

2001 No. 92

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 2) (Assistance In Investigations Undertaken by European
Commission Into Certain Prohibited Practices and Abuses)
2001**

Made

8th March 2001

Coming into force

1st April 2001

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988(a) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No.2) (Assistance in Investigations Undertaken By European Commission Into Certain Prohibited Practices and Abuses) 2001 and shall come into force on 1st April 2001.

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

Restriction as to orders against which caveats may be lodged

2.—(1) In rule 5.1 of the Rules of the Court of Session 1994(b), at the beginning there shall be inserted “Without prejudice to rule 5.1A.,”.

(2) After rule 5.1 there shall be inserted—

“Further restriction as to caveats

5.1A. A caveat shall not be lodged against an interim order sought in a petition under rule 82.2.”.

Assistance in investigations undertaken by European Commission into certain prohibited practices and abuses

3. After Chapter 81 of those Rules there shall be added—

(a) 1988 c.36. Section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3) and by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45.
(b) S.I. 1994/1443.

Applications For Purposes Of Investigations Ordered Pursuant To Article 14 Of Regulation 17 Of The Council Of The European Communities

Application of this Chapter

82.1 This Chapter applies to investigations ordered pursuant to Article 14 of Regulation 17 of the Council of the European Communities^(a) (investigation necessary to bring to light any agreement, decision or concerted practice prohibited by Article 85(1) of the Treaty establishing the European Community or any abuse of a dominant position prohibited by Article 86 of that Treaty).

Warrant for messengers-at-arms to assist in investigation

82.2—(1) On the application, made by petition, of an official authorised by the European Commission for the purposes of an investigation to which this Chapter applies the court, if satisfied that such opposition as is mentioned in paragraph 6 of the said Article 14 has arisen or may arise, may pronounce an interlocutor granting warrant for messengers-at-arms to assist the official in the investigation.

(2) In relation to the undertaking or association of undertakings investigated, a warrant granted under paragraph (1) shall authorise a messenger-at-arms, on behalf of or accompanied by the applicant, on exhibiting the warrant, to do, at all reasonable times, anything mentioned in sub-paragraphs (a) to (d) of paragraph 1 of the said Article 14 and to take such steps as are requisite to enable them to do so, as for example, but without prejudice to the generality of this paragraph, to open any lockfast place.

Giving notice of grant of warrant

82.3—(1) Such Notice (if any) as the court thinks fit of the granting of a warrant under rule 82.2(1) shall be given by the applicant to such persons, in such manner and by such means as the court may direct.

(2) Without prejudice to the generality of paragraph (1), a direction under that paragraph may provide that a telecommunications system (as defined in section 4(1) of the Telecommunications Act 1984^(b)) may be used as a means of giving notice.”

Rodger of Earlsferry
Lord President,
I.P.D.

Edinburgh
8th March 2001

(a) Council Regulation 17/62, 1962 OJ Special Edition 1959 – 1962, page 87.
(b) 1984 c.12.

EXPLANATORY NOTE

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

Regulation 14.6 of the Council of the European Communities requires Member States to afford assistance to officials authorised by The European Commission in any investigation necessary to bring to light an agreement, decision or concerted practice prohibited by Article 85(1) of the Treaty establishing the European Community or an abuse of a dominant position prohibited by Article 86 of that Treaty. The assistance is to be given “where an undertaking opposes an investigation”.

This Act of Sederunt amends the Rules of the Court of Session 1994 so as to provide for applications by such officials for assistance to be made by petition (and hence, by virtue of rule 14.2(h), by petition presented in the Outer House) and for warrant to be granted authorising messengers-at-arms to provide such assistance as is requisite.

It is not to be competent to lodge a caveat against an interim order sought in such a petition.

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