

**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(a) 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(b) 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:—

“PART XI

REGISTRATION AND ENFORCEMENT OF JUDGMENTS UNDER COUNCIL  
REGULATION (E.C.) NO. 2201/2003 OF 27<sup>TH</sup> NOVEMBER 2003(c)

*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;

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(a) 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.

(b) S.I. 1994/1443, last amended by S.S.I. 2004/514.

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

‘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;
  - (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—

- (a) an authentic copy of the judgment;
- (b) any certificate under Article 41 of the Council Regulation;
- (c) any extract of the registered judgment with a warrant for execution; and
- (d) where applicable, a document showing that the applicant is in receipt of legal aid in the country where the judgment was given.”.

(3) In rule 70.5(1) (applications for return of a child)(a) for “An application for the return of a child” there shall be substituted “Subject to rule 70.16 (warrant for intimation on a child), an application for the return of a child”.

(4) In rule 70.6(2) (service of causes)(b) for “Such a petition” there shall be substituted “Subject to rule 70.16 (intimation of notice on child), such a petition”.

(5) In rule 70.6(5) (hearings)(c) for “At the first hearing” there shall be substituted “Subject to rule 70.17 (views of the child), at the first hearing”.

(6) After Part II of Chapter 70 (international child abduction (the Hague Convention)) there shall be inserted the following:—

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(a) Rule 70.5(1) was amended by S.I. 1996/1756.  
(b) Rule 70.6(2) was amended by S.I. 1996/1756.  
(c) Rule 70.6(5) was inserted by S.I. 1996/1756.

## “PART IIA

### APPLICATIONS UNDER THE HAGUE CONVENTION WHERE THE COUNCIL REGULATION APPLIES

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

**70.15.**—(1) This Part applies to petitions under rule 70.5(1) (applications for the return of a child) under the Hague Convention where the Council Regulation (E.C.) No. 2201/2003 of 27<sup>th</sup> November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility applies(a).

(2) In this Part—

“the Council Regulation” means Council Regulation (E.C.) No. 2201/2003 of 27<sup>th</sup> November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;

“central authority” means a central authority designated under Article 53 of the Council Regulation;

“the Hague Convention” means the Convention defined in section 1(1) of the Child Abduction and Custody Act 1985(b) and as set out in Schedule 1 to that Act;

“Member State” has the same meaning as in Article 2(3) of the Council Regulation;

“wrongful removal or retention” has the same meaning as in Article 2(11) of the Council Regulation.

#### *Intimation on child*

**70.16.**—(1) In a petition under rule 70.5(1)(application for the return of a child) where the Council Regulation applies, the petitioner shall insert a warrant for intimation to the child to whom the petition relates, if not a party to the petition.

(2) Where paragraph (1) applies a copy of the petition shall not be intimated to the child but a notice of intimation in Form 49.8-N(c) shall be intimated.

(3) Where a petitioner considers that a warrant for intimation to a child under paragraph (1) is inappropriate, he shall—

- (a) apply by motion to dispense with intimation to that child; and
- (b) include in the petition averments setting out the reasons why such intimation is inappropriate,

and the court may dispense with such intimation or make such other order as it thinks fit.

#### *Views of child*

**70.17.**—(1) In an application under rule 70.5(1)(application for the return of a child) where the Council Regulation applies and the child has—

- (a) returned Form 49.8-N (form of notice of intimation to a child), or
- (b) otherwise indicated to the court a wish to express views on a matter affecting him,

the court shall not grant any order unless an opportunity has been given for the views of that child to be obtained or heard.

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(a) O.J. No L338, 23.12.2003, p. 1.

(b) 1985 c.60.

(c) Form 49.8-N was inserted by S.I. 1996/2587.

(2) Where a child has indicated his wish to express his views, the court shall order such steps to be taken as it considers appropriate to ascertain the views of that child.

(3) The court shall not grant an order in a petition under rule 70.5(1) (return of a child) affecting a child who has indicated his wish to express his views, unless due weight has been given by the court to the views expressed by that child, having regard to his age and maturity.

#### *Continuations*

**70.18.** In an application under rule 70.5(1) (application for the return of the child), where the Council Regulation applies, the court may allow a continuation of the hearing for a period not exceeding 7 days or to the first suitable court date thereafter but any further continuations shall only be allowed on special cause shown.

