COURT OF SESSION, SCOTLAND

PROCEDURE

1959 No. 118 (S. 1)

Act of Sederunt (Rules of Court Amendment No. 1) 1959

Made - - - -	*6th January*, 1959
Coming into Operation	*6th January*, 1959

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act 1933(a) and of all other powers competent to them in that behalf do hereby enact as follows:—

1. The Rules of the Court of Session(b) shall be amended as follows:—

(1) In Rule 172—

(*a*) in paragraph (*c*) for the words "a pupil child of the marriage" there shall be substituted the words "a child of the marriage or such a child as is mentioned in section 7 of the Matrimonial Proceedings (Children) Act 1958(c) (in this section of this Chapter referred to as "the Act of 1958")", and for the word "puberty" there shall be substituted the words "sixteen years";

(2) After Rule 172 there shall be inserted the following Rule—

"172A. An application under section 13 of the Act of 1958 for interim interdict prohibiting the removal of a child furth of Scotland or out of the control of the person in whose custody the child is, shall, if made prior to the calling of the summons in the action to which the application relates, be made by letter addressed to the Deputy Principal Clerk of Session, who shall lay it before a Lord Ordinary in chambers or, in vacation or recess, before the Vacation Judge; and where application is so made on behalf of the pursuer, his solicitor shall produce to the Lord Ordinary or the Vacation Judge, as the case may be, the principal summons, and where it is so made by the defender, his solicitor shall so produce the service copy summons.

Any such application made after the summons is lodged for calling shall be made by motion enrolled in the Motion Sheet."

(3) In Rule 177 in paragraph (*c*) for the words "pupil child of the marriage" there shall be substituted the words "child of the marriage or any such child as is mentioned in section 7 of the Act of 1958".

(4) In Rule 178 for the words "pupil child of the marriage" there shall be substituted the words "child of the marriage or any such child as is mentioned in section 7 of the Act of 1958".

(5) In Rule 179, in paragraph (*a*) for the words "pupil child of the marriage" there shall be substituted the words "child of the marriage or any such child as is mentioned in section 7 of the Act of 1958", and in paragraph (*b*) for the words "in pupillarity" there shall be substituted the words "under the age of sixteen years".

(a) 23 & 24 Geo. 5. c. 41. (b) S.I. 1948/1691 (1948 I, p. 3778). (c) 6 & 7 Eliz. 2. c. 40.

(6) In Rule 180—

(*a*) for the word "children" wherever it occurs there shall be substituted the word "child";

(*b*) in paragraph (*a*) for the words "separation *a mensa et thoro* or for divorce" there shall be substituted the words "divorce, nullity of marriage or separation", and after the word "relates" there shall be inserted the words "or any such child as is mentioned in section 7 of the Act of 1958";

(7) After Rule 180 there shall be inserted the following Rule—

"180A. *Matrimonial Proceedings (Children) Act* 1958

(*a*) In any action for divorce, nullity of marriage or separation in which the Court may make provision for the custody, maintenance and education of any such child as is mentioned in section 7 of the Act of 1958, intimation shall be made to any person other than a party to the marriage who may be liable to maintain the child, and such party may apply to the Court to be heard with respect to the maintenance of the child. Any such application shall be made by minute craving leave to be sisted as a party to the action and setting forth any relevant averments with respect to the maintenance of the child.

(*b*) Where it appears to the Court that any child for whose custody, maintenance and education it has jurisdiction to make provision in connection with any action for divorce, nullity of marriage or separation should not be entrusted to either of the parties to the marriage but that the care of the child should, in pursuance of section 10 of the Act of 1958, be committed to some other individual or to a local authority, the Court shall appoint intimation to be made to the individual or the local authority, and he or they may make such representations to the Court as are relevant. Such representations may be made by minute, and on such a minute being lodged the parties to the action may lodge answers thereto within such period as the Court may allow.

(*c*) When the Court, in pursuance of section 12 of the Act of 1958, makes an order placing a child under the supervision of a probation officer or of a local authority, the Court shall appoint intimation of the order to be made to the officer or authority specified in the order.

(*d*) Without prejudice to any other provision in this section of this Chapter requiring the insertion in any interlocutor making provision with respect to the custody, maintenance and education of any child of a direction granting leave to apply for variation of such provision, there shall be inserted in any order made by the Court under Part II of the Act of 1958 a direction granting leave for any person concerned to apply for the variation or revocation of the order."

2. This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 1) 1959, and shall come into operation on 6th January, 1959.

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

J. L. Clyde,
I.P.D.

Edinburgh,
6th January, 1959.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt but is intended to indicate its general purport.)

This Act of Sederunt amends the Rules of Court with respect to procedure in actions of divorce, nullity of marriage and separation so as to enable effect to be given to the provisions of Part II of the Matrominial Proceedings (Children) Act 1958.

1959 No. 585 (S. 28)

Act of Sederunt (Rules of Court Amendment No. 2) 1959

Made - - - -	10*th March*, 1959
Coming into Operation	10*th March*, 1959

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act, 1933(**a**), section 9 of the Tribunals and Inquiries Act, 1958(**b**), and of all other powers competent to them in that behalf do hereby enact as follows :—

1. The Rules of the Court of Session(**c**) shall be amended by the insertion after Rule 296 of the following :—

296A. *Special Cases under the Tribunals and Inquiries Act, 1958, Section 9 (2).*

(1) Special cases under the Tribunals and Inquiries Act, 1958 Section 9 (2) which have been stated upon the application of a party to proceedings depending before a tribunal, shall be subject to the provisions of Rules 286 to 289.

(2) It shall be competent for a Tribunal, of its own motion, to state a case for the opinion of the Court of Session on any question arising in the course of proceedings before it, in which event the following provisions shall have effect :—

(*a*) When the Tribunal decides to state a case it shall cause its decision to be intimated to the parties and within fourteen days after the dispatch of such intimation it shall cause the case to be prepared and submitted in draft to the parties ; within twenty-one days from the receipt of the draft case each party shall return it to the Clerk of the Tribunal with a note of any additions, alterations or amendments which he may desire to have made thereon and thereafter the Tribunal shall finally adjust the case.

(*b*) The case shall bear to be stated by the Tribunal and shall be authenticated by the Clerk thereof who shall thereupon :—

(i) send a copy of the case to each party to the proceedings, and

(ii) lodge the principal case in the General Department (which may be done by transmission to the Deputy Principal Clerk of Session of the said Department) together with a certificate under the hand of himself or his solicitor certifying that a copy thereof has been sent to each party to the proceedings.

(a) 23 & 24 Geo. 5 c. 41. (b) 6 & 7 Eliz. 2. c. 66. (c) S.I. 1948/1691 (1948 I, p. 3778).