

## STATUTORY INSTRUMENTS

# 1996 No. 2168

## Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Miscellaneous) 1996

PROSPECTIVE

### 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. 4) (Miscellaneous) 1996 and shall come into force on 23rd September 1996.

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

### Commencement Information

II Para. 1 in force at 23.9.1996, see [para. 1\(1\)](#)

### 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 14.5 (first order in petitions), for paragraph (1), substitute the following paragraph:—

“(1) Subject to paragraph (2), on a petition being lodged, the court shall, without a motion being enrolled for that purpose, pronounce an interlocutor for such intimation, service and advertisement as may be necessary.”.

(3) After Chapter 28 (procedure roll), insert the following Chapter:—

## “CHAPTER 28A

### NOTICES TO ADMIT AND NOTICES OF NON-ADMISSION

#### Notices to admit and notices of non-admission

**28A.1.**—(1) At any time after the record has closed, a party may intimate to any other party a notice or notices calling on him to admit for the purposes of that cause only—

(a) such facts relating to an issue averred in the pleadings as may be specified in the notice;

(b) that a particular document lodged in process and specified in the notice is—

(i) an original and properly authenticated document; or

(ii) a true copy of an original and properly authenticated document.

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- (2) Where a party on whom a notice is intimated under paragraph (1)—
  - (a) does not admit a fact specified in the notice, or
  - (b) does not admit, or seeks to challenge, the authenticity of a document specified in the notice,

he shall, within 21 days after the date of intimation of the notice under paragraph (1), intimate a notice of non-admission to the party intimating the notice to him under paragraph (1) stating that he does not admit the fact or document specified.

(3) The party intimating a notice under paragraph (1) or (2) shall lodge a copy of it in process.

(4) The court may, at any time, allow a party to amend or withdraw an admission made by him on such conditions, if any, as it thinks fit.

(5) A party may, at any time, withdraw in whole or in part a notice of non-admission by intimating a notice of withdrawal.

### **Consequences of failure to intimate notice of non-admission**

#### **28A.2. –**

(1) A party who fails to intimate a notice of non-admission under paragraph (2) of rule 28A.1 shall be deemed to have admitted the fact or document specified in the notice intimated to him under paragraph (1) of that rule; and such fact or document may be used in evidence at a proof if otherwise admissible in evidence, unless the court, on special cause shown, otherwise directs.

(2) A party who fails to intimate a notice of non-admission under paragraph (2) of rule 28A.1 within 21 days after the notice to admit intimated to him under paragraph (1) of that rule shall be liable to the party intimating the notice to admit for the expenses of proving the fact or document specified in that notice unless the court, on special cause shown, otherwise directs.

(3) A deemed admission under paragraph (1) of this rule shall not be used against the party by whom it was deemed to be made other than in the cause for the purpose for which it was deemed to be made or in favour of any person other than the party by whom the notice was given under rule 28A.1(1).”.

- (4) In rule 30.2 (intimation to party whose agent has withdrawn)—
  - (a) in paragraph (1), for the word “interlocutor” where it second occurs, substitute the word “notice”; and
  - (b) in paragraph (2), omit the words “with a copy of the interlocutor pronounced under paragraph (1)”.
- (5) After Chapter 34 (reports to Inner House), insert the following Chapter:—

## **“CHAPTER 34A PURSUERS' OFFERS**

### **Application and interpretation of this Chapter**

**34A.1.**—(1) This Chapter applies to an action in which the summons contains a pecuniary conclusion.

(2) In this Chapter—

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“defender” includes a third party;

“offer to settle” means an offer to which rule 34A.2 applies;

“pursuer” includes a defender who makes an offer in a counterclaim;

“summons” includes a counterclaim.

### **Offers to settle**

**34A.2.**—(1) In an action to which this Chapter applies, a pursuer may, at any time before—

- (a) the court makes avizandum or, if it does not make avizandum, gives judgment, or
- (b) in a jury trial, the jury retires to consider the verdict,

make an offer to a defender to settle a claim by the pursuer against the defender in accordance with this Chapter.

(2) Such an offer shall—

- (a) be by minute, which may be in Form 34A.2, signed by counsel or other person having a right of audience;
- (b) specify—
  - (i) that it is made under this rule;
  - (ii) that it is without prejudice to, and under reservation of, the pursuer’s rights and pleas;
  - (iii) the conclusion in respect of which the offer is made or that it is made in respect of all the conclusions;
  - (iv) the sum for which the pursuer offers to settle;
  - (v) whether that sum is exclusive or inclusive of interest and, if inclusive, the date to which interest is calculated; and
  - (vi) whether the expenses of process are sought in addition and whether those expenses are to be taxed by the Auditor; and
- (c) be lodged in process.