#### *Recording of hearings under Article 12 of the Hague Convention*

**70.19.**—(1) Evidence at a hearing on an application for the return of a child under rule 70.5(1) and Article 12 of the Hague Convention, where the Council Regulation applies, shall be recorded by—

- (a) a shorthand writer to whom the oath *de fidelis administratione officii* has been administered on his appointment as a shorthand writer in the Court of Session; or
- (b) tape recording or other mechanical means approved by the Lord President.

(2) The record of the evidence taken at the hearing shall include—

- (a) any objection taken to a question or to the line of evidence;
- (b) any submission made in relation to such an objection; and
- (c) the ruling of the court in relation to the objection and submission.

(3) A transcript of the record of the evidence shall be made only where an order is made under Article 13 of the Hague Convention refusing to order the return of a child in an application where the Council Regulation applies.

(4) The transcript of the record of evidence shall be certified as a faithful record of the evidence by—

- (a) the shorthand writer or shorthand writers, if more than one, who recorded the evidence; or
- (b) where the evidence was recorded by tape recording or other mechanical means, the person who transcribed the record.

(5) The court may make such alterations to the transcript of the record of the evidence as appear to it to be necessary after hearing parties; and, where such alterations are made, the Lord Ordinary shall authenticate the alterations.

#### *Order under Article 13 of the Hague Convention*

**70.20.** Where an order is made under Article 13 of the Hague Convention refusing to order the return of a child in an application under rule 70.5(1) where the Council Regulation applies, the Deputy Principal Clerk shall transmit a copy of the order and a transcript of the proceedings to the central authority of the Member State where the child was habitually resident immediately before the wrongful removal or retention.”.

(7) After Chapter 87 (causes relating to Articles 81 and 82 of the Treaty establishing the European Community) there shall be inserted the following:—

“CHAPTER 88

CIVIL MATTERS INVOLVING PARENTAL RESPONSIBILITIES UNDER THE  
COUNCIL REGULATION

*Interpretation*

**88.1.** In this Chapter —

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

“parental responsibility” has the same meaning as in Article 2(7) of the Council Regulation;

“Member State” has the same meaning as in Article 2(3) of the Council Regulation;

“requesting court” means a court in another Member State that requests the Court of Session to accept or decline jurisdiction in an action.

*Transfers of cases involving matters of parental responsibility*

**88.2.** Where the court receives a request from a court in another Member State under Article 15 of the Council Regulation (transfer to court better placed to hear the case) to accept or decline jurisdiction of an action involving parental responsibilities the request shall—

- (a) contain a detailed statement on the particular connection the child is considered to have with either Scotland or the Member State of the requesting court;
- (b) contain the full name, designation and address of all the parties to the action involving parental responsibilities, including any Scottish agent instructed to represent any of the parties;
- (c) be accompanied by a copy of any order of the requesting court confirming that at least one of the parties has accepted the request; and
- (d) be accompanied by any other documents considered by the requesting court to be relevant to the action involving parental responsibilities including any papers forming part of the process of the case in the requesting court.

*Transfers where proceedings ongoing in the sheriff court*

**88.3.—**(1) Where a request to decline jurisdiction is received under rule 88.2 (transfer of case involving matters of parental responsibility) and states that proceedings involving the same parties and matters involving parental responsibility are ongoing in a sheriff court, the Deputy Principal Clerk shall, within four days after the request is received, transmit the request to the sheriff clerk of the sheriff court specified in the request.

(2) When transmitting a request under paragraph (1) the Deputy Principal Clerk shall give written intimation of the transmission to—

- (a) the parties; and
- (b) to the requesting court.

(3) Failure by the Deputy Principal Clerk to comply with paragraph (2) shall not affect the validity of a transfer under paragraph (1).

*Translations of documents*

**88.4.** Where any document received under rule 88.2 (transfer of cases involving matters of parental responsibility) is in a language other than English, there shall be lodged with



that document a translation into English certified as correct by the translator; and the certificate shall include his full name, address and qualifications.

*Requests to accept transfer from a court in another Member State*

**88.5.**—(1) A request to the court to accept jurisdiction of an action involving parental responsibilities under rule 88.2 (request to transfer a case) shall be lodged with a summons in Form 13.2-A(a).

