SCOTTISH STATUTORY INSTRUMENTS

2005 No.135

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment) (Jurisdiction, Recognition and Enforcement of Judgments) 2005

Made - - - -	*1st March 2005*
Coming into force - -	*2nd March 2005*

The Lords of Council and Session, under and by virtue of the powers conferred upon 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) (Jurisdiction, Recognition and Enforcement of Judgments) 2005 and shall come into force on 2nd March 2005.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994(**2**) shall be amended in accordance with the following sub-paragraphs.

(2) After Part X of Chapter 62 (recognition, registration and enforcement of miscellaneous decisions) there shall be inserted the following:–

(**1**) 1988 c. 36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 c. 32, section 2(3) and by the Children (Scotland) Act 1995 c. 36, Schedule 4, paragraph 45.
(**2**) S.I. 1994/1443, last amended by S.S.I. 2004/514.

"PART XI

REGISTRATION AND ENFORCEMENT OF JUDGMENTS UNDER COUNCIL REGULATION (E.C.) NO. 2201/2003 OF 27TH NOVEMBER 2003(**3**)

Application and interpretation of this Part

62.67.—(1) This Part applies to the registration and enforcement of a judgment under the Council Regulation.

(2) In this Part, unless the context otherwise requires—

"the Council Regulation" means Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;

"judgment" includes an authentic instrument or enforceable agreement; and

"Member State" has the same meaning as in Article 2(3) of the Council Regulation.

Disapplication of certain rules to this Part

62.68. The following rules shall not apply to an application under this Part:–

4.1(1) (printed form for petition),

14.4 (form of petitions),

14.5 (first order in petitions),

14.6 (period of notice for lodging answers),

14.7 (intimation and service of petitions),

14.9 (unopposed petitions).

Enforcement of judgments from another Member State

62.69.—(1) An application under Article 28 of the Council Regulation (enforceable judgments) shall be made by petition in Form 62.69.

(2) There shall be produced with the petition—

(a) an authentic copy of the judgment to be registered;

(b) a certificate under Article 39 of the Council Regulation (standard forms of certificate);

(c) where judgment has been given in absence (that is to say, in default of appearance)–

(i) the original or a certified copy of the document which establishes that the party against whom judgment was given in absence was served with the document initiating proceedings or with an equivalent; or

(ii) a document indicating that the party against whom the judgment was given in absence has accepted the judgment unequivocally;

(d) where applicable, a document showing that the applicant is in receipt of legal aid in the country in which the judgment was given;

(e) an affidavit stating–

(i) an address within the jurisdiction of the court for service on or intimation to the petitioner;

(**3**) O.J. No L.338, 23.12.2003, p.1.

(ii) the name and address of the petitioner and his interest in the judgment;

(iii) the name and date of birth of each child in respect of whom the judgment was made, the present whereabouts or suspected whereabouts of that child and the name of any person with whom he is alleged to be;

(iv) the name and address of any other person with an interest in the judgment;

(v) whether the judgment is already registered and, if so, where it is registered;

(vi) details of any order known to the petitioner which affects a child in respect of whom the judgment was made and fulfils the conditions necessary for its recognition in Scotland.

(3) Where the petitioner does not produce a document required by paragraph (2)(b) to (e), the court may –

(a) fix a period within which that document is to be lodged;

(b) accept an equivalent document; or

(c) dispense with the requirement to produce the document.

Warrant for registration under the Council Regulation

62.70.—(1) The court shall, on being satisfied that the petition complies with the requirements of the Council Regulation, pronounce an interlocutor–

(a) granting warrant for the registration of the judgment; and

(b) where necessary, granting decree in accordance with Scots law.

(2) The interlocutor pronounced under paragraph (1) shall specify–

(a) the period within which an appeal mentioned in rule 62.74 (appeals under the Council Regulation) against the interlocutor may be made; and

(b) that the petitioner–

(i) may register the judgment under rule 62.72 (registration under the Council Regulation); and

(ii) may not proceed to execution until the expiry of the period for lodging such appeal or its disposal.

Intimation to the petitioner

62.71. Where the court pronounces an interlocutor under rule 62.70(1) the Deputy Principal Clerk shall intimate such interlocutor to the petitioner by sending to his address for service in Scotland a certified copy of the interlocutor by registered post or the first class recorded delivery service.

Registration under the Council Regulation

62.72.—(1) Where the court pronounces an interlocutor under rule 62.70(1) granting warrant for registration, the Deputy Principal Clerk shall enter the judgment in the register of judgments, authentic instruments and court settlements kept in the Petition Department.

(2) On presentation by the petitioner to the Keeper of the Registers of–

(a) a certified copy of the interlocutor under rule 62.70(1) granting warrant for registration,

(b) an authentic copy of the judgment and any translation of it, and

(c) any certificate of currency conversion under rule 62.2(1)(b) for any order concerning costs and expenses of proceedings under the Council Regulation;

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

(3) On registration under paragraph (2), the Keeper of the Registers of Scotland shall issue an extract of the registered document with a warrant for execution.