### **Protection of offers from disclosure**

**34A.3.**—(1) No averment of the fact that a minute of offer to settle has been lodged in process, or of the contents of that minute, shall be contained in any pleadings.

(2) Where an offer to settle is not accepted, the court shall not be informed about the offer at any time until all questions in respect of the pecuniary conclusion of the summons other than expenses have been disposed of.

### **Withdrawal or expiry of offers**

**34A.4.**—(1) An offer to settle may be withdrawn by the pursuer at any time before it is accepted by lodging in process a minute of withdrawal which may be in Form 34A.4.

(2) Where an offer to settle specifies a time within which it may be accepted and it is not accepted or withdrawn within that time, the offer shall be deemed to have been withdrawn when that time expires.

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### Acceptance of offers

**34A.5.**—(1) Acceptance of an offer to settle shall be made by lodging in process a minute of acceptance which may be in Form 34A.5.

(2) Acceptance of an offer to settle may be made at any time before—

- (a) the offer is withdrawn;
- (b) the expiry of any period within which it is to be accepted; or
- (c) the court makes avizandum or, if it does not make avizandum, gives judgment, or, in a jury trial, the jury retires to consider the verdict, in respect of the conclusion in the summons in relation to which the offer was made.

(3) Where an offer to settle has been accepted, the pursuer may enrol a motion for decree in terms of the minute of offer to settle and minute of acceptance.

(4) Where an offer to settle which is accepted states that it is exclusive of interest after the date of the offer, the court may, on the motion of the pursuer, decern for interest on the sum in the offer from the date of the offer until the date of the decerniture.

(5) Where an offer to settle which is accepted states that expenses are sought in addition to the sum specified in the offer, then, except in so far as expenses have already been dealt with, the pursuer shall be entitled to expenses as taxed by the Auditor to the date on which the minute of acceptance was lodged in process.

### Consequences of failure to accept an offer to settle

**34A.6.**—(1) This rule applies where an offer to settle is—

- (a) not withdrawn and does not expire before the date on which—
  - (i) the court makes avizandum or, if it does not make avizandum, gives judgment, or
  - (ii) in a jury trial, the jury retires to consider the verdict;
- (b) not accepted by the defender; and
- (c) in an action where two or more defenders are alleged in the action to be jointly or jointly and severally liable to the pursuer and rights of contribution or indemnity appear to exist between the defenders, made to all the defenders to settle the claim against all of them.

(2) Where the pursuer is awarded a sum equal to or more than the sum specified in the offer to settle, he shall be entitled, from the defender to whom the offer to settle was made—

- (a) unless the court otherwise orders, to the expenses of process (including any additional fee under rule 42.14) as taxed by the Auditor; and
- (b) to a sum equal to the taxed amount of those expenses (excluding any additional fee under rule 42.14).”.

(6) For rule 35.3 (optional procedure before executing commission and diligence), substitute the following rule:—

### “Optional procedure before executing commission and diligence

**35.3.**—(1) Subject to rule 35.3A (optional procedure where there is a party litigant or confidentiality is claimed), this rule applies where a party has obtained a commission and diligence for the recovery of a document on an application made under rule 35.2(1)(a).

(2) Such a party may, at any time before executing the commission and diligence against a haver, serve on the haver an order in Form 35.3-A (in this rule referred to as “the order”).

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- (3) The order and a copy of the specification referred to in rule 35.2(2), as approved by the court, shall be served on the haver or his known agent and shall be complied with by the haver in the manner and within the period specified in the order.
- (4) Not later than the day after the date on which the order, and any document recovered, is received from a haver by the party who obtained the order, that party—
  - (a) shall give written intimation of that fact in Form 35.3-B to the Deputy Principal Clerk and every other party; and
  - (b) shall—
    - (i) if the document has been sent by post, send a written receipt for the document in Form 35.3-C to the haver; or
    - (ii) if the document has been delivered by hand, give a written receipt in Form 35.3-C to the person delivering the document.
- (5) Where the party who has recovered any such document does not lodge it in process within 14 days of receipt of it, he shall—
  - (a) forthwith give written intimation to every other party that that party may borrow, inspect or copy the document within 14 days after the date of that intimation; and
  - (b) in so doing, identify the document.
- (6) Where any party, who has obtained any such document under paragraph (5), wishes to lodge the document in process, he shall—
  - (a) lodge the document within 14 days after receipt of it; and
  - (b) at the same time, send a written receipt for the document in Form 35.3-D to the party who obtained the order.
- (7) Where—
  - (a) no party wishes to lodge or borrow any such document under paragraph (5), the document shall be returned to the haver by the party who obtained the order within 14 days after the expiry of the period specified in sub-paragraph (a) of that paragraph; or
  - (b) any such document has been uplifted by another party under paragraph (5) and that party does not wish to lodge it in process, the document shall be returned to the haver by that party within 21 days after the date of receipt of it by him.
- (8) Any such document lodged in process shall be returned to the haver by the party lodging it within 14 days after the expiry of any period allowed for appeal or reclaiming or, where an appeal or reclaiming motion has been marked, from the disposal of any such appeal or reclaiming motion.
- (9) If any party fails to return any such document as provided for in paragraph (7) or (8), the haver shall be entitled to apply by motion (whether or not the cause is in dependence) for an order that the document be returned to him and for the expenses occasioned by that motion.
- (10) The party holding any such document (being the party who last issued a receipt for it) shall be responsible for its safekeeping during the period that the document is in his custody or control.
- (11) If the party who served the order is not satisfied that—
  - (a) full compliance has been made with the order, or
  - (b) adequate reasons for non-compliance have been given,he may execute the commission and diligence under rule 35.4.

