1969 No. 1644 (S.147)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Computer Evidence in the Court of Session) 1969

Made - - - - 18*th November* 1969
Coming into Operation 1*st December* 1969

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**) and section 15(6) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968(**b**), do hereby enact and declare as follows:—

1. A party to any civil proceedings who wishes to rely on a statement contained in a document produced by a computer shall, not later than the date of closing the Record, send to every other party to the proceedings a copy of the statement together with a notice in writing—

(*a*) intimating that the party intends to rely on the statement;

(*b*) stating that the statement is contained in a document produced by a computer; and

(*c*) informing the party to whom it is addressed that he may give a counter-notice in terms of the next following paragraph;

and the party so giving notice may within fourteen days thereafter lodge in process a certificate in terms of section 13(4) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968(**b**) relating to the document.

2. When a certificate in terms of section 13(4) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968(**b**) shall have been lodged in process, a copy thereof shall be sent to every other party to the proceedings within fourteen days after the date of the notice referred to in paragraph 1 hereof.

3. Any party who receives such a notice as is mentioned in paragraph 1 hereof may, within twenty-one days thereafter, by counter-notice in writing addressed to the party who served the notice, require him, within twenty-one days, to furnish him in writing with all or any of the following information—

(*a*) any such information as might have been the subject of a certificate under section 13(4) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968(**b**), except in so far as such information is the subject of a certificate lodged in process as aforesaid;

(*b*) the name, occupation, business address and place of residence of a person occupying at the material time a responsible position in relation to each of (i) the operation of the device involved in the production of the document, (ii) the management of the activities for the purposes of which the computer was used to store or process information, (iii) the supply of information to the computer, (iv) the operation of the computer, and (v) the operation of any equipment by means of which the document containing the statement was produced by the computer; and

(*c*) the name, occupation, business address and place of residence of the person who signed any certificate lodged in process in terms of section 13(4) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968(**a**).

(**a**) 1933 c. 41. (**b**) 1968 c. 70.

4. Subject to the provisions of section 15(8) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968(a), a party upon whom a counter-notice has been served in terms of paragraph 3 hereof shall not be entitled to rely upon the statement in the document to which the notice under paragraph 1 hereof related, unless the counter-notice shall have been withdrawn by the party who gave it or unless the Court shall be satisfied that the counter-notice was complied with so far as was reasonably possible.

5. Any party to whom information is furnished under a counter-notice by virtue of paragraph 3 hereof may, not later than twenty-eight days before the date of the proof or trial, by notice in writing require that the party wishing to should call as a witness any person of whom particulars were furnished under sub-paragraph (*b*) or (*c*) of paragraph 3 hereof.

6. (i) Subject to the provisions of section 15(8) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968(a), a party who has been required to call any person as a witness in terms of paragraph 5 hereof shall not be entitled to rely upon the statement in the document to which the notice under paragraph 1 hereof related unless the notice requiring that person to be called as a witness shall have been withdrawn by the party who gave it, or unless that person shall be adduced as a witness, or unless the Court shall be satisfied that such person is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the passage of time and to all the circumstances) to have any recollection of matters relevant to the accuracy or otherwise of the statement in the document.

(ii) In the event that such person is not to be adduced as a witness for any reason aforesaid, the party wishing to rely on the statement in the document produced by a computer shall give notice in writing to every other party to the proceedings that such witness is not to be adduced and the reason therefor.

(iii) The notice referred to in sub-paragraph (ii) hereof shall be given not later than fourteen days after the date of the notice under paragraph 5 hereof or, if such reason could not reasonably have become known to him within that period, immediately such reason shall become known.

7. This Act of Sederunt shall apply to all civil proceedings in the Court of Session.

8. This Act of Sederunt may be cited as the Act of Sederunt (Computer Evidence in the Court of Session) 1969, and shall come into operation on 1st December 1969.

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

Edinburgh.

18th November 1969.

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

EXPLANATORY NOTE

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

This Act of Sederunt prescribes certain procedure for the admission as evidence in civil proceedings in the Court of Session of statements produced by computers.

(a) 1968 c. 70.