Service of warrant for registration under the Council Regulation

62.73. The petitioner shall serve a copy of the interlocutor under rule 62.70(1) granting warrant for registration of a judgment and notice in Form 62.73 on the person against whom enforcement is sought.

Appeals under the Council Regulation

62.74.—(1) An appeal under Article 33 (appeals against the enforcement decision) of the Council Regulation shall be made by motion–

(a) to the Lord Ordinary; and

(b) where the appeal is against the granting of warrant for registration under rule 62.70(1) within one month of service under rule 62.73 (service of warrant for registration under the Council Regulation) or within two months of such service where service was executed on a person domiciled in another Member State.

(2) Where the respondent in any such appeal is domiciled furth of the United Kingdom–

(a) in relation to an appeal against the granting of warrant for registration under rule 62.70(1), intimation of the motion shall be made to the address for service of the respondent in Scotland;

(b) in relation to an appeal against a refusal to grant warrant for registration under rule 62.70(1), intimation of the motion shall be made in accordance with rule 16.2 (service furth of United Kingdom) or rule 16.5 (service where address of the person is not known), as the case may be.

Reclaiming under the Council Regulation

62.75. Any party dissatisfied with the interlocutor of the Lord Ordinary in any appeal mentioned in rule 62.74 (appeals under the Council Regulation) may reclaim on a point of law against that interlocutor.

Recognition of judgments from another Member State

62.76.—(1) For the purpose of Article 21 of the Council Regulation (recognition of a judgment), an interlocutor pronounced under rule 62.70(1) (warrant for registration under the Council Regulation) shall imply recognition of the judgment so dealt with.

(2) In an application under Article 21(3) of the Council Regulation for recognition of a judgment, rules 62.67 to 62.75 shall apply to such an application as they apply to an application under Article 28 of the Council Regulation (declarator of enforceability).

(3) In an application under Article 21(3) of the Council Regulation for non-recognition of a judgment, the rules under this part shall apply to such an application as they apply to an application under Article 28 of the Council Regulation (declarator of enforceability) subject to the following provisions–

(a) where the application relies on grounds under Article 22(b) or 23(c) of the Council Regulation (judgment given in default of appearance) for the judgment not to be

recognised, it shall not be necessary to produce documents required by rule 62.69(2)(c)(document establishing service or acceptance of judgment); and

(b) rule 62.69(2)(b)(certificate under Article 39 of the Council Regulation);

rule 62.70(warrant for registration under the Council Regulation); and

rule 62.72(registration under the Council Regulation); shall not apply.

Cancellation of registration under the Council Regulation

62.77. Where an interlocutor under rule 62.70(1) (warrant for registration under the Council Regulation) is recalled and registration under rule 62.72(2) (registration under the Council Regulation) is ordered to be cancelled after an appeal under Article 33 of the Council Regulation (appeal against decision on enforceability) a certificate to that effect by the Deputy Principal Clerk shall be sufficient warrant to the Keeper of the Registers to cancel the registration and return the judgment, certificate or other documents to the person who applied for registration.

Enforcement in another Member State of Court of Session judgments etc.

62.78.—(1) Where a person seeks to apply under the Council Regulation for recognition or enforcement in another Member State of a judgment given by the court, he shall apply by letter to the Deputy Principal Clerk for–

(a) a certificate under Article 39 of the Council Regulation (certificates concerning judgments in matrimonial matters or on matters of parental responsibility);

(b) a certified copy of the judgment; and

(c) if required, a certified copy of the opinion of the court.

(2) The Deputy Principal Clerk shall not issue a certificate under paragraph (1)(a) above unless there is produced to him an execution of service of the judgment on the person against whom it is sought to be enforced.

(3) Where a judgment granting rights of access delivered by the Court of Session acquires a cross-border character after the judgment has been delivered and a party seeks to enforce the judgment in another Member State, he shall apply by letter to the Deputy Principal Clerk for–

(a) a certificate under Article 41 of the Council Regulation (certificate concerning rights of access); and

(b) a certified copy of the judgment.

Rectification of certificates under Articles 41 and 42 of the Council Regulation

62.79. Where a party seeks rectification of a certificate issued under Article 41 or 42 of the Council Regulation (certificate concerning rights of access or return of a child) he shall apply by letter to the Deputy Principal Clerk stating the details of the certificate that are to be rectified.

Practical arrangements for the exercise of rights of access

62.80.—(1) An application by a party having an enforceable judgment granting a right of access, that has been certified under Article 41 of the Council Regulation or registered for enforcement, seeking an order making practical arrangements for organising the exercise of rights of access under Article 48 of the Council Regulation, shall be made by petition.

(2) There shall be produced with the petition—