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(12) Where an extract from a book of any description (whether the extract is certified or not) is produced under the order, the court may, on the motion of the party who served the order, direct that that party shall be allowed to inspect the book and take copies of any entries falling within the specification.

(13) Where any question of confidentiality arises in relation to a book directed to be inspected under paragraph (12), the inspection shall be made, and any copies shall be taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence.

(14) The court may, on cause shown, order the production of any book (not being a banker's book or book of public record) containing entries falling under a specification, notwithstanding the production of a certified extract from that book.”.

(7) After rule 35.3 (optional procedure before executing commission and diligence), insert the following rule:—

**“Optional procedure where there is a party litigant or confidentiality is claimed**

**35.3A.**—(1) This rule shall apply where—

- (a) any of the parties to the action is a party litigant; or
- (b) confidentiality is claimed for any document in the possession of a haver.

(2) Rule 35.3 (optional procedure before executing commission and diligence) shall not apply where paragraph (1) of this rule applies.

(3) The party who has obtained a commission and diligence for the recovery of a document on an application made under rule 35.2(1)(a) may, at any time before executing it against a haver, serve on the haver an order in Form 35.3A-A (in this rule referred to as “the order”).

(4) The order and a copy of the specification referred to in rule 35.2(2), as approved by the court, shall be served on the haver or his known agent and shall be complied with by the haver in the manner and within the period specified in the order.

(5) Not later than the day after the date on which the order, and any document recovered, is received from a haver by the Deputy Principal Clerk, he shall give written intimation of that fact to each party.

(6) No party, other than the party who served the order, may uplift any such document until after the expiry of 7 days after the date of intimation under paragraph (5).

(7) Where the party who served the order fails to uplift any such document within 7 days after the date of intimation under paragraph (5), the Deputy Principal Clerk shall give written intimation of that failure to every other party.

(8) Where no party has uplifted any such document within 14 days after the date of intimation under paragraph (7), the Deputy Principal Clerk shall return it to the haver who delivered it to him.

(9) Where a party who has uplifted any such document does not wish to lodge it, he shall return it to the Deputy Principal Clerk who shall—

- (a) give written intimation of the return of the document to every other party; and
- (b) if no other party uplifts the document within 14 days after the date of intimation, return it to the haver.

(10) Any such document lodged in process shall be returned to the haver by the party lodging it within 14 days after the expiry of any period allowed for appeal or reclaiming or, where an appeal or reclaiming motion has been marked, from the disposal of any such appeal or reclaiming motion.

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(11) If any party fails to return any such document as provided for in paragraph (9) or (10), the haver shall be entitled to apply by motion (whether or not the cause is in dependence) for an order that the document be returned to him and for the expenses occasioned by that motion.

(12) The party holding any such document (being the party who last issued a receipt for it) shall be responsible for its safekeeping during the period that the document is in his custody or control.

(13) If the party who served the order is not satisfied that—

- (a) full compliance has been made with the order, or
- (b) adequate reasons for non-compliance have been given,

he may execute the commission and diligence under rule 35.4.

(14) Where an extract from a book of any description (whether the extract is certified or not) is produced under the order, the court may, on the motion of the party who served the order, direct that that party shall be allowed to inspect the book and take copies of any entries falling within the specification.

(15) Where any question of confidentiality arises in relation to a book directed to be inspected under paragraph (14), the inspection shall be made, and any copies shall be taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence.

(16) The court may, on cause shown, order the production of any book (not being a banker's book or book of public record) containing entries falling under a specification, notwithstanding the production of a certified extract from that book.”

(8) In rule 36.4 (copy productions), in paragraph (1), after the word “every”, insert the word “documentary”.

(9) Rule 36.6(2) (notices to admit and notices of non-admission) shall be omitted.

