

## 1976 No. 283 (S. 22)

## COURT OF SESSION, SCOTLAND

## Act of Sederunt (Letters of Request) 1976

Made - - - - 24th February 1976

Coming into Operation            4th May 1976

The Lords of Council and Session, by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act 1933(a), by sections 2 and 5 of the Evidence (Proceedings in Other Jurisdictions) Act 1975(b), and of all other powers competent to them in that behalf do hereby enact and declare:

*Citation, interpretation and commencement*

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Letters of Request) 1976 and shall come into operation on 4th May 1976.

(2) The Interpretation Act 1889(c) shall apply for the interpretation of this Act of Sederunt as it applies for the interpretation of an Act of Parliament.

*Amendment of Rules of Court*

## 2. In the Rules of Court(d)—

(a) there are substituted for rule 102 the following rules:—

“102.—(1) This rule applies to applications to the Court for a letter of request to a court or tribunal outside Scotland to obtain evidence of the kind specified in paragraph (2) of this rule, being evidence obtainable within the jurisdiction of that court or tribunal, for the purposes of civil proceedings commenced before the Court of Session.

(2) An application under paragraph (1) of this rule may be made in relation to a request—

- (a) for the examination of witnesses;
- (b) for the production of documents;
- (c) for the inspection, photographing, preservation, custody or detention of any property;
- (d) for the taking of samples of any property and the carrying out of any experiments on or with any property.

(3) An application to which this rule applies shall be made by way of a minute lodged in process and framed in accordance with Form 10, to which is appended a proposed letter of request framed in accordance with Form 11.

(4) On consideration of the minute and proposed letter of request, and after allowing the other parties to lodge answers, and after hearing any objections, the application may be granted and a letter of request authorised to be issued.

(a) 1933 c. 41.

(b) 1975 c. 34.  
(d) S.I. 1965/321 (1965 I, p. 803).

(c) 1889 c. 63.

(5) Unless the court or tribunal to which a letter of request is addressed under this rule, is a court or tribunal in a country or territory—

- (a) where the official language or one of the official languages is English; or
- (b) in relation to which the Deputy Principal Clerk certifies that no translation is required,

then the applicant shall, before the issue of the letter, lodge in process a translation of the letter and relative interrogatories, if any, into the language of that court or tribunal.

(6) It shall be a condition of granting any such letter of request that the solicitor for the applicant shall become personally liable for the whole expenses which may become due and payable in respect thereof to the court or tribunal obtaining the evidence and to any witnesses who may be examined for that purpose; and he shall consign such sums in respect of such expenses as the court shall think proper.

(7) The letter of request when duly issued shall together with any interrogatories adjusted according to the present practice and the relative translations, be forwarded forthwith by the Deputy Principal Clerk to such person and in such manner as the Lord President may direct.

102A.—(1) This rule applies to applications made to the Court of Session for an order for evidence to be obtained in Scotland in pursuance of a request issued—

- (a) by or on behalf of a court or tribunal exercising jurisdiction outside Scotland, being evidence to be obtained for the purposes of civil proceedings commenced or contemplated before that court or tribunal; or
- (b) by or on behalf of a court or tribunal exercising jurisdiction outside the United Kingdom, being evidence to be obtained by the examination of witnesses, either orally or in writing, or the production of documents, for the purpose of criminal proceedings commenced before that court or tribunal.

(2) An application to which this rule applies shall be made by way of Petition to the Inner House, and shall have a certificate appended—

- (a) certifying that the application is made in pursuance of a request issued by or on behalf of a court or tribunal exercising jurisdiction outside Scotland, or where the request relates to criminal proceedings, outside the United Kingdom;
- (b) certifying that the evidence to be obtained is for the purposes of civil proceedings commenced or contemplated, or criminal proceedings commenced, as the case may be, before that court or tribunal;
- (c) in the case of criminal proceedings, certifying that the proceedings are not of a political nature; and
- (d) signed by a duly authorised diplomatic or consular representative of the country or territory within which the court or tribunal exercises jurisdiction.

(3) (a) Where in pursuance of an order of the Court granting the prayer of a Petition under this rule, a witness is cited to attend to give evidence, and he claims that he is not a compellable witness by virtue of the provisions

of section 3 of the Evidence (Proceedings in Other Jurisdictions) Act 1975, the Court, or a Commissioner appointed by the Court to take the evidence of that witness, may, if the claim is not supported by a statement in the request issued by or on behalf of the foreign court or tribunal or is not conceded by the applicant, take his evidence and have it recorded in a separate document.

