

**2005 No. 521**

**COURT OF SESSION**

**Act of Sederunt (Rules of the Court of Session Amendment  
No. 8) (Miscellaneous) 2005**

*Made* - - - - - *18th October 2005*

*Coming into force* - - - - - *21st October 2005*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988(a), and all of the 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 No. 8) (Miscellaneous) 2005 and shall come into force on 21st October 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) At the end of Chapter 62 (recognition, registration and enforcement of foreign judgments) there shall be inserted the following:—

**“PART XII**

***EUROPEAN ENFORCEMENT ORDERS***

**Interpretation and application of this Part**

**62.81.**—(1) In this Part—

“the Regulation” means Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims(c);

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

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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. 2005/268.

(c) O.J. No. L 143, 30.4.04, p.15.

(d) O.J. No. L 012, 16.01.01, p.1.

“authentic instrument” has the same meaning as in Article 4(3) of the Regulation;

“court settlement” means a settlement where the debtor has expressly agreed to a claim within the meaning of Article 4(2) of the Regulation by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; and

“judgment” has the same meaning as in Article 4(1) of the Regulation.

(3) This Part applies to judgments, court settlements and authentic instruments on uncontested claims certified as European Enforcement Orders under the Regulation.

(4) Subject to rule 62.84 (certification of authentic instrument), rule 62.87 (rectification or withdrawal of certificate), rule 62.88(1) (application for registration), and rule 62.88(3) (application for refusal, stay or limitation of enforcement), an application shall be made to the Deputy Principal Clerk by letter.

(5) Rule 62.1 shall not apply to a petition under rule 62.88(3) of this Part (application for refusal, stay or limitation of enforcement).

### **Certification of decree in absence or decree by default**

**62.82.**—(1) An application for certification under Article 6(1) (judgment on uncontested claim) or Article 8 (partial European Enforcement Order) of the Regulation shall be accompanied by an affidavit—

- (a) verifying that the judgment was of an uncontested claim within the meaning of Article 3(1)(b) or (c) of the Regulation and that the court proceedings met the requirements set out in Chapter III of the Regulation (minimum standards for uncontested claims procedures);
- (b) providing the information required by the form of certificate in Annex I to the Regulation (European Enforcement Order – judgment);
- (c) verifying that the judgment is enforceable in Scotland, and does not conflict with the rules of jurisdiction laid down in Articles 3 and 6 of Chapter II of Council Regulation (EC) No. 44/2001; and
- (d) stating that where the debtor was a consumer and the judgment related to a contract concluded by the debtor for a purpose outside his trade or profession the judgment was given in the Member State of the debtors domicile within the meaning of Article 59 of Council Regulation (EC) No. 44/2001.

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

### **Certification of court settlement**

**62.83.**— An application for certification under Article 24 of the Regulation (court settlement) shall be accompanied by an affidavit—

- (a) verifying that the debtor admitted the claim or entered into a settlement that was approved by the court or concluded before the court in the course of proceedings and is enforceable in Scotland;
- (b) verifying that the settlement concerned a claim within the meaning of Article 4(2) of the Regulation (payment of money); and
- (c) providing the information required by the form of certificate in Annex II to the Regulation (European Enforcement Order – court settlement).

### **Certification of authentic instrument**

**62.84.** An application for certification under Article 25(1) of the Regulation (authentic instrument) shall be by letter to the Keeper of the Registers and shall be accompanied by an affidavit—

- (a) verifying that the authentic instrument concerns a claim within the meaning of Article 4(2) of the Regulation (payment of money);
- (b) verifying that the authentic instrument is enforceable in Scotland; and
- (c) providing the information required by the form of certificate in Annex III to the Regulation (European Enforcement Order – authentic instrument).

### **Certificate of lack or limitation of enforceability**

**62.85.** An application for certification under Article 6(2) of the Regulation (lack or limitation of enforceability) shall be accompanied by an affidavit—

- (a) stating the date on which the judgment, court settlement or authentic instrument was certified as a European Enforcement Order; and
- (b) providing the information required by the form of certificate in Annex IV to the Regulation (certificate of lack or limitation of enforceability).

### **Replacement certificate**

**62.86.** An application under Article 6(3) of the Regulation (replacement certificate) shall be accompanied by an affidavit providing the information required by the form of certificate in Annex V to the Regulation (European Enforcement Order - replacement certificate following a challenge).

### **Rectification or withdrawal of certificate**

**62.87.** An application under Article 10(1) of the Regulation (rectification or withdrawal of European Enforcement Order certificate) shall be made in the form set out in Annex VI to the Regulation and, subject to rule 62.1 (disapplication of certain rules in Chapter 14 to this Chapter), shall be treated as a petition.

### **Registration for enforcement**

**62.88.—**(1) An application for registration for enforcement of a judgment, court settlement or authentic instrument certified as a European Enforcement Order shall be made by presenting to the Keeper of the Registers—

- (a) a certificate under Article 20(2)(b) of the Regulation (European Enforcement Order certificate);
- (b) a copy of the judgment, court settlement, or authentic instrument in accordance with Article 20(2)(a) of the Regulation (enforcement procedure);
- (c) where the certificate under Article 20(2)(b) is in a language other than English, a translation of the certificate into English certified as correct by the translator and stating the full name, address and qualification of the translator; and
- (d) any certificate of currency conversion under rule 62.2(1)(b).

