

2004 No. 52

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment)
(Miscellaneous) 2004**

Made - - - - - *10th February 2004*

Coming into force - - - - - *1st March 2004*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 59 of the Adoption (Scotland) Act 1978(a), sections 4, 12 and 48 of the Civil Jurisdiction and Judgments Act 1982(b), section 5 of the Court of Session Act 1988(c) 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) (Miscellaneous) 2004 and shall come into force on 1st March 2004.

(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(d) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 10.1(2) (terms of court) “annually” shall be omitted.

(3) After rule 16.2 (service furth of United Kingdom) there shall be inserted the following:—

“Service under the Council Regulation

16.2A.—(1) In this rule—

“competent receiving agency” and “Member State” have the same meaning as in the Council Regulation; and

“Council Regulation” means Council Regulation (E.C.) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters(e).

(2) This rule applies to service of a document under the Council Regulation on a person on whom service is to be executed in a Member State other than the United Kingdom.

(a) 1978 c.28; section 59 was amended by the Children (Scotland) Act 1995 c.36, Schedule 2, paragraph 27.
(b) 1982 c.27; sections 4 and 12 were amended by articles 2(2) and 5(2)(c) respectively of S.I. 1993/604 and section 48 was amended by paragraph 17(e)(v) of Schedule 2 to S.I. 2001/3929.
(c) 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.
(d) S.I. 1994/1443, last amended by S.S.I. 2003/537.
(e) O.J. L 160, 30.6.2000, p.37.

(3) Where a document is being served by a competent receiving authority under Article 7 of the Council Regulation, rule 16.6(1) (translations of documents) shall not apply.

(4) Where a document has been served by a competent receiving authority under Article 7 of the Council Regulation, the party executing service shall lodge the certificate of service mentioned in Article 10 of the Council Regulation.”.

(4) In rule 16.6(1) (translations of documents) at the beginning there shall be inserted “Subject to rule 16.2A,”.

(5) In rule 16.8(1) (intimation on a warrant to intimate) after “rule 16.2 (service furth of United Kingdom),” there shall be inserted “rule 16.2A (service under the Council Regulation),”.

(6) Rule 26.6(A1) shall be omitted.

(7) After Rule 26.6(1) there shall be inserted the following:–

“(1A) Where a minute of amendment under rule 26.2(2) has been lodged, the defender may not apply by motion under paragraph (1) unless, at or before the date on which he makes that application, he applies by motion to amend the pleadings in terms of the minute of amendment.”.

(8) After Chapter 32 there shall be inserted the following:–

“CHAPTER 32A

TRANSFER OF CAUSES TO AND FROM THE COMPETITION APPEAL TRIBUNAL

Transfers to the Competition Appeal Tribunal

32A.1.—(1) An application to transfer a cause to the Competition Appeal Tribunal shall be made by motion.

(2) Where a cause is transferred to the Competition Appeal Tribunal, the Deputy Principal Clerk of Session shall, within four days after the interlocutor transferring the cause has been pronounced, transmit the process to the party on whose motion the transfer was made together with a certified copy of the interlocutor granting the motion under paragraph (1).

(3) When transmitting a process under paragraph (2), the Deputy Principal Clerk shall—

(a) give written intimation of the transmission to—

(i) the other parties;

(ii) the Registrar of the Competition Appeal Tribunal; and

(b) certify on the interlocutor sheet that such written intimation has been given.

(4) A failure by the Deputy Principal Clerk to comply with paragraph (3) shall not affect the validity of any transfer of a cause.

Receipt of transfers from the Competition Appeal Tribunal

32A.2. On receipt of documentation in respect of a claim which has been directed to be transferred to the court by the Competition Appeal Tribunal, the Deputy Principal Clerk of Session shall—

(a) mark the first page of the documentation or, as the case may be, the interlocutor sheet, with the date of receipt; and

(b) give written intimation of that date to each party.

Motion for further procedure and lodging of process in transfers from the Competition Appeal Tribunal

32A.3.—(1) Within 14 days after the date of receipt of documentation referred to in rule 32A.2 (receipt of transfers from the Competition Appeal Tribunal)—

(a) the party at whose request the transfer was directed, or

- (b) in proceedings in which the transfer was directed by the Tribunal at its own initiative, the party who initiated the proceedings,

shall apply by motion for an order for such further procedure as he desires; and the cause shall proceed as if it had been an action in the court initiated by summons.

