

**2011 No. 190**

**COURT OF SESSION**

**Act of Sederunt (Rules of the Court of Session Amendment  
No. 3) (Miscellaneous) 2011**

*Made* - - - - *10th March 2011*

*Coming into force in accordance with paragraph 1(1) and (2)*

The Lords of Council and Session, under and by virtue of the powers conferred 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, commencement etc.**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Miscellaneous) 2011 and, subject to paragraph (2), comes into force on 11th April 2011.

(2) Paragraph 4 comes into force on the date on which the Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010(b) come into force.

(3) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(4) In this Act of Sederunt, “the Rules” means the Rules of the Court of Session 1994(c).

**Service of documents furth of the United Kingdom**

2.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In rule 16.2 (service furth of United Kingdom)—

(a) in paragraph (2)(b), for “Secretary of State for Foreign and Commonwealth Affairs” substitute “Scottish Ministers”;

(b) for paragraph (3) substitute—

“(3) Where service is to be executed through a central, or other appropriate, authority at the request of the Scottish Ministers, the party executing service shall—

(a) send a copy of the document, with a request for service by the method indicated in the request, to the Scottish Ministers; and

(b) lodge in process a certificate signed by the authority which executed service stating that it has been, and the manner in which it was, served.

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(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3); the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), Schedule 9; the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); and the Judiciary and Courts (Scotland) Act 2008, (asp 6), section 46(3).

(b) S.S.I. 2010/213. Regulation 1(2) specifies the day on which these Regulations come into force.

(c) S.I. 1994/1443, last amended by S.S.I. 2011/165.

(3A) Where service is to be executed through a British consular officer at the request of the Secretary of State for Foreign and Commonwealth Affairs, the party executing service shall—

- (a) send a copy of the document, with a request for service by the method indicated in the request, to the Secretary of State for Foreign and Commonwealth Affairs; and
- (b) lodge in process a certificate signed by the authority which executed service stating that it has been, and the manner in which it was, served.”.

### **Personal injuries actions**

3.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In Chapter 43 (actions of damages for, or arising from, personal injuries)(a)—

- (a) in rule 43.4(4) (inspection and recovery of documents), for “rule 35.2” substitute “rules 35.3 or 35.3A”.
- (b) in rule 43.6(1)(b)(ii) (allocation of diets and timetables)(b), for “execute” substitute “serve”.

### **Registration and enforcement of measures for the protection of children**

4.—(1) The Rules are amended in accordance with the following subparagraphs.

(2) In Chapter 62 (recognition, registration and enforcement of foreign judgments etc.), after Part XIII (UNCITRAL model law on cross-border insolvency)(c) insert—

## **“PART XIV**

### **PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN**

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

**62.97.**—(1) This Part applies to the registration and enforcement of a measure under Article 24 or Article 26 of the 1996 Convention.

(2) In this Part—

“the 1996 Convention” means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, signed at The Hague on 19th October 1996(d);

“Contracting State” means a state party to the 1996 Convention.

#### **Enforcement, recognition or non-recognition of measures from a Contracting State**

**62.98.**—(1) An application—

- (a) under Article 24 of the 1996 Convention for recognition or non-recognition of a measure taken in a Contracting State other than the United Kingdom; or
- (b) under Article 26 of the 1996 Convention for enforcement of a measure taken in a Contracting State other than the United Kingdom,

shall be made by petition in Form 62.98.

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(a) Chapter 43 was substituted by S.S.I. 2002/570.  
(b) Rule 43.6 was last amended by S.S.I. 2007/548.  
(c) Part XIII of Chapter 62 was inserted by S.S.I. 2006/199.  
(d) Cm 7727.

(2) The petition shall include averments on the matters outlined at Article 23(2) of the 1996 Convention (grounds for refusal of recognition).

(3) There shall be produced with the petition an authentic copy of any judgment or other document which outlines the measure to be registered.

(4) The court shall, on being satisfied that the petition complies with the requirements of the 1996 Convention, pronounce an interlocutor—

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

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

(5) The interlocutor pronounced under paragraph (4) shall specify that the petitioner may register the measure under rule 62.100 (registration under the 1996 Convention).

