of the pension scheme, in the following terms:— “Warrant to intimate to (*name and address*) as trustees [*or managers*] of the pension scheme in respect of which an order is sought in the (*number*) conclusion of this summons.”;” and
- (b) in paragraph (3)—
- (i) at the end of sub-paragraph (1), for the full-stop, substitute a semi-colon; and
- (ii) after sub-paragraph (1), insert the following sub-paragraph:—
- “(m) under paragraph (1)(l) (orders for pension lump sums), in Form 49.8-M.”.
- (17) In rule 49.23 (referral to family mediation and conciliation service)—
- (a) in the heading to the rule, omit the words “**and conciliation service**”;
- (b) omit the words “and with the consent of the parties”; and
- (c) for the words “specified family mediation and conciliation service”, substitute the words “mediator accredited to a specified family mediation organisation”.
- (18) In rule 49.49 (applications relating to orders for financial provision)—
- (a) in paragraph (2), after the words “a motion under”, insert the words “paragraph (1) of”; and
- (b) after paragraph (2), insert the following paragraph:—
- “(3) An application under—
- (a) paragraph (5) of section 12A of the Act of 1985 (recall or variation of order in respect of a pension lump sum), or
- (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute trustees or managers),
- shall be made by minute in the process of the action to which the application relates.”.
- (19) In rule 49.53 (applications for financial provision after overseas divorce or annulment)—
- (a) in paragraph (3), after the words “a motion under”, insert the words “paragraph (2) of”; and
- (b) after paragraph (3), insert the following paragraph:—
- “(4) An application under—
- (a) paragraph (5) of section 12A of the Act of 1985 (recall or variation of order in respect of a pension lump sum), or
- (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute trustees or managers),
- shall be made by minute in the process of the action to which the application relates.”.
- (20) In rule 49.81 (interpretation of this Part), omit “—(1)”.
- (21) In rule 55.1 (application and interpretation of this Chapter)—
- (a) for paragraph (1), substitute the following paragraph:—
- “(1) This Chapter applies to any cause—
- (a) under the Patents Act 1949⁽⁹⁾;

⁽⁸⁾ 1985 c. 37; section 8(1)(ba) was inserted by the Pensions Act 1995 (c. 26), section 167(1).

⁽⁹⁾ 1949 c. 87.

- (b) under the Registered Designs Act 1949(10);
 - (c) under the Defence Contracts Act 1958(11);
 - (d) under the Patents Act 1977(12);
 - (e) under the Copyright, Designs and Patents Act 1988(13);
 - (f) under the Trade Marks Act 1994(14);
 - (g) under the Olympics Association Right (Infringement Proceedings) Regulations 1995(15); or
 - (h) for the determination of a question relating to a patent under the inherent jurisdiction of the court.”; and
- (b) in paragraph (2), omit the definition of “the Act of 1938”.
- (22) In rule 55.3 (pre-proof hearings), in paragraph (1), for the words “under the Act of 1949 or the Act of 1977”, substitute the words “to which this Chapter applies”.
- (23) In rule 55.17(16) (intimation and service of applications)—
- (a) in the heading to the rule—
 - (i) after the word “**service of**”, insert the words “**certain statutory**”; and
 - (ii) omit the words “**under the Copyright Act of 1988 or the Trade Marks Act 1994**”;
 - (b) omit the word “or” where it occurs after the words “and design rights.”;
 - (c) after the words “or articles)” insert the words “or regulation 5 of the Olympics Association Right (Infringement Proceedings) Regulations 1995 (order as to disposal of infringing goods, material or articles etc.)”;
 - (d) for the word “or” where it occurs after the words “Copyright Act of 1988” substitute a comma; and
 - (e) after the words “the said Act of 1994”, insert the words “or regulation 5 of the said Regulations”.
- (24) In rule 59.1 (applications for letters of arrestment or inhibition), in paragraph (1)(b), after the words “decree granted”, insert the words “or foreign judgment registered for execution”.
- (25) In rule 62.41 (enforcement in another part of the United Kingdom of Court of Session judgments or documents registered for execution (money provisions)), in paragraph (3)(a), for “61.41-B”, substitute “62.41-B”.
- (26) In rule 62.47 (interpretation of this Part)—
- (a) omit the definition of “the Act of 1987”;
 - (b) after the definition of “the Act of 1989”, insert the following definition:—
 - ““the Act of 1995” means the Proceeds of Crime (Scotland) Act 1995(17);”;
 - (c) at the end of the definition of “non-money order”, for the full-stop, substitute a semi-colon; and
 - (d) after the definition of “non-money order”, insert the following definitions:—

(10) 1949 c. 88.