(2) On applying by motion under paragraph (1) the party shall make up and lodge a process incorporating the documentation referred to in rule 32A.2 (receipt of transfers from the Competition Appeal Tribunal) unless the documentation includes a process previously transferred to the Competition Appeal Tribunal under rule 32A.1 (transfers to the Competition Appeal Tribunal).

- (3) A motion under paragraph (1) shall be disposed of by the Lord Ordinary.

Reponing against a failure to comply with rule 32A.3(1) or (2)

32A.4.—(1) Where—

- (a) the party at whose request the transfer was directed; or
- (b) in proceedings in which the transfer was directed by the Tribunal at its own initiative, the party who initiated the proceedings, fails to comply with the requirements of rule 32A.3(1) or (2) (motion for further procedure and lodging of process), he may, within seven days after the expiry of the period specified in rule 32A.3(1), apply by motion to be reponed.

(2) The party enrolling a motion under paragraph (1), where the failure is a failure to lodge a process under rule 32A.3, shall on enrolling the motion, lodge such a process and shall apply by motion for an order for such further procedure as he desires.

(3) A motion under paragraph (1) shall be granted only on cause shown and on such conditions, if any, as to expenses or otherwise as the court thinks fit.

Insistence in transfer by another party

32A.5. Where—

- (a) the party at whose request the transfer was directed; or
- (b) in proceedings in which the transfer was directed by the Tribunal at its own initiative, the party who initiated the proceedings, has failed to comply with the requirements of paragraph (1) or (2) of rule 32A.3 (motion for further procedure and lodging of process), any other party to the proceedings may, within seven days after the expiry of the period specified in rule 32A.3(1), comply with the requirements of those paragraphs himself and insist in the transfer.

Re-transmission to Registrar of the Competition Appeal Tribunal

32A.6. Where, on the expiry of 21 days after the receipt of the documentation referred to in rule 32A.2 (intimation of the date of receipt of documentation), no motion has been enrolled under rule 32A.4 (reponing against failure to comply with rule 32A.3(1) or (2)) and no motion has been enrolled under rule 32A.5 (insistence on transfer by another party), the transfer shall be deemed to be abandoned and the Deputy Principal Clerk shall—

- (a) write on the first page of the documentation or, as the case may be, the interlocutor sheet the words “Re-transmitted in respect that transfer has been abandoned.”;
- (b) add his signature and the date; and
- (c) transmit the documentation to the Registrar of the Competition Appeal Tribunal.”.

(9) For rule 40.21 there shall be substituted the following:—

“Use of Gaelic

40.21.—(1) This rule applies where an inferior court has authorised the use of Gaelic by a party.

(2) If—

(a) the party wishes to address the Inner House in the appeal; or

(b) where proof has been ordered by the Inner House, the party wishes to give oral evidence or to address the judge to whom the Inner House has remitted the cause, in Gaelic,

he may apply by motion for authority to do so.

(3) Where the court has granted authority under paragraph (2), an interpreter shall be provided by the court.”.

(10) In rule 41.4 (application and interpretation of Part II of Chapter 41) for “X” there shall be substituted “XI”.

(11) In rule 41.25 (appeals relating to penalties)—

(a) in paragraph (1)(d) “and” shall be omitted;

(b) after paragraph (1)(e) there shall be inserted—

“and

(f) paragraph 4(1) of Schedule 2 to the Tax Credits Act 2002(a) (appeals from General or Special Commissioners in relation to penalties) ”;

(c) in paragraph (2) for “or (e)” there shall be substituted “, (e) or (f)”; and

(d) in paragraph (4) before “the Special Commissioners” there shall be inserted “the General Commissioners,”.

(12) Before rule 49.89 there shall be inserted the heading “Directions”.

(13) In rule 58.8A—

(a) for “Minute of Intervention”, “Court” and “proceedings” in each place they appear there shall be substituted respectively, “minute of intervention”, “court” and “cause”;

(b) in paragraph (2) for “Form 58.8” and “lodge it with the court” there shall be substituted respectively “Form 58.8A” and “lodge it in process”;

(c) in paragraph (10) for “notify” there shall be substituted “give written intimation of”;

(d) in paragraph (11) for “and intimated” there shall be substituted “who shall give written intimation of the diet”;

(e) in paragraph (12) for “Rule” there shall be substituted “rule”; and

(f) at the end of paragraph (13) there shall be inserted “and not subject to review”.

