

**2005 No. 193**

**COURT OF SESSION**

**Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Miscellaneous) 2005**

*Made* - - - - - *24th March 2005*

*Coming into force* - - - - - *1st April 2005*

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 paragraph 4 of the Schedule to the Prevention of Terrorism Act 2005(b) 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. 5) (Miscellaneous) 2005 and shall come into force on 1st April 2005.

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

**Amendment of the Rules of the Court of Session**

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

(2) In rule 41.25 (appeals relating to penalties)—

(a) in paragraph (1)(e) “and” shall be omitted;

(b) after paragraph (1)(f) there shall be inserted—

“; and

(g) paragraph 6(1) of Schedule 14 to the Finance Act 2003(d) (appeals from General or Special Commissioners in relation to penalties)”;

(c) in paragraph (3), for “paragraph (1)(b)” there shall be substituted “paragraph (1)(b), and (g)”.

(3) In Part I of Chapter 49 (family actions: general provisions)—

(a) in rule 49.1(2) (family actions: interpretation)(e)—

(i) after the definition of “the Act of 1995” there shall be inserted the following:—

““the Act of 2004” means the Gender Recognition Act 2004(f);”

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(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) 2005 c.2.

(c) S.I.1994/1443, last amended by S.S.I. 2005/153.

(d) 2003 c.14.

(e) Rule 49.1 was amended by S.I. 1996/2587.

(f) 2004 c.7.

- (ii) after the definition of “contact order” there shall be inserted the following:–
  - ““corrected gender recognition certificate” means a certificate issued under section 6(4) of the Act of 2004;
  - “full gender recognition certificate” and “interim gender recognition certificate” have the same meanings as in section 25 of the Act of 2004;”.
- (b) for rule 49.10(1)(a) (productions in action of divorce)(a) there shall be substituted the following:–
  - “(a) in an action of divorce—
    - (i) an extract or certified copy of the relevant entry in the register of marriages; and
    - (ii) where the action relies on section 1(1)(b) of the Act of 1976 (grounds for divorce: interim gender recognition certificate)(b), the interim gender recognition certificate or a certified copy of it; and”.
- (c) after rule 49.14(1)(b) (notices in certain actions of divorce or separation) there shall be inserted the following:–
  - “(c) in an action relying on section 1(1)(b) of the Act of 1976 (grounds for divorce: interim gender recognition certificate), a notice in Form 49.14-G.”.
- (d) after rule 49.27A (expenses of curator ad litem appointed to child)(c) there shall be inserted the following:–

*“Corrected gender recognition certificates*

**49.27B.**—(1) An application after final decree for a corrected gender recognition certificate under section 6 of the Act of 2004 shall be made by minute in the process of the action in which the full gender recognition certificate was issued.

(2) Where the court issues a corrected gender recognition certificate, the Deputy Principal Clerk shall send a certified copy of the certificate to the Secretary of State.”.

(4) Chapter 83 (applications in investigations ordered pursuant to Article 14 of Regulation 17 of the Council of the European Communities)(d) shall be omitted.

(5) For rule 89.5(3) (appeal after failure to determine application for revocation or modification of control order) there shall be substituted the following:–

“(3) In a case where the Secretary of State has failed to determine an application for the revocation of the control order, or for the modification of an obligation imposed by such an order, any appeal under section 10 of the Act of 2005 shall be lodged—

- (a) no earlier than 28 days; and
- (b) no later than 42 days;

after the date on which the application was made.”.

(6) At the end there shall be inserted the following:–

“CHAPTER 90

FREEDOM OF INFORMATION

*Applications*

**90.1.**—(1) In this rule—

(a) Rule 49.10 was amended by S.I. 1996/2587.

(b) 1976 c.39; section 1(1)(b) was inserted by paragraph 6 of Schedule 2 to the Gender Recognition Act 2004 c.7.

(c) Rule 49.27A was inserted by S.S.I. 1999/109.

(d) Chapter 83 was amended by S.S.I. 2001/92 and S.S.I. 2001/305.

“the Act of 2000” means the Freedom of Information Act 2000(a); and

“the Act of 2002” means the Freedom of Information (Scotland) Act 2002(b).

(2) An application under section 54(3) of the Act of 2000 or section 53(3) of the Act of 2002 for the court to deal with a public authority as if it had committed a contempt of court shall be by petition.