(11) 1958 c. 38.

(12) 1977 c. 37.

(13) 1988 c. 48.

(14) 1994 c. 26.

(15) S.I. 1995/3325.

(16) Rule 55.17 was substituted by S.I. 1994/2901.

(17) 1995 c. 43.

““the Order of 1995” means the Prevention of Terrorism (Temporary Provisions) Act 1989 (Enforcement of External Orders) Order 1995(18);

“relevant enactment” means the Act of 1988, the Act of 1989, the Act of 1995 or the Order of 1995, as the case may be.”.

- (27) In rule 62.48 (applications for registration under the Act of 1987, 1988 or 1989)—
- (a) in the heading to the rule, for the words “**Act of 1987, 1988 or 1989**”, substitute the words “**relevant enactment**”; and
 - (b) in paragraph (2)—
 - (i) omit sub-paragraphs (a) and (b);
 - (ii) sub-paragraphs (c) and (d) shall become sub-paragraphs (a) and (b);
 - (iii) for the full-stop at the end of new sub-paragraph (b), substitute a semi-colon; and
 - (iv) after new sub-paragraph (b), insert the following sub-paragraphs:—
 - “(c) section 36(1) of the Act of 1995 (application for registration of an order to which section 35 of the Act of 1995 applies);
 - (d) section 41(1) of the Act of 1995 (application for registration of external confiscation order);
 - (e) article 15(1) of the Order of 1995 (application for registration of external forfeiture order);
 - (f) article 16(1) of the Order of 1995 (application for registration of external restraint order).”.
- (28) In rule 62.49 (warrant for registration under the Act of 1987, 1988 or 1989)—
- (a) in the heading to the rule, for the words “**Act of 1987, 1988 or 1989**”, substitute the words “**relevant enactment**”; and
 - (b) for the words “Act of 1987, the Act of 1988 or the Act of 1989”, substitute the words “relevant enactment”.
- (29) In rule 62.50 (registration under the Act of 1987, 1988 or 1989)—
- (a) in the heading to the rule, for the words “**Act of 1987, 1988 or 1989**”, substitute the words “**relevant enactment**”; and
 - (b) for the words “Act of 1987, the Act of 1988 or the Act of 1989”, substitute the words “relevant enactment”.
- (30) In rule 62.51 (service of warrant for registration under the Act of 1987, 1988 or 1989), in the heading to the rule, for the words “**Act of 1987, 1988 or 1989**”, substitute the words “**relevant enactment**”.
- (31) In rule 62.52 (suspension of enforcement under the Act of 1987, 1988 or 1989)—
- (a) in the heading to the rule, for the words “**1987, 1988 or 1989**”, substitute the words “**1988 or 1995**”; and
 - (b) in paragraph (1), after the words “Where an order”, insert the words “under section 91(1) of the Act of 1988 or section 36(1) of the Act of 1995”.
- (32) In rule 62.53 (modification and cancellation of registration)—
- (a) in the heading to the rule, after the word “registration”, insert the words “**under the Act of 1988, 1989 or 1995**”;