(b) If a Commissioner appointed to take evidence refuses to do so on the ground that the witness is not a compellable witness, the applicant may apply to the Court to order him to do so.

(c) Where a Commissioner takes evidence under sub-paragraph (a) or (b) of this paragraph of this rule, he shall certify the claim and the grounds upon which it was made, and send the certificate to the Court, which shall cause the certificate to be sent to the foreign court or tribunal with a request to them to determine the claim.

(d) On receipt of the determination of the foreign court or tribunal the Court shall give notice of the determination to the person who made the claim and shall, in accordance with the determination, send the document in which that person's evidence is recorded to the foreign court or tribunal, or return it to that person, as the case may be.”;

(b) paragraph (vi) of Rule 190 is deleted, and the following paragraphs are renumbered accordingly;

(c) there are substituted for Forms 10 and 11 the following forms:

#### **“FORM 10**

##### **FORM OF MINUTE FOR LETTERS OF REQUEST**

*Minute for A.B. (design)*

Counsel for the Minuter states that the evidence specified in the Schedule is required for the purpose of these proceedings and prays the Court to issue a letter of request to (specify the Court or tribunal having powers to obtain the evidence) to obtain the evidence so specified.

(signed by Counsel).

#### **SCHEDULE**

*(Specify the evidence to be obtained)*

#### **FORM 11**

##### **FORM OF LETTER OF REQUEST**

Whereas an action for [divorce] is now pending in the Court of Session, Supreme Court of Scotland, in which A.B. is pursuer and is represented by C.D., counsel, and E.F., solicitors, and E.F., is defender and is represented by G.H., counsel, and I.J., solicitors, and whereas it has been represented to the said Court that it is necessary, for the purposes of justice and for the due determination of the matters in dispute between the parties that the following persons should be examined as witnesses upon oath [or affirmation], that is to say:

K.L., of \_\_\_\_\_, who will give evidence to the effect that  
 M.N., of \_\_\_\_\_, who will give evidence to the effect that  
 and O.P., of \_\_\_\_\_, who will give evidence to the effect that  
 and who may competently refuse to give evidence on the following grounds  
 [or that the following evidence shall be obtained, that is to say, \_\_\_\_\_]  
 and it appearing that such witnesses are resident [or such evidence is]  
 within the jurisdiction of your honourable Court [or tribunal]:

Now I, the Right Honourable \_\_\_\_\_ as the President of  
 the \_\_\_\_\_ Division of said Court [or, I, the Right Honourable [or the  
 Honourable] Lord \_\_\_\_\_, one of the Judges of said Court], have the  
 honour to request, and do hereby request, that for the reasons aforesaid, and  
 for the assistance of the said Court, you as the President and judges of the said  
 Court [or tribunal] or some one or more of you, will be pleased to summon  
 the said witnesses to attend at such time and place as you shall appoint  
 before some one or more of you, or such other person as, according to the  
 procedure of your Court [or tribunal], is competent to take the examination  
 of witnesses, and that you will cause such witnesses to be examined upon the  
 interrogatories which accompany this letter of request in the presence of the  
 solicitors, procurators or attorneys of the pursuer and defender, or such of  
 them as shall, on due notice given, attend such examination [or will be  
 pleased to take such steps as, according to the procedure of your Court  
 (or tribunal), are competent to obtain such evidence].

And I have further the honour to request that you will be pleased to cause  
 the answers by the witnesses to the said interrogatories to be reduced to  
 writing, and all books, letters, papers and documents produced upon such  
 examination, [or evidence so obtained] to be duly marked for identification;  
 and that you will be further pleased to authenticate such examination [or  
 evidence] by the seal of your Court [or tribunal], or in such other way as is  
 in accordance with your procedure, and to return the same through  
 Her Majesty's Secretary of State for Foreign Affairs, for transmission to the  
 said Court of Session.

(signed by the Judge)

(address of Foreign Court or tribunal)

(date) .”

And the Lords appoint this Act of Sederunt to be inserted in the Books of  
 Sederunt.

*G. C. Emslie,*

I.P.D.

Edinburgh,  
 24th February 1976.

## EXPLANATORY NOTE

*(This Note is not part of the Act of Sederunt.)*

This Act of Sederunt amends the Rules of Court relating to Letters of Request by making new provision in respect of Letters received from foreign courts or tribunals to give effect to the provisions of the Evidence (Proceedings in Other Jurisdictions) Act 1975, and corresponding provision in respect of Letters sent out by the Court of Session in relation to civil proceedings that have been commenced before the Court.

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