(2) When the summons lodged under paragraph (1) is signetted the pursuer shall request the Keeper of the Rolls to allocate a hearing within 14 days of the signetting, to determine whether the court will accept jurisdiction in the action.

(3) On allocation of the date of the hearing the pursuer shall serve a copy of the summons on the defender and at the same time intimate the date and time of the hearing on the defender by serving on him a notice in Form 88.5 (form of notice of intimation of a hearing to determine jurisdiction), not less than 7 days before the date of the hearing.

(4) The pursuer shall lodge a certificate of intimation in Form 16.2 (certificate of intimation furth of United Kingdom), 16.3 (certificate of service by messenger-at-arms) or 16.4 (certificate of service by post), as appropriate, at least 2 days before the date of the hearing.

(5) Where the court orders that it will accept jurisdiction of an action after a hearing under paragraph (2) the Deputy Principal Clerk shall, within seven days, send a copy of the interlocutor to the requesting court.

*Request to decline jurisdiction from a court in another Member State*

**88.6.** Where a request is received under rule 88.2 (request for transfer of a case) for the court to decline jurisdiction in an action involving parental responsibilities the Deputy Principal Clerk shall—

- (a) on receipt of the request and any accompanying documents, give written intimation of the request to each party to the action and to any Scottish agents identified in the request as being instructed to represent any of the parties; and
- (b) within two sederunt days of receipt of the request, cause it to be put out on the By Order Roll before the Lord Ordinary.”.

(8) In the Appendix—

- (a) for Form 49.8-N(a) there shall be substituted the form set out in Part 1 of the Schedule to this Act of Sederunt;
- (b) after Form 62.65(b) there shall be inserted the forms set out in Part 2 of the Schedule to this Act of Sederunt;
- (c) after Form 87.1(c) there shall be inserted the form set out in Part 3 of the Schedule to this Act of Sederunt.

Edinburgh  
1st March 2005

*CULLEN of WHITEKIRK*  
Lord President  
I.P.D.

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(a) Form 13.2-A was amended by S.I. 1994/2901 and S.S.I. 2004/537.  
(a) Form 49.8-N was inserted by S.I. 1996/2587.  
(b) Form 62.65 was inserted by S.I. 1996/2168.  
(c) Form 87.1 was inserted by S.S.I. 2004/514.

## SCHEDULE

Paragraph 2(8)

### PART 1

Rule 49.8(7) and

Rule 70.16

FORM 49.8-N

**Form of notice of intimation to a child of a family action in which an order under section 11 of the Children (Scotland) Act 1995 or Article 12 of the Hague Convention when regulated by Council Regulation (E.C.) NO. 2201/2003 of 27<sup>th</sup> November 2003, is sought**

Court Ref. No.

### PART 1

**THIS PART MUST BE COMPLETED BY THE PURSUER'S SOLICITOR IN LANGUAGE THAT A CHILD IS CAPABLE OF UNDERSTANDING**

To: *(name and address of child)*

The court has been asked by your father [*or mother, or (other relative or person as the case may be)*] to decide (*insert appropriate wording to explain section 11 or Article 12 order[s] sought*).

If you want to tell the court your views, you should complete Part 2 of this form and return it to the court in the envelope provided by (*insert date*). This envelope does not need a stamp.

If you return the form, it will be given to the court. The judge may wish to speak to you, and may ask you to come and see him or her.

**IF YOU DO NOT UNDERSTAND THIS FORM OR IF YOU WANT HELP TO COMPLETE IT you may get help from a SOLICITOR or you may contact the SCOTTISH CHILD LAW CENTRE ON the FREE ADVICE TELEPHONE LINE ON 0800 328 8970**

**PART 2**

**IF YOU WISH THE COURT TO KNOW YOUR VIEWS ABOUT YOUR FUTURE YOU SHOULD COMPLETE THIS PART OF THE FORM**

To: Deputy Principal Clerk of Session

Court Ref. No.

From *(insert name of child)*

1. Do you want the court to know what your views are about your future?

**YES**

**NO**

Please tick

2. Would you like someone else to tell the court what your views are about your future?

**YES**

**NO**

Please tick

If YES, please write this person's name and address below:

Name:

Address:

3. Would you like to write to the court to give your views about your future?

**YES**

**NO**

Please tick

If YES, please write your views below. You may continue on a separate piece of paper.