(14) For Part V of Chapter 62 there shall be substituted the following:—

“PART V

*RECOGNITION AND ENFORCEMENT OF JUDGMENTS UNDER THE CIVIL
JURISDICTION AND JUDGMENTS ACT 1982 OR UNDER COUNCIL
REGULATION (E.C.) NO. 44/2001 OF 22ND DECEMBER 2001*

Application and interpretation of this Part

62.26.—(1) This Part applies to the recognition and enforcement of a judgment under the Civil Jurisdiction and Judgments Act 1982(b) or under the Council Regulation.

(a) 2002 c.21.

(b) 1982 c.27.

(2) Unless the context otherwise requires, in this Part—

“the Act of 1982” means the Civil Jurisdiction and Judgments Act 1982;

“Contracting State” has the meaning assigned in section 1(3) of the Act of 1982(a);

“judgment” includes an authentic instrument or court settlement;

“the Council Regulation” means Council Regulation (E.C.) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters(b);

“Member State” has the same meaning as Member State in the Council Regulation.

Disapplication of certain rules to this Part

62.27. The following provisions shall not apply to an application under this Part in addition to those rules mentioned in rule 62.1:—

rule 4.1(1) (printed form for petition),

rule 14.4 (form of petitions).

Enforcement of judgments, authentic instruments or court settlements from another Contracting State or Member State

62.28.—(1) An application under—

(a) section 4 of, and Article 31 (enforcement of judgment from another Contracting State) or Article 50 (enforcement of authentic instrument or court settlement from another Contracting State) of the Convention in Schedule 1 or 3C to, the Act of 1982(c); or

(b) Article 38 (enforcement of judgment from Member State), Article 57 (enforcement of authentic instrument from another Member State) or Article 58 (enforcement of court settlement from another Member State) of the Council Regulation,

shall be made by petition in Form 62.28.

(2) Subject to paragraph (3), there shall be produced with the petition—

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

(b) a document which establishes that, according to the law of the country in which the judgment has been given, the judgment is enforceable and has been served;

(c) where judgment has been given in absence (that is to say, in default of appearance), 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 the proceedings or with an equivalent document;

(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) whether the judgment provides for the payment of a sum of money;

(ii) whether interest is recoverable on the judgment under the law of the country in which judgment was given and, if so, the rate of interest, the date from which interest is due and the date on which interest ceases to accrue;

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

(a) Section 1(3) of the Act of 1982 was amended by the Civil Jurisdiction and Judgments Act 1991 c.12, section 2(5).

(b) O.J. No. L 012, 16.01.2001, p.1.

(c) Section 4 was amended by the Civil Jurisdiction and Judgments Act 1991 c.12, Schedule 2, paragraph 2 and was extended to authentic instruments and court settlements by S.I. 1993/604. Schedule 1 was substituted by S.I. 1990/2591 and amended by S.I. 2000/1824. Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991, section 1(3) and Schedule 1.

- (iv) the usual or last known place of residence or business of the person against whom the judgment was given;
- (v) the grounds on which the petitioner is entitled to enforce the judgment; and
- (vi) the part of the judgment which is unsatisfied.

(3) Paragraph (2)(b) and (d) shall not apply to a petition under Article 38 (enforcement of judgment from another Member State), Article 57 (enforcement of authentic instrument from another Member State) or Article 58 (enforcement of settlement from another Member State) of the Council Regulation but there shall be produced with such a petition a certificate under Article 54 (standard form of certificate of judgment), Article 57 (standard form of certificate of authentic instrument) or Article 58 (standard form of certificate of court settlement) of the Council Regulation.

(4) Where the petitioner does not produce a document required under paragraph (2)(a) to (d) or (3), 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.

Protective measures and interim interdict

62.29.—(1) On lodging a petition, the petitioner may, at any time until the expiry of the period for lodging an appeal referred to in rule 62.34 or its disposal, apply by motion for a warrant for the execution of protective measures.

(2) On lodging such a petition, the petitioner may, at any time until the expiry of the period for lodging an appeal mentioned in rule 62.34 or its disposal, apply by motion for an interim interdict.

Warrant for registration under the Act of 1982 or the Council Regulation

62.30.—(1) The court shall, on being satisfied that the petition complies with the requirements of the Act of 1982 or, as the case may be, the Council Regulation, pronounce an interlocutor—

- (a) granting warrant for the registration of the judgment;
- (b) granting warrant for the execution of protective measures; and
- (c) 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 62.34 against the interlocutor may be made; and
- (b) that the petitioner—
 - (i) may register the judgment under rule 62.32; and
 - (ii) may not proceed to execution until the expiry of the period for lodging such an appeal or its disposal.