- (b) in paragraph (1), after the words “of an order”, insert the words “under the Act of 1988, 1989 or 1995”; and
- (c) in paragraph (3)—
 - (i) in sub-paragraph (b), for the words “30A(3) of the Act of 1987”, substitute the words “41(3) of the Act of 1995”; and
 - (ii) after the words “certified copy of the interlocutor in the”, insert the words “register of judgments of the”.
- (33) In rule 62.54 (applications for inhibition or arrestment)—
 - (a) omit the words from “section 11(1)” to the words “of that section.”;
 - (b) for the word “or” where it first occurs, substitute a comma; and
 - (c) after “1989”, insert the words “or section 32(1) of the Act of 1995”.
- (34) In rule 70.1 (interpretation of this Chapter)—
 - (a) in the definition of “relevant authority”, for paragraph (b), substitute the following paragraph:—
 - “(b) in a relevant territory, the appropriate authority or court within that territory.”;
 - and
 - (b) for the definition of “specified dependent territory”, substitute the following definition:—
 - ““relevant territory” means a territory outside the United Kingdom to which the Act of 1985 extends by virtue of an Order in Council made under section 28(1) of that Act or in relation to which provision is made by an Order in Council under section 28(2) of that Act.”.
- (35) In rule 70.5(19) (form of applications under this Part)—
 - (a) at the end of each of paragraphs (1)(a)(vi) and (2)(a)(vi), omit the word “and”;
 - (b) at the end of each of paragraphs (1)(b) and (2)(b), for the full-stop, substitute “; and”;
 - (c) after each of paragraphs (1)(b) and (2)(b), insert the following paragraph:—
 - “(c) there shall be lodged with the petition the evidence by affidavits of any witnesses and any documentary evidence, whether originals or copies initially, in support of the petition.”; and
 - (d) in paragraph (3)—
 - (i) at the end of sub-paragraph (a)(vi), omit the word “and”;
 - (ii) at the end of sub-paragraph (b), for the full-stop, substitute “; and”; and
 - (iii) after sub-paragraph (b), insert the following sub-paragraph:—
 - “(c) there shall be lodged with the petition the evidence by affidavits of any witnesses and any documentary evidence, whether originals or copies initially, in support of the petition.”.
- (36) In rule 70.6 (period of notice, service of causes and first hearing under this Part)—
 - (a) in the heading to the rule, for the words “**first hearing**”, substitute the word “**hearings**”;
 - (b) in paragraph (2), after the words “Such a petition”, insert the words “, and a copy of any affidavit and documentary evidence lodged with it.”;
 - (c) in paragraph (2)(c), for the words “specified dependent territory”, substitute the words “relevant territory”;
 - (d) in paragraph (3), after the words “period of notice for a”, insert the word “first”; and

- (e) after paragraph (3), insert the following paragraphs:—
- “(4) A respondent shall lodge in process, and send a copy to the petitioner of, the evidence by affidavits of any witnesses and any documentary evidence, whether originals or copies initially, in support of his answers to the petition at least 3 days before the first hearing fixed under paragraph (3).
- (5) At the first hearing fixed under paragraph (3), the court—
- (a) shall determine to what extent, if any, further evidence by affidavit is required, by whom and in regard to what matters, and by what date any such affidavit should be lodged;
- (b) may, on special cause shown, direct that a particular matter should be the subject of oral evidence in lieu of further, or in addition to, affidavit evidence and by what means such evidence shall be taken; and
- (c) may, if no further evidence is required, determine the petition at the first hearing or, if further evidence is required, shall give directions as to the period within which a second hearing shall be held to determine the petition.”.
- (37) In rule 70.8 (transfer of causes)—
- (a) in paragraph (1), for the words “specified dependent territory”, substitute the words “relevant territory”;
- (b) in paragraph (2)(a), for the words “specified territory”, substitute the words “relevant territory”; and
- (c) in paragraph (4), for the words “specified dependent territory”, substitute the words “relevant territory”.
- (38) In rule 70.9 (form of applications under this Part), in paragraph (4)—
- (a) at the end of sub-paragraph (a)(vi), omit the word “and”;
- (b) at the end of sub-paragraph (b)(iv), for the full-stop, substitute “; and”; and
- (c) after sub-paragraph (b), insert the following sub-paragraph:—
- “(c) there shall be lodged with the petition, minute or note, as the case may be, the evidence by affidavits of any witnesses and any documentary evidence, whether originals or copies initially, in support of the petition, minute or note.”.
- (39) In rule 70.10 (period of notice, service of causes and first hearing under this Part)—
- (a) in the heading to the rule, for the words “**first hearing**”, substitute the word “**hearings**”;
- (b) in paragraph (2)—
- (i) after the words “Such a petition”, insert the words “, and a copy of any affidavit and documentary evidence lodged with it,”; and
- (ii) for the words “specified dependent territory” wherever they occur, substitute the words “relevant territory”;
- (c) in paragraph (3), after the words “period of notice for a”, insert the word “first”; and
- (d) after paragraph (3), insert the following paragraphs:—
- “(4) A respondent shall lodge in process, and send a copy to the petitioner of, the evidence by affidavits of any witnesses and any documentary evidence, whether originals or copies initially, in support of his answers to the petition to which rule 70.9 applies at least 3 days before the first hearing fixed under paragraph (3).
- (5) At the first hearing fixed under paragraph (3), the court—