### **Intimation to the petitioner**

**62.99.** Where the court pronounces an interlocutor under rule 62.98(4) 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 1996 Convention**

**62.100.**—(1) Where the court pronounces an interlocutor under rule 62.98(4) granting warrant for registration, the Deputy Principal Clerk shall enter the measure 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 62.98(4) granting warrant for registration,

(b) an authentic copy of any judgment or other document which outlines the measure to be registered and any translation of such a document,

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

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

### **Service of warrant for registration under the 1996 Convention**

**62.101.** The petitioner shall serve a copy of the interlocutor under rule 62.98(4) granting warrant for registration of a judgment and notice in Form 62.101 on the person against whom enforcement is sought.”.

(3) At the appropriate place in the appendix insert the forms set out in Schedule 1 to this Act of Sederunt.

### **Applications under section 1 of the Administration of Justice (Scotland) Act 1972**

**5.**—(1) The Rules are amended in accordance with the following subparagraphs.

(2) In rule 64.9 (duties of commissioner)(a), in paragraph (c), after “legal advice” insert “and to ask the court to vary or discharge the order”.

(3) For rule 64.12 (right of haver to consult)(b) substitute—

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(a) Rule 64.9 was inserted by S.S.I. 2000/319 and amended by S.S.I. 2004/52.

(b) Rule 64.12 was inserted by S.S.I. 2000/319.

### **“Right of haver to consult**

**64.12.**—(1) The haver may seek legal or other professional advice of his choice.

(2) Where the purpose of seeking this advice is to help the haver to decide whether to ask the court to vary or discharge the order, the haver may ask the Commissioner to delay starting the search for up to 2 hours or such other longer period as the Commissioner may permit.

(3) Where the haver is seeking advice under this rule, he or she must—

- (a) inform the Commissioner and the petitioner’s agent of that fact;
- (b) not disturb or remove any listed items;
- (c) permit the Commissioner to enter the premises, but not to start the search.”.

(4) For Form 64.6 (form of order of court in procedure for recovery of documents under Chapter 64)(a), and Form 64.9 (notice to accompany order of the court when served by Commissioner)(b), substitute the forms set out in Schedule 2 to this Act of Sederunt.

### **Citation of witness personally at proof or jury trial**

**6.**—(1) The Rules are amended in accordance with the following subparagraph.

(2) In the appendix, for Form 36.2-C substitute the form set out in Schedule 3 to this Act of Sederunt.

*A.C. HAMILTON*  
Lord President  
I.P.D.

Edinburgh  
10th March 2011

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(a) Form 64.6 was inserted by S.S.I. 2000/319 as Form 64.-A and was renumbered by S.S.I. 2004/52 and amended by S.S.I. 2009/450.

(b) Form 64.9 was inserted by S.S.I. 2009/319 as Form 64.-B and was renumbered by S.S.I. 2004/52.

## Form 62.98

Rule 62.98(1)

Form of petition under Article 24 [or 26] of the 1996 Convention

**UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION****PETITION**

of

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

under the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, signed at The Hague on 19th October 1996

for registration of

a measure of the (*name of judicial or administrative authority of Contracting State*)

dated the            day of

HUMBLY SHEWETH:—

1. That this petition is presented by [A.B.] to register a measure of the (*name of judicial or administrative authority of Contracting State*).
2. That the petitioner is a party or person having an interest to enforce the measure because (*state reasons*).
3. That the petitioner seeks warrant to register the measure [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*)].
4. That the petition is made under Article 24 [*or* Article 26] of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, signed at The Hague on 19th October 1996 and rule 62.98 of the Rules of the Court of Session 1994 [*or (as the case may be)*].
5. That the following grounds for refusal of recognition as set out in Article 23(2) of the said Convention apply: (*list which of the grounds mentioned in Article 23(2) apply*)

[or

That there are no grounds for refusal of recognition having regard to Article 23(2) of the said Convention.]