Intimation to petitioner

62.31. Where the court pronounces an interlocutor under rule 62.30(1) granting warrant for registration, 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 Act of 1982 or the Council Regulation

62.32.—(1) Where the court pronounces an interlocutor under rule 62.30(1) granting warrant for registration, the Deputy Principal Clerk shall enter the judgment in a register of judgments, authentic instruments and court settlements under the Act of 1982 and the Council Regulation 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 62.30(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),

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 shall issue an extract of the registered judgment with a warrant for execution.

Service of warrant for registration under the Act of 1982 or the Council Regulation

62.33. The petitioner shall serve a copy of the interlocutor granting warrant for registration of a judgment and a notice in Form 62.33 on the person liable under the judgment.

Appeals under the Act of 1982 or the Council Regulation

62.34.—(1) An appeal under Article 37 of the convention in Schedule 1 or 3C to the Act of 1982 (appeal against granting of warrant for registration) or an appeal under Article 43 (appeals by either party) of the Council Regulation against the granting of a warrant for registration shall be made by motion—

- (a) to the Lord Ordinary; and
- (b) within one month of service under rule 62.33 (service of warrant for registration under the Act of 1982 or the Council Regulation) or within two months of such service where service was executed on a person domiciled in another Contracting State or, as the case may be, Member State.

(2) An appeal under Article 40 of the convention in Schedule 1 or 3C to the Act of 1982 (appeal against refusal to grant warrant for registration) or an appeal under Article 43 (appeals by either party) of the Council Regulation against a refusal to grant warrant for registration shall be made by motion—

- (a) to the Lord Ordinary; and
- (b) within one month of the interlocutor pronounced under rule 62.30(1) (warrant for registration under the Act of 1982 or the Council Regulation).

(3) Where the respondent in any such appeal is domiciled furth of the United Kingdom—

- (a) in relation to an appeal under paragraph (1), intimation of the motion shall be made to the address for service of the respondent in Scotland; and
- (b) in relation to an appeal under paragraph (2), 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 person is not known), as the case may be.

(4) Where an appeal under paragraph (1) is successful, the court shall, on the motion of the appellant, pronounce an interlocutor recalling any protective measure or interim interdict.

Reclaiming under the Act of 1982 or the Council Regulation

62.35.—(1) Any party dissatisfied with the interlocutor of the Lord Ordinary in any appeal mentioned in rule 62.34 (appeals under the Act of 1982 or the Council Regulation) may reclaim on a point of law against that interlocutor.

(2) Where a reclaiming motion under paragraph (1) against the registration of a judgment is successful, the court shall, on the motion of the appellant, pronounce an interlocutor recalling any protective measure or interim interdict.

Recognition of judgments from another Contracting State or Member State

62.36.—(1) For the purposes of Article 26 of the convention in Schedule 1 or 3C to the Act of 1982 and Article 33 of the Council Regulation, an interlocutor pronounced under rule 62.30(1) (warrant for registration under the Act of 1982 or the Council Regulation) shall imply recognition of the judgment so dealt with.

(2) In an application under Article 26(2) of the convention in Schedule 1 or 3C to the Act of 1982 (application for recognition of a judgment) or Article 33(2) of the Council Regulation (application for recognition of a judgment), rules 62.26 to 62.35 shall apply to such an application as they apply to an application under Article 31 of that convention, subject to the following provisions:—

- (a) it shall not be necessary to produce any documents required by rule 62.28(2)(b) and (d); and
- (b) rule 62.32 shall not apply.

Enforcement of judgments from another part of the United Kingdom in Scotland (money provisions)

62.37.—(1) An application under paragraph 5 of Schedule 6 to the Act of 1982 (application for registration in the Court of Session of a certificate in relation to a money provision in a judgment from another part of the United Kingdom) shall be made by presenting to the Keeper of the Registers—

- (a) a certificate under paragraph 4(1) of Schedule 6 to the Act of 1982; and
- (b) any certificate of currency conversion under rule 62.2(1)(b).

(2) On presentation of the certificate mentioned in paragraph (1)(a), the Keeper of the Registers shall—

- (a) register the certificate in the register of judgments of the Books of Council and Session; and
- (b) issue an extract of the certificate with a warrant for execution.

(3) An application under—

- (a) paragraph 9 of Schedule 6 to the Act of 1982 (application to sist proceedings for enforcement of a certificate registered under paragraph (2) of this rule); or
- (b) paragraph 10 of Schedule 6 to the Act of 1982 (application for reduction of registration),

shall be made by petition.