(10) After rule 41.43 (application of Parts II and III to this Part), insert the following rules:—

#### “**Appeals to be heard in Outer House**

**41.44.**—(1) Subject to paragraph (2), an appeal to the court to which this Chapter applies may be remitted by the Inner House to the Outer House to be heard by the Lord Ordinary in the first instance—

- (a) at its own instance after hearing parties, or
- (b) on the motion of a party,

on a motion being enrolled under rule 41.15 (motions for hearing appeals by stated case) or rule 41.22 (motion for further procedure in appeals in Form 41.19), as the case may be.

(2) Paragraph (1) shall not apply to the following appeals:—

- (a) an appeal under an enactment which specifies that the appeal is to the Inner House;
- (b) an appeal to which Part IV of this Chapter applies (Exchequer appeals);
- (c) an appeal to which Part VI of this Chapter applies (appeals under section 50 of the Social Work (Scotland) Act 1968(3));
- (d) an appeal to which Part VII of this Chapter applies (appeals under the Representation of the People Act 1983(4));
- (e) an appeal from the Land Court;

(2) Rule 36.6 was amended by S.I. 1994/2901.

(3) 1968 c. 49; section 50 was amended by the Local Government etc. (Scotland) Act 1994, Schedule 13, paragraph 76(17).

(4) 1983 c. 2.

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- (f) an appeal from the Lands Tribunal for Scotland;
- (g) an appeal under section 10 of the Restrictive Practices Court Act 1976<sup>(5)</sup> (appeal from the Restrictive Practices Court);
- (h) an appeal under paragraph 14 of Schedule 4 to the Transport Act 1985<sup>(6)</sup> (appeal from the Transport Tribunal);
- (i) an appeal under section 25(1) of the Child Support Act 1991<sup>(7)</sup> (appeal from the Child Support Commissioner);
- (j) an appeal under section 24(1) of the Social Security Administration Act 1992<sup>(8)</sup> (appeal from the Social Security Commissioner);
- (k) an appeal under section 9 of the Asylum and Immigration Appeals Act 1993<sup>(9)</sup> (appeal from the Immigration Appeal Tribunal);
- (l) an appeal under section 37(1) of the Industrial Tribunals Act 1996<sup>(10)</sup>.

### **Reclaiming against decision of Lord Ordinary**

**41.45.** The decision of the Lord Ordinary on an appeal heard in the Outer House by virtue of rule 41.44 (appeals to be heard in Outer House) may be reclaimed against.”.

- (11) In Chapter 43 (actions of damages), after Part V, insert the following Part:—

#### “PART VI

#### PRODUCTIONS IN CERTAIN ACTIONS OF DAMAGES

### **Application of this Part**

**43.29.** This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries.

### **Averments of medical treatment**

**43.30.** The condescence of the summons in an action to which this Part applies shall include averments naming—

- (a) every medical practitioner from whom, and
- (b) every hospital or other institution in which,

the pursuer or, in an action in respect of the death of a person, the deceased received treatment for the injuries sustained, or disease suffered, by him.

### **Lodging of medical reports**

**43.31.**—(1) In an action to which this Part applies, the pursuer shall lodge as productions, with the summons when it is lodged for signeting under rule 13.5, all medical reports then available to him and in his possession or control on which he intends, or intends to reserve the right, to rely in the action.

<sup>(5)</sup> 1976 c. 33.

<sup>(6)</sup> 1985 c. 67.

<sup>(7)</sup> 1991 c. 48; section 25 was amended by the Child Support Act 1995 (c. 34), Schedule 3, paragraph 8.

<sup>(8)</sup> 1992 c. 5.

<sup>(9)</sup> 1993 c. 23.

<sup>(10)</sup> 1996 c. 17.



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(2) Where no medical report is lodged as required by paragraph (1), the defender may apply by motion for an order specifying a period within which such a report shall be lodged in process.”.

(12) After Chapter 45 (actions of division and sale), insert the following Chapter:—

## **“CHAPTER 45A ACTIONS OF REMOVING**

### **Application of this Chapter**

**45A.1.**—(1) Subject to paragraph (2), this Chapter applies only to a conclusion for removing in an action of removing against a person or persons in possession of heritable property without right or title to possess the property.

(2) This Chapter shall not apply with respect to a person who has or had a title or other right to occupy the heritable property and who has been in continuous occupation since that title or right is alleged to have come to an end.

### **Service on unnamed occupiers**

**45A.2.**—(1) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the pursuer shall call that person as a defender by naming him as an “occupier”.

(2) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the summons shall be served (whether or not it is also served on a named person), unless the court otherwise directs, by a messenger-at-arms—

- (a) affixing a copy of the summons and a citation in Form 45A.2 addressed to “the occupiers” to the main door or other conspicuous part of the premises, and if practicable, depositing a copy of each of those documents in the premises; or
- (b) in the case of land only, inserting stakes in the ground at conspicuous parts of the occupied land to each of which is attached a sealed transparent envelope containing a copy of the summons and a citation in Form 45A.2 addressed to “the occupiers”.