- (a) shall determine to what extent, if any, further evidence by affidavit is required, by whom and in regard to what matters, and by what date any such affidavit should be lodged;
 - (b) may, on special cause shown, direct that a particular matter should be the subject of oral evidence in lieu of further, or in addition to, affidavit evidence and by what means such evidence shall be taken; and
 - (c) may, if no further evidence is required, determine the petition at the first hearing or, if further evidence is required, shall give directions as to the period within which a second hearing shall be held to determine the petition.”.
- (40) In rule 70.12 (other proceedings), in paragraph (2), for the words “specified dependent”, substitute the word “relevant”.
- (41) In rule 70.13 (transfers)—
- (a) in paragraph (1), for the words “specified dependent territory”, substitute the words “relevant territory”;
 - (b) in paragraph (2)(a), for the words “specified dependent territory”, substitute the words “relevant territory”; and
 - (c) in paragraph (4), for the words “dependent territory”, substitute the words “relevant territory”.
- (42) In rule 74.1 (application and interpretation of this Chapter), in paragraph (1), for sub-paragraph (a), substitute the following sub-paragraph:—
- “(a) the Insolvency Act 1986(20); and”.
- (43) In Chapter 75 (applications under the Financial Services Act 1986)—
- (a) for the cross-heading of the Chapter, substitute the following heading:—
“APPLICATIONS RELATING TO FINANCIAL SERVICES

PART I

APPLICATIONS UNDER THE FINANCIAL SERVICES ACT 1986”;

- (b) in rule 75.1 (application and interpretation of this Chapter)—
 - (i) in the heading to the rule, for the word “**Chapter**”, substitute the word “**Part**”;
 - (ii) in paragraph (1), for the word “Chapter”, substitute the word “Part”; and
 - (iii) in paragraph (2), for the word “Chapter”, substitute the word “Part”; and
- (c) after rule 75.4 (questions relating to interpretation of rules or regulations), insert the following Part:—

“PART II

APPLICATIONS UNDER THE UNCERTIFICATED SECURITIES REGULATIONS 1995

Interpretation of this Part

75.5. In this Part—

“operator” has the meaning assigned in regulation 3(1) of the Regulations of 1995;
“the Regulations of 1995” means the Uncertificated Securities Regulations 1995(21).

Form of applications under the Regulations of 1995

75.6. An application under regulation 8 (application by Secretary of State for compliance order), or regulation 9 (application by Secretary of State for interdict or restitution), of the Regulations of 1995 shall be made by petition.

Intimation and service

75.7. An order under regulation 9 of the Regulations of 1995 shall only be made following intimation and service of the petition—

- (a) on the person against whom the order is to be made; and
- (b) on the operator.

Questions relating to interpretation of rules of an operator

75.8. Where a question of the interpretation of any of the rules of an operator referred to in regulation 9(1)(a) of the Regulations of 1995 arises in a petition under this rule, the Secretary of State and the operator, if not already parties, shall be given the opportunity to make representations to the court by lodging answers to the petition.”

(44) In the appendix—

- (a) for Form 7.1, substitute Form 7.1 in the Schedule to this Act of Sederunt;
- (b) in Form 37.2-A (form of jury precept), in the paragraph beginning with the words “YOU are hereby authorised”, for the word “designations”, substitute the word “addresses”;
- (c) after Form 49.8-L, insert Form 49.8-M in the Schedule to this Act of Sederunt;
- (d) in Form 59.1-B—
 - (i) in the heading, after the words “**decree granted**”, insert the words “**or foreign judgment registered for execution**”;
 - (ii) in paragraph 1, for the word “(court)”, substitute the words “in (specify court)”;
 - (iii) in paragraph 1, at the end, insert the following:—

“[The decree was registered for execution in your Lordships' Books of Council and Session on (date) following a warrant to register for execution granted by your Lordships' court.]”; and

- (iv) in paragraph 2, after the word “decree” insert the words “[or decree of registration in the Books of Council and Session]”;
- (e) in Form 59.1-C, in paragraph 2, after the word “Session”, insert the words “[or books of the sheriff court at (name of court)]”; and
- (f) in Form 62.33—
 - (i) omit the paragraph beginning with the words “The applicant may”;
 - (ii) omit the paragraph beginning with the words “[The applicant applied]”;
 - (iii) omit the paragraph beginning with the words “Diligence in execution”; and
 - (iv) in the last paragraph, for the word “applicant”, substitute the word “petitioner”.