Enforcement of judgments from another part of the United Kingdom in Scotland (non-money provisions)

62.38.—(1) An application under paragraph 5 of Schedule 7 to the Act of 1982 (application for registration in the Court of Session of a non-money provision in a judgment from another part of the United Kingdom) shall be made by petition in Form 62.38.

(2) There shall be produced with the petition under paragraph (1)—

- (a) a certified copy of the judgment of the original court; and

(b) a certificate under paragraph 4(1)(b) of Schedule 7 to the Act of 1982.

(3) The petition under paragraph (1) shall be heard by the Lord Ordinary in chambers and shall not require any appearance for the applicant unless the court so requires.

(4) The court shall, on being satisfied that the petition complies with the requirements of section 18 of, and Schedule 7 to, the Act of 1982(a), pronounce an interlocutor—

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

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

(5) Where the court pronounces an interlocutor under paragraph (4), rule 62.32 shall apply to the registration of a judgment under this rule as it applies to the registration of a judgment under that rule.

(6) An application under—

(a) paragraph 8 of Schedule 7 to the Act of 1982 (application to sist proceedings for enforcement of a judgment registered under paragraph (5) of this rule); or

(b) paragraph 9 of Schedule 7 to the Act of 1982 (application to reduce the registration under paragraph (5) of this rule),

shall be made by petition.

Cancellation of registration under the Act of 1982 or the Council Regulation

62.39. Where—

(a) an interlocutor under rule 62.30(1) (warrant for registration under the Act of 1982 or the Council Regulation) is recalled and registration under rule 62.32 (registration under the Act of 1982 or the Council Regulation) is ordered to be cancelled after an appeal under Article 37 of the convention in Schedule 1 or 3C to the Act of 1982 or an appeal under Article 43 of the Council Regulation; or

(b) registration under rule 62.37(2) (registration of judgments from another part of the United Kingdom in Scotland (money provisions)) or rule 62.38(5) (registration of judgments from another part of the United Kingdom in Scotland (non-money provisions)) is reduced,

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 Contracting State or Member State of Court of Session judgments etc.

62.40.—(1) Where a person seeks to apply under section 12 of the Act of 1982(b) for recognition or enforcement in another Contracting State of a judgment given by the court or a court settlement in the court, he shall apply by letter to the Deputy Principal Clerk for—

(a) a certificate in Form 62.40-A;

(b) a certified copy of the judgment; and

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

(2) Where a person seeks to apply under Chapter III of 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 54 of the Judgments Regulation;

(b) a certified copy of the judgment; and

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

(a) Section 18 was amended by S.I. 2003/425.

(b) Section 12 was extended to court settlements by S.I. 1993/604.

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

(4) Where a person seeks to apply under Article 50 of the convention in Schedule 1 or 3C to the Act of 1982 for enforcement of an authentic instrument or court settlement registered for execution in the Books of Council and Session, he shall apply by letter to the Keeper of the Registers for—

- (a) a certificate in Form 62.40-B or; and
- (b) an extract of the authentic instrument or court settlement.

(5) Where a person seeks to apply under Article 57 or 58 of the Council Regulation for enforcement in another Member State of an authentic instrument or court settlement registered for execution in the Books of Council and Session, he shall apply by letter to the Keeper of the Registers for—

- (a) a certificate under Article 57 or 58 of the Council Regulation; and
- (b) an extract of the authentic instrument or court settlement.

(6) The Keeper of the Registers shall not issue a certificate under paragraph (4) or (5) 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.

Enforcement in another part of the United Kingdom of Court of Session judgments or documents registered for execution (money provisions)

62.41.—(1) Where a person seeks to apply under Schedule 6 to the Act of 1982 for enforcement in another part of the United Kingdom of a money provision in a judgment given by the court, he shall apply by letter to the Deputy Principal Clerk for a certificate in Form 62.41-A.

(2) The Deputy Principal Clerk shall not issue a certificate under paragraph (1) unless there is produced to him an affidavit stating—

- (a) the sum or aggregate of sums including interest and expenses payable and unsatisfied;
- (b) that the time for making an appeal against such judgment has expired or such appeal has been finally determined;
- (c) that enforcement of the judgment has not been suspended and the time available for its enforcement has not expired; and
- (d) the address of the party entitled to enforce, and the usual or last known address of the party liable to execution on, the judgment.