(3) Paragraphs (1), (2) and (4) of rule 16.3 (service by messenger-at-arms) shall apply to service of a summons under this rule as they apply to service by a method to which those paragraphs apply.

### **Shortening or dispensing with periods of time**

**45A.3.** Where the action is directed against a person in occupation of the heritable property *vi clam aut precario*, the pursuer may apply by motion to shorten or dispense with the period of notice or other period of time in these Rules relating to the conduct of the action or the extracting of any decree.

### **Application by occupiers to become defenders**

**45A.4.** A person not named as a defender in the summons who is in occupation of the heritable property may, within the period of notice, apply by minute to be sisted as a defender to the action.”.

(13) In the following provisions of Chapter 62 (recognition, registration and enforcement of foreign judgments, etc.) for the words “rule 62.2(2)” substitute the words “rule 62.2(1)(b)”:—

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rule 62.8(2)(c),  
 rule 62.15(2)(c),  
 rule 62.22(1)(c),  
 rule 62.32(2)(c),  
 rule 62.37(1)(b),  
 rule 62.46(2)(c),  
 rule 62.58(3)(c).

(14) In rule 62.40(11) (enforcement in another Contracting State of Court of Session judgments etc.), after paragraph (3), insert the following paragraph:—

“(4) The Keeper of the Registers shall not issue a certificate under paragraph (3) unless there is produced to him an affidavit verifying that enforcement has not been suspended and that the time available for enforcement has not expired.”.

(15) In rule 62.47(12) (interpretation of this Part)—

- (a) omit the definition of “the Act of 1988”; and
- (b) in the definition of “relevant enactment”, omit the words “the Act of 1988”.

(16) In rule 62.48(2)(12) (applications for registration under the relevant enactment)—

- (a) omit sub-paragraph (a); and
- (b) sub-paragraphs (b), (c), (d), (e) and (f) shall become sub-paragraphs (a), (b), (c), (d) and (e) respectively.

(17) In rule 62.52(12) (suspension of enforcement under the Act of 1988 or 1995)—

- (a) in the heading to the rule, omit the words “1988 or”; and
- (b) in paragraph (1), omit the words “section 91(1) of the Act of 1988 or”.

(18) In rule 62.53(13) (modification and cancellation of registration under the Act of 1988, 1989 or 1995)—

- (a) in the heading to the rule, omit “1988,”; and
- (b) in paragraph (1), omit “1988,”.

(19) For rule 62.54(13) (applications for inhibition or arrestment), substitute the following rule:

—

#### “Incidental applications

**62.54.**—(1) Any of the following applications shall be made in the prayer of the petition under rule 62.48(1) to which it relates or, if the prayer of that petition has been granted, by motion in the process of that petition:—

- (a) an application under section 32(1) of the Act of 1995(14) for a warrant for inhibition;
- (b) an application under section 33(1) of the Act of 1995 (warrant for arrestment);

(11) Rule 62.40 was amended by [S.I. 1994/2901](#).

(12) Rules 62.47-62.54 were amended by [S.I. 1996/1756](#).

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(14) [1995 c. 43](#).

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(c) an application under paragraph 16(1) (warrant for inhibition), or paragraph 16A(1) (warrant for arrestment), of Schedule 4 to the Act of 1989(15) as applied by paragraph 19(5)(16) of that Schedule or by article 18 of the Order of 1995(17), as the case may be.

(2) Either of the following applications shall be made in the prayer of the petition under rule 62.48(1) to which it relates or, if the prayer of the petition has been granted, by note in the process of that petition:—

(a) an application under sub-paragraph (4) of paragraph 19 of Schedule 4 to the Act of 1989 for an order in implementation of an England and Wales, Northern Ireland or Islands forfeiture order registered in the Court of Session under that paragraph;

(b) an application under article 17 of the Order of 1995 for an order in implementation of an external forfeiture order registered in the Court of Session under article 15(1) of that Order.

(3) Where the court makes an order by virtue of paragraph 19(4) of Schedule 4 to the Act of 1989 or article 17 of the Order of 1995 appointing an administrator, rules 76.24 to 76.26 (which relate to the duties of an administrator) shall apply to an administrator appointed by virtue of that paragraph or article as they apply to an order in implementation of a forfeiture order.”.

(20) After rule 62.60 (application for refusal of recognition or enforcement under the Act of 1990), insert the following Part:—

#### “PART X

#### RECOGNITION, REGISTRATION AND ENFORCEMENT OF MISCELLANEOUS DECISIONS

##### **Application and interpretation of this Part**

**62.61.**—(1) This Part applies to the recognition, registration or enforcement, as the case may be, of an award, decision, judgment or order under any of the following instruments:—

(a) Article 34.1 (enforcement of arbitral award) of the procedural rules on conciliation and arbitration of contracts financed by the European Development Fund(18);

(b) Article 20 of the United Nations (International Tribunal) (Former Yugoslavia) Order 1996(19) (enforcement of orders for the preservation or restitution of property).