Thank you for taking the time to respond. Please now return the form and any separate piece of paper in the envelope provided.

## PART 2

Rule 62.69(1)

FORM 62.69

### Form of petition for enforcement of a judgment under Article 28 of the Council Regulation

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

PETITION

of

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

under Council Regulation (E.C.) No. 2201/2003 of 27<sup>th</sup> November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility

for registration of

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

dated the      day of

HUMBLY SHEWETH:—

1. That this petition is presented by [A.B.] to register a judgment [*or (as the case may be)*][of the (*name of court*)] of (*date of judgment or as the case may be*).
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 warrants to register the judgment [*or (as the case may be)*] [and for decree in terms thereof] [*or and for decree to be pronounced in the following or such other terms as to the court seem proper:—(state terms in which decree is to be pronounced in accordance with Scots law)*].
6. That the petition is made under Article 28 of the Council Regulation (E.C.) No. 2201/2003 of 27<sup>th</sup> November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility and rule 62.69 of the Rules of the Court of Session 1994 [*or (as the case may be)*].

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 62.73

**Form of notice of decree and warrant for registration of a judgment under Article 28 of the Council Regulation**

IN THE COURT OF SESSION

in the

PETITION of

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

under Council Regulation (E.C.) No. 2201/2003 of 27<sup>th</sup> November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility

for registration of

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

dated the      day of

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:— (*specify address*)

*(Signed)*

Messenger-at-Arms

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

PART 3

FORM 88.5

Rule 88.5(3)

**Form of notice of intimation of a hearing to determine jurisdiction under Article 15 of Council Regulation (E.C.) No. 2201/2003 of 27th November 2003**

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

To: *(name and address)*

TAKE NOTICE

*(Name and address of pursuer)* has lodged a summons in the Court of Session against *(name and address of defender)*.

The parties are presently engaged in proceedings involving matters of parental responsibility in *(specify court in other Member State where proceedings are ongoing)* and a request has been made to the Court of Session to accept jurisdiction of these proceedings and for the action to be dealt with in the Court of Session.

A hearing has been fixed on *(date)* at *(time)* within the Court of Session to determine the issue of jurisdiction.

You may appear or be represented by a person having a right of audience before the Court of Session at the hearing.

You or your representative will be asked whether you agree to jurisdiction being accepted by the Court of Session and the proceedings involving matters of parental responsibility being dealt with in the Court of Session.

If you do not appear or are not represented at the hearing the court may decide whether to accept jurisdiction in your absence.

*(Signed)*

Solicitor [*or Agent*] for Pursuer

*[or as the case may be]*

*(Address)*



## **EXPLANATORY NOTE**

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

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994 (S.I. 1994/1443) (“the Rules”). The amendments are in consequence of the 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.

Paragraph 2(2) inserts a new Part XI into Chapter 62 of the Rules by setting out a procedure for registration and enforcement of judgments under the Council Regulation (E.C.) No. 2201/2003.

Paragraph 2(3), (4), and (5) amend rules in Chapter 70 of the Rules on international abduction and the Hague Convention so that any actions under the Hague Convention which are also under the Council Regulation (E.C.) No. 2201/2003 are subject to new rules that are inserted into Chapter 70.

Paragraph 2(6) inserts a new Part IIA into Chapter 70 of the Rules to make provision that actions under the Hague Convention, where the Council Regulation also applies, are intimated to a child who is the subject of the action, and gives the child an opportunity to give their views on the action to the court. Provision is also made that hearings in such actions can be continued once but thereafter continuations must be on special cause being shown. A rule is inserted that hearings in such cases must be recorded and where the court decides not to order the return of a child after a hearing, a copy of the judgment and transcript of the proceedings shall be sent to by the Deputy Principal Clerk to the court in the other Member State.

Paragraph 2(7) inserts a new Chapter 88 into the Rules on civil cases involving parental responsibility that come under the Council Regulation (E.C.) No. 2201/2003. It makes provision that cases may be transferred between courts in different Member States if it is more appropriate that they be dealt with in that other Member State.

Paragraph 2(8) inserts new forms into the Appendix to the Rules.





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**COURT OF SESSION**

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