(3) Where a person seeks to apply under Schedule 6 to the Act of 1982 for enforcement in another part of the United Kingdom of a document registered for execution in the Books of Council and Session, he shall apply by letter to the Keeper of the Registers for—

- (a) a certificate in Form 62.41-B; and
- (b) an extract of the document.

(4) The Keeper of the Registers shall not issue a certificate under paragraph (3) unless there is produced to him an affidavit which includes the statements required under paragraph (2)(a), (c) and (d).

Enforcement in another part of the United Kingdom of Court of Session judgments or documents registered for execution (non-money provisions)

62.42.—(1) Where a person seeks to apply under Schedule 7 to the Act of 1982 for enforcement in another part of the United Kingdom of a non-money provision in a judgment of the court, he shall apply by letter to the Deputy Principal Clerk for—

- (a) a certificate in Form 62.42-A; and

- (b) a certified copy of such judgment.
- (2) The Deputy Principal Clerk shall not issue a certificate under paragraph (1) unless there is produced to him an affidavit stating—
 - (a) that the time for making an appeal against such judgment has expired or such appeal has been finally determined; and
 - (b) the address of the party entitled to enforce, and the usual or last known address of the party liable to execution on, the judgment or registered document.
- (3) Where the Deputy Principal Clerk issues a certificate in Form 62.42-A, he shall attach it to the certified copy judgment.
- (4) Where a person seeks to apply under Schedule 7 to the Act of 1982 for enforcement in another part of the United Kingdom of a non-money provision in a document registered for execution in the Books of Council and Session, he shall apply by letter to the Keeper of the Registers for—
 - (a) a certificate in Form 62.42; and
 - (b) an extract of the document.
- (4) The Keeper of the Registers shall not issue a certificate under paragraph (4) unless there is produced to him an affidavit referred to in paragraph (2).
- (5) Where the Keeper of the Registers issues a certificate in Form 62.42-B, he shall attach it to the extract of the document.”.
- (15) In rule 64.2(2)(a) and rule 64.6 for “Form 64-A” there shall be substituted “Form 64.6”.
- (16) In rule 64.9(a) for “Form 64-B” there shall be substituted “Form 64.9”.
- (17) For Part IV of Chapter 67 there shall be substituted the following:–

“PART IV

CONVENTION ADOPTION ORDERS

Interpretation of this Part

67.33. In this Part—

- “the petition” means the petition referred to in rule 67.35 or 67.41, as the case may be;
- “receiving State” has the same meaning as in the Convention(a); and
- “State of origin” has the same meaning as in Article 2 of the Convention.

Application of Part III to this Part

67.34. Part III (adoption), except the following rules, shall apply to the petition:–

- rule 67.19 (interpretation of Part III),
- rule 67.20 (protection of identity of petitioner),
- rule 67.27 (applications under section 49(b)),
- rule 67.29 (applications to amend or revoke a direction in, or revoke, an adoption order).

(a) Section 65 of the Adoption (Scotland) Act 1978 (c.28) provides that “the Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993. Section 65 was amended by the Adoption (Intercountry Aspects) Act 1999 c.18.

(b) Section 49 was amended by the Children (Scotland) Act 1995 c.36, Schedule 2, paragraph 23.

Applications for Convention adoption orders

67.35.—(1) An application for a Convention adoption order shall be made by petition in Form 67.22.

(2) The petition shall include averments in relation to—

- (a) the age of the child;
- (b) the place and the country where the petitioner habitually resides;
- (c) the period of time for which the petitioner has resided there;
- (d) the place and the country where the child habitually resides;
- (e) the period of time for which the child has resided there; and
- (f) whether the child is, or has been, married.

(3) Where the United Kingdom is the receiving state, and the child is over the age of twelve years the petition shall also include averments in relation to—

- (a) whether the child is capable of giving consent, and
- (b) whether the child has consented,

to the making of the order.

(4) Where the United Kingdom is the State of origin, the petition shall also include averments as to whether the child is free for adoption by virtue of an order made under section 18 of the Act of 1978^(a), section 18 of the Adoption Act 1976^(b), or article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987^(c).

(5) The prayer of the petition shall include a crave that the court direct the Registrar General for Scotland to insert the words “Convention Order” in the entry to be made by him in the Adopted Children Register regarding the adoption.

Investigations by curator ad litem

67.36.—(1) The curator *ad litem* appointed under rule 67.23(1)(b) by virtue of rule 67.34 (application of Part III to this Part) shall also investigate the averments referred to in rule 67.35(2) and shall include the results of his investigations in his report.

(2) Where in the course of his investigations, the curator *ad litem* requires a report from any authority outside Great Britain, he shall request the local authority to request that other authority to provide that report.