(2) In this Part—

“decision” includes award, judgment or order;

“relevant instrument” means an instrument mentioned in paragraph (1).

##### **Applications under this Part**

**62.62.**—(1) An application for recognition, registration or enforcement, as the case may be, of a decision under a relevant instrument shall be made by petition.

(15) Paragraph 16(1) was amended, and paragraph 16A(1) was inserted, by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 72(3).

(16) Paragraph 19(5) of the Act of 1989 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, Schedule 4, paragraph 72(3)(c).

(17) S.I. 1995/760.

(18) Annex V of Decision No. 3/90 of the ACP/EEC Council of Ministers of 29th March 1990 (Official Journal No. L382 of 31st December 1990).

(19) S.I. 1996/716.

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- (2) There shall be produced with such a petition an affidavit—
- (a) exhibiting a copy of the decision certified under the relevant instrument; and
  - (b) stating—
    - (i) the full name, title, trade or business and the usual or the last known place of residence or, where appropriate, of business of the petitioner and of the party against whom the decision was made;
    - (ii) that the petitioner is entitled to have the decision recognised, registered or enforced, as the case may be, under the relevant instrument;
    - (iii) the extent to which the decision is unsatisfied; and
    - (iv) whether the enforcement of the decision has been sisted (provisionally or otherwise) under the relevant instrument and whether any, and if so what, application has been made under the relevant instrument which, if granted, might result in a sist of enforcement of the decision.

#### **Recognition, or warrant for registration or for enforcement under this Part**

**62.63.** The court shall, on being satisfied that the petition complies with the requirements of the relevant instrument, pronounce an interlocutor recognising or granting warrant for the registration or enforcement of the decision, as the case may be.

#### **Registration for enforcement under this Part**

**62.64.**—(1) Where the court pronounces an interlocutor under rule 62.63 granting warrant for registration or enforcement, as the case may be, the Deputy Principal Clerk shall enter details of the interlocutor and the decision in a register of decisions under this Part.

- (2) On presentation by the petitioner to the Keeper of the Registers of—
- (a) a certified copy of the interlocutor under rule 62.63,
  - (b) a certified copy of the decision and any translation of it, and
  - (c) any certificate of currency conversion under rule 62.2(1)(b),

they shall be registered in the register of judgments of the Books of Council and Session.

(3) An extract of a registered decision with warrant for execution shall not be issued by the Keeper of the Registers until a certificate of service under rule 62.65 is produced to him.

#### **Service on party against whom award made**

**62.65.** On registration under rule 62.64, the petitioner shall forthwith serve a notice of the registration on the party against whom the decision was made in Form 62.65.

#### **Sist of enforcement under this Part**

- 62.66.**—(1) Where it appears to the court that—
- (a) the enforcement of the decision has been sisted (whether provisionally or otherwise) under the relevant instrument, or
  - (b) any application has been made under the relevant instrument which, if granted, might result in a sist of the enforcement of the award,

the court shall, or in the case referred to in sub-paragraph (b) may, sist the petition for such period as it thinks fit.

(2) Where the court has granted a warrant for registration under rule 62.63, the party against whom the decision was made may apply to the court for suspension or interdict of execution of the award.

(3) An application under paragraph (2) shall—

- (a) be made on ground (a) or (b) of paragraph (1);
- (b) notwithstanding rule 60.2 (form of applications for suspension), be made by note in the process of the petition under rule 62.62; and
- (c) be accompanied by an affidavit stating the relevant facts.”.

(21) In Chapter 76 (causes in relation to confiscation of proceeds of crime), in the cross-heading to Part I, for the words “CRIMINAL JUSTICE (SCOTLAND) ACT 1987”, substitute the words “PROCEEDS OF CRIME (SCOTLAND) ACT 1995”.

(22) In rule 76.1 (interpretation of this Part), for the definitions, substitute the following definitions:—

““the Act of 1995” means the Proceeds of Crime (Scotland) Act 1995(20);

“administrator” means the person appointed under paragraph 1(1) of Schedule 1 to the Act of 1995;

“restraint order” has the meaning assigned in section 49(1) of the Act of 1995.”.

(23) In rule 76.3 (applications for restraint orders), in paragraph (1), for the words “8(1) of the Act of 1987”, substitute the words “28(1) of the Act of 1995”.