(2) On presentation of the documents mentioned in sub-paragraphs (a) to (d) of paragraph (1) 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) Article 21 of the Regulation (refusal of enforcement); or
  - (b) Article 23 of the Regulation (stay or limitation of enforcement),
- shall be made by petition.

**Refusal, stay or limitation of enforcement**

**62.89.** An interlocutor certified by the Deputy Principal Clerk shall be sufficient warrant to the Keeper of the Registers—

- (a) where enforcement is refused under rule 62.88(3)(a), to cancel the registration of the certificate of the European Enforcement Order and return the judgment, certificate or other documents to the person who sought registration ; or
- (b) where enforcement is stayed or limited under rule 62.88(3)(b), to—
  - (i) register the interlocutor in the register of judgments of the Books of Council and Session; and
  - (ii) issue an extract of the interlocutor.”.

(3) For rule 65.3(1B) (preparation of case for reference to European Court of Justice)(a), there shall be substituted the following:—

“(1B) In preparing a reference, the parties shall have regard to guidance issued by the European Court of Justice.”.

(4) In Part VI of Chapter 74 (disqualification of company directors)—

- (a) in rule 74.33 (applications in relation to disqualification orders)—
  - (i) in the heading after “disqualification orders” there shall be inserted “or undertakings”;
  - (ii) after rule 74.33(c) (application for disqualification of unfit director) there shall be inserted the following:—
    - “(ca) under section 8A of that Act (variation or cessation of disqualification undertaking)(b),”;

(b) for rule 74.34(2) (intimation of petition to Secretary of State) there shall be substituted the following:—

“(2) A petition presented under rule 74.33 shall be intimated—

- (a) to the Secretary of State for Trade and Industry; or
- (b) where a petition is presented under rule 74.33(ca) and the disqualification undertaking was given under section 9B of the Company Directors Disqualification Act 1986 (competition undertaking)(c), to the Office of Fair Trading or any specified regulator which has accepted the undertaking, as the case may be;

unless the petition is presented by that person or body.”.

(5) In rule 76.36 (Proceeds of Crime Act 2002: applications in civil recovery proceedings)—

- (a) in paragraph (2) after “an application under” there shall be inserted “section 255A(1) (application for prohibitory property order) or”;
- (b) for paragraphs (4) and (5) there shall be substituted the following:—
  - “(4) An application under the following provisions shall be by motion:—
    - (a) section 255B(1) or section 260(3) (variation or recall of order);

(a) Rule 65.3(1B) was inserted by S.I. 1999/1281.

(b) Section 8A was inserted by section 6(5) of the Insolvency Act 2000 (c.39) and amended by section 204(4) and (5) of the Enterprise Act 2002 (c.40).

(c) Section 9B was inserted by section 204(1) of the Enterprise Act 2002 (c.40).

- (b) section 255E(1) and (6) (arrestment of property affected by prohibitory property order);
- (c) section 255F(1) and (6) (inhibition of property affected by prohibitory property order);
- (d) section 258(1) and (7) (inhibition of property affected by interim administration order); and
- (e) section 265(1) and (7) (arrestment of property affected by interim administration order).

(5) Before granting an application under the following provisions, the court may dispense with, postpone or order intimation to be made to such persons as it thinks fit:—

- (a) section 255E(1) and (6);
- (b) section 255F(1) and (6);
- (c) section 258(1) and (7); and
- (d) section 265 (1) and (7).”.

(6) At the end there shall be inserted the following:—

**“CHAPTER 92**  
**INQUIRES ACT 2005**

**Applications**

**92.1.**—(1) In this rule “the Act of 2005” means the Inquiries Act 2005**(a)**.

(2) An application under section 36(2) of the Act of 2005 for the court to make such order by way of enforcement, or otherwise as it could make if the matter had arisen in proceedings before the court, shall be by petition.

(3) There shall be attached to a petition mentioned in paragraph (2) a certificate under section 36(1) of the Act of 2005 (certificate by chairman of inquiry or Minister).”.

(7) In the appendix, in Form 65.3 (form of reference to the European Court)**(b)** the Annex to the Form (notes for completion of Form 65.3, guidance of the Court of Justice of the European Communities) shall be omitted.

Cullen of Whitekirk  
Lord President, I.P.D.

Edinburgh  
18th October 2005

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**(a)** 2005 c.12.

**(b)** Form 65.3 was inserted by S.I. 1999/1281.

## **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. 194/1443) (“the Rules”).

Paragraph 2(2) introduces new rules consequential upon the introduction of Regulation (E.C.) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. The new rules create a procedure for certifying certain judgments as European Enforcement Orders and enforcing European Enforcement Orders in Scotland.

Paragraph 2(3) makes a minor amendment to the Rules on preparing a case for a reference to the European Court of Justice.

Paragraph 2(4) amends Part VI of Chapter 74 on the disqualification of company directors by inserting a reference to disqualification undertakings.

Paragraph 2(5) amends the Rules on applications in civil recovery proceedings under the Proceeds of Crime Act 2002 consequent upon the amendment of that Act by the Serious and Organised Crime and Police Act 2005 (c.15).

Paragraph 2(6) introduces a new Chapter 92 into the Rules consequential upon the Inquiries Act 2005 (c.12).

Paragraph 2(7) omits the guidance of the Court of Justice of the European Communities from Form 65.3 in the appendix to the Rules.

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