Annulment etc. of overseas adoptions

67.37.—(1) This rule applies to an application for an order under section 47 of the Act of 1978 (annulment etc. of overseas adoptions)^(d).

(2) An application mentioned in paragraph (1) shall be made by petition.

(3) An application under section 47(1) of the Act of 1978 shall not, except with the leave of the court, be made later than two years after the date of the adoption to which it relates.

(4) Where the adopted person is under the age of 18 years on the date of the presentation of a petition under this rule, the court shall appoint a curator *ad litem* with the duties mentioned in rule 67.24(2).

(5) On the court pronouncing an interlocutor making an order referred to in paragraph (1), the Deputy Principal Clerk shall send a notice of the order to the Registrar General for Scotland specifying—

- (a) the date of the adoption;

^(a) Section 18 was amended by the Children (Scotland) Act 1995 c.36, Schedule 2, paragraph 11(d).

^(b) 1976 c.36. Section 18 was amended by the Children Act 1989 c.41, Schedule 10(1), paragraph 6(3).

^(c) S.I. 1987/2203 (N.I. 22).

^(d) Section 47 was amended by the Adoption (Intercountry Aspects) Act 1999 (c.18), section 6(2).

- (b) the name and address of the authority which granted the adoption;
- (c) the names of the adopter or adopters and of the adopted person as given in that petition;
- (d) the country in which the adoption was granted;
- (e) the country of which the adopted person is a national; and
- (f) the country in which the adopted person was born.

Directions as to the status conferred by adoption

67.38. An application under section 39(2A) of the Act of 1978 (application for direction as to status conferred by adoption)(a) shall be made by petition.”.

(18) In the annexe:

- (a) for paragraph 3 of Part 1 of Form 49.73–A (jurisdiction) and paragraph 5 of Part 1 of Form 49.73–B (jurisdiction) there shall be substituted the paragraph set out in Part 1 of the Schedule to this Act of Sederunt;
- (b) Form 58.8 shall be numbered “Form 58.8A”;
- (c) for Forms 62.28 and 62.33 respectively there shall be substituted the forms set out in Part 2 of the Schedule to this Act of Sederunt;
- (d) Form 64-A shall be numbered “Form 64.6”;
- (e) Form 64-B shall be numbered “Form 64.9”; and
- (f) in Form 82.3-A and Form 82.3-B for “1998 Act” there shall be substituted “Human Rights Act 1998”.

Cullen of Whitekirk

Lord President
I.P.D.

Edinburgh
10th February 2004

(a) Section 39 was amended by Adoption (Intercountry Aspects) Act 1999 c.18, section 5(2).

SCHEDULE

PART 1

JURISDICTION

Please indicate with a tick (✓) in the appropriate box or boxes which of the following apply:

PART A

- | | | |
|-------|---|--------------------------|
| (i) | My spouse and I are habitually resident in Scotland | <input type="checkbox"/> |
| (ii) | My spouse and I were last habitually resident in Scotland, and one of us still resides there | <input type="checkbox"/> |
| (iii) | My spouse is habitually resident in Scotland | <input type="checkbox"/> |
| (iv) | I am habitually resident in Scotland having resided there for at least a year immediately before this application was made | <input type="checkbox"/> |
| (v) | I am habitually resident in Scotland having resided there for at least six months immediately before this application was made and am domiciled in Scotland | <input type="checkbox"/> |
| (vi) | My spouse and I are domiciled in Scotland | <input type="checkbox"/> |

Part B applies where the defender is not a national of a Contracting State (other than the UK or Ireland) or domiciled in Ireland

PART B

- | | | |
|------|--|--------------------------|
| (i) | I consider myself to be domiciled in Scotland | <input type="checkbox"/> |
| (ii) | My spouse considers himself or herself to be domiciled in Scotland | <input type="checkbox"/> |

AND

- (iii) No court of a Contracting State has jurisdiction under the Council Regulation

PART C

- (i) I have lived at the address shown above for at least 40 days immediately before the date I signed this application

- (ii) My spouse has lived at the address shown above for at least 40 days immediately before the date I signed this application

PART 2

Rule 62.28

FORM 62.28

Form of petition for registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982 or under Article 38, Article 57 or Article 58 of the Council Regulation