(24) In rule 76.4 (applications in relation to protective measures)—

(a) in paragraph (1)—

(i) for the words “the Act of 1987”, substitute the words “the Act of 1995”; and

(ii) for sub-paragraphs (a), (b) and (c), substitute the following sub-paragraphs:—

“(a) section 29(4) or (5) (recall of restraint order in relation to realisable property);

(b) section 30(3) or (4) (recall of restraint order in relation to forfeitable property);

(c) section 31(1) (variation or recall of restraint order);

(d) section 32(5) (recall or restriction of inhibition);

(e) section 33(4) (recall or restriction of arrestment).”;

(b) in paragraph (2), for the words “8(2)(b) of the Act of 1987”, substitute the words “31(1) (b) of the Act of 1995”;

(c) in paragraph (3), for the words “Lord Advocate under section 8(2)(a) of the Act of 1987”, substitute the words “prosecutor under section 31(1)(a) of the Act of 1995”;

(d) in paragraph (4)—

(i) for the words from “under section 11(1) of the Act of 1987” to the word “inhibition”, substitute the words “by the Lord Advocate under section 32(1) (warrant for inhibition) of the Act of 1995, or by the prosecutor under section 33(1) (warrant for arrestment) of that Act.”; and

(ii) in sub-paragraph (a), for the words “8(1) of that Act”, substitute the words “28(1) of that Act”;

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- (e) in paragraph (5), for the words from “11(1)” to “inhibition”, substitute the words “32(1) (a) (recall, loosing or restriction of inhibition), or section 33(2) (recall, loosing or restriction of arrestment), of the Act of 1995”; and
- (f) in paragraph (6)—
  - (i) for the words “12 of the Act of 1987”, substitute the words “28(8) of the Act of 1995”; and
  - (ii) in sub-paragraph (a), for “8(1)”, substitute “28(1)”.
- (25) In rule 76.5 (applications for variation of confiscation order or compensation)—
  - (a) in the heading to the rule, omit the words “**variation of confiscation order or**”; and
  - (b) for the words from “25(1)” to “1987”, substitute the words “17(compensation) of the Act of 1995”.
- (26) In rule 76.6 (applications for disclosure of information by government departments), for the words “41 of the Act of 1987”, substitute the words “20 of the Act of 1995”.
- (27) In rule 76.7 (applications for appointment of administrators)—
  - (a) in paragraph (1), for the words “section 13(1) of the Act of 1987”, substitute the words “paragraph 1(1) of Schedule 1 to the Act of 1995”; and
  - (b) in paragraph (2), for the words “section 13(3)(a) of the Act of 1987”, substitute the words “paragraph 1(3)(a) of Schedule 1 to the Act of 1995”.
- (28) In rule 76.8(21) (incidental applications in an administration)—
  - (a) in paragraph (1)—
    - (i) for the words “the Act of 1987”, substitute the words “Schedule 1 to the Act of 1995”;
    - (ii) for sub-paragraph (a), substitute the following sub-paragraph:—
      - “(a) paragraph 1(1) with respect to an application after appointment of an administrator to require a person to give property to him;”;
    - (iii) in sub-paragraph (b), for the words “section 13(4)”, substitute the words “paragraph 1(4)”;
    - (iv) in sub-paragraph (c), for the words “section 13(5)”, substitute the words “paragraph 1(5)”;
    - (v) in sub-paragraph (d), for the words “section 14(1)(n)”, substitute the words “paragraph 2(1)(n)”; and
    - (vi) in sub-paragraph (e), for the words “section 16”, substitute the words “paragraph 4”; and
  - (b) in paragraph (2)—
    - (i) for the words “the Act of 1987” wherever they occur, substitute the words “Schedule 1 to the Act of 1995”;
    - (ii) for the words “section 13(1) of the Act of 1987”, substitute the words “paragraph 1(1) of that Schedule”;
    - (iii) in sub-paragraph (a), for the words “section 14(1)(o)”, substitute the words “paragraph 2(1)(o)”;
    - (iv) in sub-paragraph (b), for the words “section 14(3)”, substitute the words “paragraph 2(3)”;

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(v) in sub-paragraph (c), for the words “section 24”, substitute the words “paragraph 12”.

(29) In rule 76.9 (requirements where order to facilitate realisation of property considered), for the words “section 24(1) of the Act of 1987”, substitute the words “paragraph 12(1) of Schedule 1 to the Act of 1995”.

(30) In rule 76.14 (state of funds and scheme of division)—

(a) in paragraph (1)(a), for the words “section 16(1) of the Act of 1987”, substitute the words “paragraph 4(2) of Schedule 1 to the Act of 1995”; and

(b) in paragraph (3)(c), for “1987”, substitute “1995”.

(31) In rule 76.15 (objections to scheme of division), in paragraph (1), for the words “section 16(2) of the Act of 1987”, substitute the words “paragraph 4(3) of Schedule 1 to the Act of 1995”.

(32) In rule 76.16 (application for discharge of administrator), in paragraph (2), for the words “section 13(1) of the Act of 1987”, substitute the words “paragraph 1(1) of Schedule 1 to the Act of 1995”.