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 62.101

Rule 62.101

Form of notice of decree and warrant for registration of a measure under  
Article 24 [or Article 26] of the 1996 Convention

**IN THE COURT OF SESSION**

in the

**PETITION** of

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

under the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-  
operation in respect of Parental Responsibility and Measures for the Protection of Children, signed  
at The Hague on 19th October 1996

for registration of

a measure of the (*name of judicial or administrative authority of Contracting State*)

dated the            day of

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

To: (*name of person against whom measure is sought to be enforced*)

**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 measure of  
the (*name of judicial or administrative authority of Contracting State*) dated the            day of            ,  
for (*state briefly the terms of the measure*).

(*Signed*)

Messenger-at-Arms

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

SCHEDULE 2

Paragraph 5(4)

Form 64.6

Rule 64.6

Form of order of court in procedure for recovery of documents under  
Chapter 64

**ORDER BY THE COURT OF SESSION**

In the Petition

of

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

Petitioner

against

[C.D.] (*designation and address*)

Respondent

Date: (*date of interlocutor*)

To: (*name and address of party or parties or named third party haver, from whom the documents and other property are sought to be recovered*)

**THE COURT** having heard Counsel and being satisfied that it is appropriate to make an order under section 1 of the Administration of Justice (Scotland) Act 1972:

**APPOINTS** the Petition to be intimated on the walls of the court in common form and to be served upon the person(s) named and designed in the Petition;

**APPOINTS** (*name and designation of Commissioner*) to be Commissioner of the court;

**GRANTS** commission and diligence;

**ORDERS** the Commissioner to explain to the haver on executing the order—

- (1) the meaning and effect of the order;
- (2) that the haver may be entitled to claim that certain of the documents and other property are confidential or privileged;
- (3) that the haver has a right to seek legal or other professional advice of his choice and to apply to vary or discharge the order;

and to give the haver a copy of the Notice in Form 64.9 of the Rules of Court.

**GRANTS** warrant to and authorises the said Commissioner, whether the haver has allowed entry or not—

- (1) to enter, between the hours of 9am and 5pm on Monday to Friday, (*or where the court has found cause shown under rule 64.11(1), otherwise specify the time*) the premises at (*address of premises*) and any other place in Scotland owned or occupied by the haver at which it appears to the Commissioner that any of the items set out in the statement of facts in the application to the court (the “listed items”) may be located;
- (2) to search for and take all other steps which the Commissioner considers necessary to take possession of or preserve (*specify the listed items*);
- (3) to take possession of and to preserve all or any of the listed items and to consign them with the Deputy Principal Clerk of Session to be held by him pending the further orders of the court;;

and for that purpose,

**ORDERS** the haver or his servants or agents to allow the Commissioner, any person whom the Commissioner considers necessary to assist him, and the Petitioner’s representatives to enter the premises named in the order and to allow them—

- (1) to search for the listed items and take such other steps as the Commissioner considers it reasonable to take to execute the order;
- (2) to provide access to information stored on any computer owned or used by him by supplying or providing the means to overcome any and all security mechanisms inhibiting access thereto;
- (3) to remain in the premises until such time as the search is complete, including allowing them to continue the search on subsequent days if necessary;
- (4) to inform the Commissioner immediately of the whereabouts of the listed items;
- (5) to provide the Commissioner with a list of the names and addresses of everyone to whom he has given any of the listed items;

and not to destroy, conceal or tamper with any of the listed items except in accordance with the terms of this order;

**FURTHER AUTHORISES** (*specify the representatives*) to be the sole representatives of the Petitioner to accompany the Commissioner for the purpose of identification of the said documents and other property.

## **SCHEDULE TO THE ORDER OF THE COURT**

### **Undertakings given by the Petitioner**

The petitioner has given the following undertakings—

1. That he will comply with any order of the court as to payment of compensation if it is subsequently discovered that the order, or the implementation of the order, has caused loss to the respondent or, where the respondent is not the haver, to the haver.