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

PETITION

of

[A.B.] (*designation and address*)

under the Civil Jurisdiction and Judgements Act 1982 [*or under Council Regulation (E.C.) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*]

for registration of

a judgment [*or authentic instrument or court settlement*] [*of the (name of court)*]

dated the

day of

HUMBLY SHEWETH:—

1. That this petition is presented by (*name*) to register a judgment [*or authentic instrument or court settlement*] [*of the (name of court) of (date of judgement)*].
2. That in the cause in which the judgment [*or as the case may be*] was pronounced, A.B. was pursuer [*or defender or (as the case may be)*] and [C.D.] was defender [*or pursuer or as the case may be*].
3. That the petitioner is a party having an interest to enforce the judgment [*or as the case may be*] because (*state reasons*).
4. That this petition is supported by the affidavit of (*name of deponent*) and the documents produced with it.
5. That the petitioner seeks warrant to register the judgment [*or as the case may be*] [and for decree in terms thereof] [and for decree to be pronounced in the following or such other terms as to the court may seem proper:- (*state terms in which decree is to be pronounced in accordance with Scots law*)].
6. That the petitioner seeks the authority of the court to execute the protective measure[s] of (*state measures*), for the following reasons (*state reasons*).

7. That this petition is made under section 4 of, and Article 31 [*or* 50] of the Convention in Schedule 1 [*or* 3C] to, the Civil Jurisdiction and Judgments Act 1982 [*or* under Article 38 [*or* 57 *or* 58] of Council Regulation (E.C.) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters] and rule 62.28 of the Rules of the Court of Session 1994.

According to Justice etc.

(signed)

Petitioner

[*or* Solicitor [*or* Agent] for Petitioner]

(Address of Solicitor or Agent)

[*or* counsel *or* other person having a right of audience]

FORM 62.33

Form of notice of decree and warrant for registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982 or under Article 38, Article 57 or Article 58 of the Council Regulation

IN THE COURT OF SESSION

in the

PETITION

of

[A.B.] (*designation and address*)

under section 4 of the Civil Jurisdiction and Judgments Act 1982 [*or under Article 38 [or 57 or 58] of Council Regulation (E.C.) No. 22/2002 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*]

Date: (*date of posting or other method of service*)

To: (*name of person against whom judgment was given and decree and warrant granted*)

TAKE NOTICE

That an interlocutor dated the _____ day of _____, a certified copy of which is attached was pronounced at the Court of Session granting decree and warrant for registration of the judgment [*or as the case may be*] [of the (*name of court*) dated the _____ day of _____, for (*state briefly the terms of the judgment*)].

You have the right to appeal to a Lord Ordinary in the Outer House of the Court of Session, Parliament Square, Edinburgh EH1 1RQ against the interlocutor granting decree and warrant for registration within one month [*or two months as the case may be*] after the date of service of this notice upon you. The date of service is the date stated at the top of this notice unless service has been executed by post in which case the date of service is the day after that date.

An appeal must be by motion enrolled in the process of the petition.

The registered judgment and decree of the Court of Session may not be enforced in Scotland until the expiry of the period within which you may appeal and any appeal has been disposed of.

Intimation of an appeal should be made to the petitioner, [A.B.], at the following address for service in Scotland:— (*address*)

(Signed)

Messenger-at-Arms

[*or Petitioner [or Solicitor [or Agent] for Petitioner]*]
(*Address*)

EXPLANATORY NOTE

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

This Act of Sederunt makes miscellaneous amendments to the Rules of the Court of Session 1994 (S.I. 1994/1443) ('the Rules').

Paragraph 2(2) makes a minor amendment to rule 10.1(2) (terms of court).

Paragraph 2(3), (4) and (5) makes provision in the Rules in connection with the service of documents under Council Regulation (E.C.) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

Paragraph 2(7), (10), (12), (13), (15), and (16) makes amendments to remove or correct minor errors and inconsistencies in the Rules.

Paragraph 2(8) makes provision for the transfer of proceedings between the Court of Session and the Competition Appeal Tribunal.

Paragraph 2(9) makes minor amendments to rule 40.21 (use of Gaelic in appeals from inferior courts).

Paragraph 2(11) makes provision in the Rules in connection with appeals under paragraph 4(1) of Schedule 2 to the Tax Credits Act 2002 (appeals from General or Special Commissioners in relation to penalties).

Paragraph 2(14) makes provision in the Rules in connection with the recognition and enforcement of judgments under Council Regulation (E.C.) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Paragraph 2(17) makes provision in the Rules in connection with inter-country adoption.

Paragraph 2(18) makes various amendments to Forms in the Rules.

2004 No. 52

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment)
(Miscellaneous) 2004

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