

2005 No. 523

SHERIFF COURT

Act of Sederunt (Sheriff Court European Enforcement Order Rules) 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 by section 32 of the Sheriff Courts (Scotland) Act 1971(a), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court European Enforcement Order Rules) 2005 and shall come into force on 21st October 2005.

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

(3) In this Act of Sederunt—

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

“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(b);

“court of origin” has the meaning assigned in Article 4(6) 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 meaning assigned by Article 4(1) of the Regulation; and

“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).

(a) 1971 c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 13, and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2), and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49.

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

(c) O.J. No. L 143, 30.04.04, p.15.

(4) Any reference in this Act of Sederunt to a numbered form shall, unless the context otherwise requires, be construed as a reference to the form so numbered in the Schedule to this Act of Sederunt and includes a form substantially to the same effect with such variation as circumstances may require.

Application etc.

2.—(1) These Rules shall apply to applications under the Regulation where the sheriff court is the court of origin.

(2) An application shall—

- (a) be made in writing to the sheriff clerk of the sheriff court in which the judgment was delivered or authentic instrument was registered; and
- (b) subject to rule 8(1) (rectification or withdrawal of European Enforcement Order certificate) be made by letter.

Certification of decree in absence or decree by default

3.—(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 the court proceedings met the requirements set out in Chapter III of the Regulation;
- (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 sections 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 debtor’s domicile within the meaning of Article 59 of Council Regulation (EC) No. 44/2001,

and an execution of service of the judgment under sub-paragraph (3).

(2) Before an application is made under Article 6(1) (application for certificate as European Enforcement Order) or Article 8 (partial European Enforcement Order certificate) of the Regulation, the party wishing to enforce the judgment shall serve the judgment on all parties against whom the judgment has been given in accordance with the requirements of Article 13 (service with proof of receipt by the debtor) or Article 14 (service without proof of receipt by the debtor) of the Regulation accompanied by a notice in Form 1.

(3) An execution of service of the judgment shall be in Form 2 unless a form of execution of service is provided by a person effecting service in another Member State.

(4) A certificate under Article 9(1) of the Regulation (European Enforcement Order certificate) shall be signed by the sheriff clerk.

Certification of court settlement

4.—(1) 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 court 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).

(2) A certificate under Article 24 of the Regulation (court settlement) shall be signed by the sheriff clerk.

Certificate of authentic instrument

5.—(1) An application for certification under Article 25(1) of the Regulation (authentic instrument) 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).

(2) A certificate under Article 25(1) of the Regulation (authentic instrument) shall be signed by the sheriff clerk.

Certificate of lack or limitation of enforceability

6.—(1) 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).

(2) A certificate under Article 6(2) of the Regulation (lack or limitation of enforceability) shall be signed by the sheriff clerk.

Replacement certificate

7.—(1) 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).

(2) A certificate under Article 6(3) of the Regulation (replacement certificate) shall be signed by the sheriff clerk.

Rectification or withdrawal of European Enforcement Order certificate

8.—(1) An application under Article 10(1) of the Regulation (rectification or withdrawal of European Enforcement Order certificate) shall be in the form set out in Annex VI to the Regulation and shall be lodged with the sheriff clerk.

(2) An application under paragraph (1) shall be determined by the sheriff in chambers and shall not require any appearance for the applicant unless the sheriff otherwise directs.

(3) Where the sheriff requires to hear parties on an application the sheriff clerk shall—

- (a) fix a date, time and place for the parties to be heard, and
- (b) inform the parties—
 - (i) of that date, time and place; and
 - (ii) of the reasons for the sheriff wishing to hear parties.

Cullen of Whitekirk
Lord President
I.P.D.

Edinburgh
18th October 2005

SCHEDULE

Rule 3(2)

FORM 1

Form of notice to accompany service copy of judgment

To [A.B.] (*address*)

You are hereby served with a copy of the interlocutor of the Sheriff of at given on the day of 20 . [In terms of this interlocutor you are required to (*state requirements of interlocutor*). Your failure to do so may result in further steps being taken to enforce the interlocutor.]

(*Signed*)

(*Address*)

Solicitor [*or* Sheriff Officer]

(*Place and date*)

Rule 3(3)

FORM 2

**Execution of service of judgment where service effected by officer of court or solicitor in
Scotland**

(place and date)

I, [A.B.] (*address*), hereby certify that upon the day of 20 , I duly served a copy of this judgment together with a notice under rule 3(2) of the Act of Sederunt (Sheriff Court European Enforcement Order Rules) 2005 upon [C.D.], defender. This I did by posting (*set forth mode of service; if by officer and not by post, add in presence of [E.F.] (address) witness, hereto with me subscribing*).

(Signed)

(Address)

Solicitor for Pursuer

[*or* Defender]

[*or*

(Signed)

Sheriff Officer

(Signed)

Witness]

EXPLANATORY NOTE

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

This Act of Sederunt makes rules of procedure in the sheriff court for applications for European Enforcement Order certificates for enforcement of judgments in other Member States of the European Community.

Such applications will be made under Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21st April 2004 creating a European Enforcement Order for uncontested claims (“the Regulation”).

The Regulation came in to force on 21 January 2005, and applies to all Member States other than Denmark, from 21 October 2005.

Rule 3 provides a procedure for an application for certification of an uncontested judgment as a European Enforcement Order. Examples would be a decree in absence or a decree by default.

Rule 4 provides a procedure for an application for certification of a judgment, where there has been an admission or settlement, as a European Enforcement Order. An example would be a decree granted of consent.

Rule 5 provides a procedure for certification of an authentic instrument as a European Enforcement Order. An example would be a deed registered for preservation and execution in the books of a sheriff court.

Rule 6 provides a procedure for certification of a lack or limitation of enforceability where a judgment has been certified as a European Enforcement Order.

Rule 7 provides a procedure for an application for a replacement certificate where a decision has been issued after a judgment that was certified as a European Enforcement Order has been challenged.

Rule 8 provides a procedure for an application for a certificate to be rectified due to a material error or withdrawn where it was clearly wrongly granted.

The Schedule sets out a form of notice to accompany the service of a judgment on a debtor and a form of execution of service by an officer or solicitor in Scotland.

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Rules) 2005

£3.00

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