2. That he will bring within a reasonable time of the execution of the order any proceedings which he decides to bring.
3. That he will not, without leave of the court, use any information, documents or other property obtained as a result of the order, except for the purpose of any proceedings which he decides to bring and to which the order relates.

*(or as modified under rule 64.4)*

## Form 64.9

Rule 64.9

### Notice to accompany order of the court when served by Commissioner

#### **IMPORTANT**

#### **NOTICE TO PERSON ON WHOM THIS ORDER IS SERVED**

1. This order orders you to allow the person appointed and named in the order as Commissioner to enter your premises to search for, examine and remove or copy the items mentioned in the order.
2. It also allows entry to the premises to any person appointed and named in the order as a representative of the person who has been granted the order and to any person accompanying the Commissioner to assist him.
3. No-one else is given authority to enter the premises.
4. You should read the order immediately.
5. You have the right to seek legal or other professional advice of your choice and you are advised to do so as soon as possible.
6. Consultation under paragraph 5 will not prevent the Commissioner from entering your premises for the purposes mentioned in paragraph 1 but if the purpose of your seeking advice is to help you to decide if you should ask the court to vary or discharge the order you are entitled to ask the Commissioner to delay searching the premises for up to 2 hours or such other longer period as the Commissioner may permit.
7. The Commissioner is obliged to explain the meaning and effect of the order to you.
8. He is also obliged to explain to you that you are entitled to claim that the items, or some of them, are protected as confidential or privileged.
9. You are entitled to ask the court to vary or discharge the order provided that—
  - you take steps to do so at once; and
  - you allow the Commissioner, any person appointed as a representative of the person who has been granted the order and any person accompanying the Commissioner to assist him, to enter the premises meantime.
10. The Commissioner and the persons mentioned as representatives or assistants have a right to enter the premises even if you refuse to allow them to do so, unless—
  - you are female and alone in the premises and there is no female with the Commissioner (where the Commissioner is not herself female), in which case they have no right to enter the premises;

the Commissioner serves the order before 9am or after 5pm on a weekday or at any time on a Saturday or Sunday (except where the court has specifically allowed this, which will be stated in the order);

in which cases you should refuse to allow entry.

11. You are entitled to insist that there is no-one (*or* no-one other than X) present who could gain commercially from anything which might be read or seen on your premises.
12. You are required to hand over to the Commissioner any of the items mentioned in the order which are in your possession.
13. You may be found liable for contempt of court if you refuse to comply with the order.

SCHEDULE 3

Paragraph 6(2)

Form 36.2-C

Rule 36.2(3)(b)

Form of certificate of citation of witness personally at proof or jury trial

**CERTIFICATE OF CITATION PERSONALLY**

I, *(name)*, Messenger-at-Arms, certify that, on the authority of the interlocutor of the Court of Session *(date)*, I cited *(name of witness)* to appear at the proof [*or* jury trial] on *(date)* personally by leaving the citation in Form 36.2-A with him [or her] at *(place)* on *(date)*.

*(Signed)*

Messenger-at-Arms

*(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.

Paragraph 2 amends the rule on service of documents furth of the United Kingdom, to reflect a change in the designated central authority under the 1965 Hague Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters.

Paragraph 3 amends rules 43.4 and 43.6, in relation to the inspection of recovery of documents and allocation of diets and timetables in personal injuries actions.

Paragraph 4 inserts a new Part XIV into Chapter 62 of the Rules, and related forms, in relation to the enforcement of measures made by Contracting States to the Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children.

Paragraph 5 amends the rules and Forms relating to applications under section 1 of the Administration of Justice (Scotland) Act 1972, in order to make it clear that a haver has a right to apply for variation or discharge of an order granted under that provision. Rule 64.12 and Forms 64.6 and 64.9 are amended to provide that where a haver is seeking advice to help decide whether to apply for variation or discharge of an order, the haver may ask the Commissioner to delay starting the search for up to 2 hours or such other longer period as the Commissioner may permit.

Paragraph 6 amends the form of certificate of citation of a witness by a Messenger-at-Arms, so as to remove the requirement for the citation to be witnessed.

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