(33) In rule 76.17 (appeals against determination of outlays and remuneration), in paragraph (1)

(a) for the words “section 18(2) of the Act of 1987”, substitute the words “paragraph 6(2) of Schedule 1 to the Act of 1995”; and

(b) for the words from “of the petition” to “1987”, substitute the words “in which the administrator was appointed”.

(34) Rule 76.18 (remits from High Court of Justiciary) shall be omitted.

(35) In the cross-heading to Part II of Chapter 76 (causes in relation to confiscation of proceeds of crime), at the end, insert the words “OR THE ORDER OF 1995”.

(36) In rule 76.19(22) (application and interpretation of this Part), after the definition of “administrator”, insert the following definition:—

““the Order of 1995” means the Prevention of Terrorism (Temporary Provisions) Act 1989 (Enforcement of External Orders) Order 1995(23);”.

(37) In rule 76.22 (applications in relation to protective measures)—

(a) in paragraph (2), after the words “paragraph (1)(b)”, insert the words “of this rule”;

(b) in paragraph (3)—

(i) after the words “paragraph 16(1)(24)”, insert the words “(warrant for inhibition), or 16A(1)(25) (warrant for arrestment);”;

(ii) omit the words “(warrant for arrestment or inhibition);”;

(c) in paragraph (4), for sub-paragraphs (a) and (b), substitute the following sub-paragraphs:

“(a) an application to recall, loose or restrict an inhibition under paragraph 16(2) (a);

(b) an application under paragraph 16(6)(a) (recall or restriction of inhibition);

(22) Rule 76.19 was amended by [S.I. 1994/2901](#).

(23) [S.I. 1995/760](#).

(24) Paragraph 16 of Schedule 4 to the Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4) (“the Act of 1989”) was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 72(3)(a).

(25) Paragraph 16A of Schedule 4 to the Act of 1989 was inserted by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, Schedule 4, paragraph 72(3)(b).

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- (c) an application to recall, loose or restrict an arrestment under paragraph 16A(2);  
or
  - (d) an application under paragraph 16A(4) (recall or restriction of arrestment).”.
- (38) In the appendix—
- (a) in Form 16.7, for the word “on” where it first occurs, substitute the word “to”;
  - (b) in Form 30.2—
    - (i) in the paragraph beginning with the words “In accordance”, omit the word “enclosed” wherever it occurs; and
    - (ii) in the paragraph beginning with the words “**If you do not**”, for the word “**attached**”, substitute the words “**referred to above**”.
  - (c) after Form 33.12, insert Forms 34A.2, 34A.4 and 34A.5 in the Schedule to this Act of Sederunt;
  - (d) for Form 35.3, substitute Forms 35.3-A, 35.3-B, 35.3-C, 35.3-D and 35.3A-A;
  - (e) after Form 44.3(26), insert Form 45A.2 in the Schedule to this Act of Sederunt;
  - (f) after Form 62.51, insert Form 62.65 in the Schedule to this Act of Sederunt; and
  - (g) in Form 76.7—
    - (i) in the heading, for the words “section 24 of the Criminal Justice (Scotland) Act 1987”, substitute the words “paragraph 12 of Schedule 1 to the Proceeds of Crime (Scotland) Act 1995”;
    - (ii) in the instance, for the words from “section 13” to “1987”, substitute the words “paragraph 12 of Schedule 1 to the Proceeds of Crime (Scotland) Act 1995”;
    - (iii) in paragraph 1, for the words “Criminal Justice (Scotland) Act 1987”, substitute the words “Proceeds of Crime (Scotland) Act 1995”;
    - (iv) in the first alternative paragraph 2, for the words “section 13(1)(a) of the Act of 1987”, substitute the words “paragraph 1(1)(a) of Schedule 1 to the Act of 1995”;
    - (v) in the second alternative paragraph 2, for the words “section 13(1)(b) of the Act of 1987”, substitute the words “paragraph 1(1)(b) of Schedule 1 to the Act of 1995”;
    - and
    - (vi) in paragraph 3, for the words “section 24 of the Act of 1987”, substitute the words “paragraph 12 of Schedule 1 to the Act of 1995”.

#### Commencement Information

**I2** Para. 2 in force at 23.9.1996, see [para. 1\(1\)](#)

Edinburgh,  
14th August 1996

*Hope of Craighead*  
Lord President, I.P.D.



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**Changes and effects yet to be applied to :**

- Sch. coming into force by [S.I. 1996/2168 para. 1\(1\)](#)
- Regulations revoked by [S.I. 2023/805 reg. 10](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- para. 1 coming into force by [S.I. 1996/2168 para. 1\(1\)](#)
- para. 2 coming into force by [S.I. 1996/2168 para. 1\(1\)](#)