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STATUTORY INSTRUMENTS

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**1992 No. 1533 (S.145)**

**COURT OF SESSION, SCOTLAND**

**Act of Sederunt (Rules of the Court of Session  
Amendment No.5) (Public Trusts) 1992**

*Made* - - - - *25th June 1992*  
*22nd September*  
*Coming into force* - - *1992*

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(1) 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) (Public Trusts) 1992 and shall come into force on 22nd September 1992.

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

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

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

(2) After rule 233 (Form of petitions and procedure) insert the following Section and rules:—

*“SECTION 6A  
PUBLIC TRUSTS*

**Interpretation**

**233A.** In this Section, “the Act of 1990” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

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(1) 1988 c. 36.

(2) S.I.1965/321; relevant amending instruments are S.I. 1970/134, 1976/283, 1977/1621, 1980/1144 and 1987/1206.

### **Applications relating to public trusts**

**233B.**—(1) Subject to rule 233H and paragraph (2) and (3) of this rule, any application to the court under—

- (a) section 105(4A), 106, 108 and 108A of the Education (Scotland) Act 1980,  
or
- (b) Part I of the Act of 1990 (charities and reorganisation of public trusts), shall be by petition presented to the Outer House.

(2) An application in a petition depending before the court to which paragraph (1) applies shall be made by motion.

(3) A further application under section 7(7) or (8) of the Act of 1990 shall be made by note in the process relating to the application made under section 7(6) of that Act.

### **Proceedings before nominated judge**

**233C.** All proceedings in the Outer House under rule 233B shall be heard by a judge of the court nominated for that purpose by the Lord President or, where the nominated judge is not available, before any other judge of the court (including a vacation judge); and, in this Section, “Lord Ordinary” shall be construed accordingly.

### **Intimation**

**233D.** The court shall order intimation of a petition under this section to all persons interested in the subject-matter of the petition and if any such person wishes to appear he shall lodge answers within such *induciaeas* the court may direct.

### **Procedure where no answers lodged**

**233E.**—(1) If, on the expiry of the *induciae* in a petition to which this Section applies, no answers have been lodged, the petitioner may apply by motion for an order granting the prayer of the petition.

(2) On a motion under paragraph (1), the Lord Ordinary may, before determining that motion—

- (a) remit to a reporter to enquire 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 considers necessary.

### **Procedure where answers lodged**

**233F.**—(1) Where answers are lodged in a petition to which this Section applies, 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 *induciae*, 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) In a motion under paragraph (2), the Lord Ordinary shall make such an order as he considers appropriate for the further procedure of the petition; and, in particular, may—

- (a) remit to a reporter to enquire into, and report on, the petition and any scheme appended to it,

- (b) order a party to lodge evidence by affidavit or documentary evidence, and then, or thereafter, shall appoint the cause to a hearing.
- (4) At a hearing the Lord Ordinary shall—
- (a) determine the petition; or
  - (b) make such order for further procedure as he considers necessary.
- (5) If at any stage answers are withdrawn, the petition shall proceed as if answers had not been lodged.

#### **Warrants for registration**

**233G.** An interlocutor approving 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, together with a copy of the scheme certified by the solicitor to the petitioner, in the Books of Council and Session or the books of a specified sheriff court.

#### **Applications to recall interlocutors**

**233H.**—(1) Intimation to the court by the Lord Advocate under section 1(6) or 5(13) of the Act of 1990 shall be made by motion for recall of the interlocutor in the process of the petition in which the interlocutor was granted.

(2) An application for recall of an interlocutor granted under section 2(3), paragraph (b), (d) or (e) of section 7(5), section 7(6), or section 7(7) of the Act of 1990 shall be made by motion in the process of the petition in which the interlocutor was granted.

#### **Advertisement of court orders**

**233I.** An order made under paragraph (a) or (g) of section 7(4) of the Act of 1990 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.”

Edinburgh  
25th June 1992

*J.A.D. Hope*  
Lord President IPD

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session by—

- (a) providing that applications in relation to public trusts under Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) and the Education (Scotland) Act 1980 (c. 44) be made by petition presented to the Outer House (paragraph 2(2)); and
- (b) providing rules in relation to the disposal of such petitions (paragraph 2(2)).