(3) There shall be attached to a petition mentioned in paragraph (2)–

- (a) where the application is under the Act of 2000, a certificate under section 54(1) of that Act (certificate by Information Commissioner of failure to comply with notice);
- (b) where the application is under the Act of 2002, a certificate under section 53(1) of that Act (certificate by Scottish Information Commissioner of failure to comply with notice).

## CHAPTER 91

### GENDER RECOGNITION ACT 2004

#### *Interpretation of this Chapter*

**91.1.** In this Chapter–

“the Act of 2004” means the Gender Recognition Act 2004(c);

“full gender recognition certificate” has same meaning as in section 25 of the Act of 2004; and

“Gender Recognition Panel” is to be construed in accordance with Schedule 1 to the Act of 2004.

#### *References by Secretary of State*

**91.2.**—(1) A reference by the Secretary of State under section 8(5) of the Act of 2004 shall be made by petition.

(2) Where the court quashes a decision by the Gender Recognition Panel to grant an application for a gender recognition certificate under section 1(1) or section 5(2), the Deputy Principal Clerk shall send a certified copy of the interlocutor to the Registrar General for Scotland.”.

(7) In the appendix—

- (a) in Form 37.2-B (form of citation of a juror) “Ext. 254” shall be omitted.
- (b) after Form 49.14-F (form of notice to defender in action of separation: five years non-cohabitation)(d) there shall be inserted the form set out in the Schedule to this Act of Sederunt.

Edinburgh  
24th March 2005

Cullen of Whitekirk  
Lord President, I.P.D.

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(a) 2000 c.36.

(b) 2002 asp 13.

(c) 2004 c.7.

(d) Form 49.14-F was amended by S.I. 1994/2901 and S.I. 1996/2587.

## SCHEDULE

Paragraph 2(7)

FORM 49.14-G

Rule 49.14(1)(c)

### **Form of notice to defender in action of divorce where an interim gender recognition certificate has been issued**

Date: *(date of posting or other method of service)*

To: *(name and address of defender in summons)*

#### TAKE NOTICE

*(Pursuer's name and address)*, pursuer, has raised an action against you, defender, in the Court of Session, Edinburgh. The pursuer seeks divorce from you. A copy of the summons in the action is attached.

1. The summons states that an interim gender recognition certificate has been issued to you [*or the pursuer*]. If the pursuer establishes this as a matter of fact the pursuer will obtain a decree of divorce.
2. If the pursuer obtains a decree of divorce, the consequences may be as follows:–
  - (a) you may lose your rights of inheritance in your wife's [*or husband's*] property;
  - (b) you may lose the right to any pensions which depend on the marriage continuing or on you being left a widow;
  - (c) apart from these consequences there may be others depending on your particular circumstances.
3. If the pursuer is entitled to a decree of divorce, you are nevertheless entitled to apply to the court:–
  - (a) to make financial or other provision for you by making an order under the Family Law (Scotland) Act 1985;
  - (b) to make an order under section 11 of the Children (Scotland) Act 1995 for maintenance in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age.

In order to make such an application you must lodge defences to the action seeking any such order. If you wish to do this you should consult a solicitor.

If you lodge defences, you may do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of service on you of the summons [*or if service is executed before calling of the summons*, within seven days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of service on you of the summons]. The date of service is the date stated at the top of this notice unless service has been made by post in which case the date of service is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.**

*(Signed)*

Messenger-at-Arms

[*or Solicitor [or Agent] for pursuer*]

*(Address)*

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994 (S.I. 1994/1443).

Paragraph 2(2) amends rule 41.25 (appeals relating to penalties) to make provision for certain appeals against penalties under the Finance Act 2003.

Paragraph 2(3), makes amendments to Chapter 49 (family actions) in view of the Gender Recognition Act 2004.

Paragraph 2(4) omits Chapter 83 on applications for investigations pursuant to Article 14 of Regulation 17 of the Council of the European Communities.

Paragraph 2(5) makes a minor amendment to rule 89.5(3) (certain appeals under the Prevention of Terrorism Act 2005).

Paragraph 2(6) inserts a new Chapter 90 introducing procedure for applications to the court under the Freedom of Information Act of 2000 and Freedom of Information (Scotland) Act 2002. It also inserts a new Chapter 91 to introduce procedure for a reference by the Secretary of State under the Gender Recognition Act 2004.

Paragraph 2(7) makes a minor amendment to Form 37.2-B (form of citation of juror) and inserts a new form to the appendix to accompany a summons for divorce where an interim gender recognition certificate has been issued under the Gender Recognition Act 2004.





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