
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 201

**COURT OF SESSION
SHERIFF COURT**

**Act of Sederunt (Rules of the Court of Session and
Sheriff Court Rules Amendment) (Miscellaneous) 2014**

<i>Made</i>	- - - -	<i>4th July 2014</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>7th July 2014</i>
<i>Coming into force</i>	- -	<i>1st August 2014</i>

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(1), section 5 of the Court of Session Act 1988(2) and of all other powers enabling them in that behalf, having approved with such modifications as they think appropriate draft rules submitted to them by the Scottish Civil Justice Council in accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(3), do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session and Sheriff Court Rules Amendment) (Miscellaneous) 2014.

(2) It comes into force on 1st August 2014.

(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 Child Care and Maintenance Rules” means the Act of Sederunt (Child Care and Maintenance Rules) 1997(4).

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- (1) 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; the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43; the Vulnerable Witnesses (Scotland) Act (asp 3), section 14(2); the Consumer Credit Act 2006 (c.14), section 16(4); the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3), section 33 and Schedule 5, paragraph 10 (in part); the Legal Services (Scotland) Act 2010 (asp 16), section 127(a); the Children’s Hearings (Scotland) Act 2011 (asp 1), section 185; and the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), section 15(2).
- (2) 1988 c.36. Section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3); the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 46(3); and the Legal Services (Scotland) Act 2010 (asp 16), section 126(a).
- (3) 2013 asp 3.
- (4) S.I. 1997/291, last amended by S.S.I. 2013/172.

Amendment of the Rules of the Court of Session 1994

2.—(1) The Rules of the Court of Session 1994 in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(5) are amended in accordance with subparagraph (2).

- (2) In rule 41.52(4) (appeals to be heard in Outer House)(6)—
- (a) in subparagraph (c) for “Part VI” substitute “Part V”;
 - (b) in subparagraph (d) for “Part VII” substitute “Part VI”.

Amendment of the Ordinary Cause Rules 1993

3.—(1) The Ordinary Cause Rules 1993 in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(7) are amended in accordance with subparagraph (2).

- (2) In rule 28.8(2) (confidentiality)(8), for subparagraph (b) substitute—
- “(b) any other party after the date of intimation under rule 28.3(5), 28.3A(8) or 28.4(10).”.

Amendment of the Child Care and Maintenance Rules: Hague Convention 2007

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

- (2) In rule 5.1 (interpretation)(9), insert the following definitions in the appropriate places—
- ““2012 Regulations” means the International Recovery of Maintenance (Hague Convention 2007) (Scotland) Regulations 2012(10);
- “Contracting State” means a State bound by the Convention other than an EU Member State;
- “the Convention” means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007(11);
- “Convention Maintenance Decision” means a decision, or part of a decision, to which Chapter V of the Convention applies by virtue of Article 19(1) made by—
- (a) a court in a Contracting State; or
 - (b) a sheriff.”.

(3) In rule 5.2 (application)(12) after paragraph (7) insert—

“(8) Part IX of this Chapter shall have effect in relation to a Convention Maintenance Decision.”.

(4) In rule 5.4(1) (Maintenance Orders Register)(13) for “and the Maintenance Regulation,” substitute “, the Maintenance Regulation and the 2012 Regulations,”.

(5) After Part VIII (recognition and enforcement of maintenance decisions made by courts in Denmark etc.)(14) insert—

(5) S.I. 1994/1443, last amended by S.S.I. 2014/152.

(6) Rule 41.52 was substituted by S.S.I. 2011/303 and amended by S.S.I. 2013/162.

(7) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2014/152.

(8) Rule 28.8 was last amended by S.S.I. 2014/152.

(9) Rule 5.1 was last amended by S.S.I. 2011/386.

(10) S.S.I. 2012/301.

(11) OJNo. L 192, 22.7.2011, p.51-70.

(12) Rule 5.2 was amended by S.S.I. 2011/386.

(13) Rule 5.4 was amended by S.S.I. 2011/386

(14) Part VIII was inserted by S.S.I. 2011/386.

“PART IX
RECOGNITION AND ENFORCEMENT OF
CONVENTION MAINTENANCE DECISIONS

Application for transmission of Convention Maintenance Decision to a Contracting State

5.50.—(1) This rule applies to an application under Article 10(1) of the Convention to enforce a Convention Maintenance Decision of a sheriff in another Contracting State.

(2) On receipt of an application in the form of a letter, the sheriff clerk must provide the applicant with a certified copy of the Convention Maintenance Decision.

(3) The letter must be addressed to the sheriff clerk and must include—

- (a) the name and National Insurance number (if known) of the parties to the proceedings;
- (b) the date, or approximate date, of the proceedings in which the Convention Maintenance Decision was made and the nature of those proceedings;
- (c) the Contracting State in which the application for recognition or enforcement has been made or is to be made; and
- (d) the postal address of the applicant.

Intimation of registration of, or refusal to register, a Convention Maintenance Decision

5.51.—(1) Intimation of the registration of a Convention Maintenance Decision in accordance with Article 23 of the Convention shall be given by the sheriff clerk—

- (a) to the payer, by sending an intimation in Form 73D; and
- (b) to the payee, by sending a notice in Form 73E.

(2) Notice of a refusal to register a Convention Maintenance Decision shall be given by the sheriff clerk to the payee, by sending a notice in Form 73F.”

(6) In Schedule 1 (forms) after Form 73C (notice of a decision not to register, for the purposes of the enforcement in Scotland, a Maintenance Decision made by a court in Denmark etc.), insert Form 73D, 73E and 73F set out in the Schedule to this Act of Sederunt.

Amendment of the Child Care and Maintenance Rules: miscellaneous

5.—(1) The Child Care and Maintenance Rules are amended in accordance with the following subparagraphs.

(2) In rule 3.49 (adjournment for inquiry, etc.)(**15**), for “rule 3.45(1B)” substitute “rule 3.45(1C)”.

(3) In Form 65A (interim compulsory supervision order under the Children’s Hearings (Scotland) Act 2011)(**16**), for paragraph 2(d) substitute—

“*(d) a movement restriction in the following terms: [*insert relevant details, including details of the person designated under regulation 4(1) of the Children’s Hearings (Scotland) Act 2011 (Movement Restriction Conditions) Regulations 2013(17)*];”.

(15) Rule 3.49 was amended by [S.S.I. 2013/172](#).

(16) Form 65B was inserted by [S.S.I. 2013/172](#).

(17) [S.S.I. 2013/210](#).

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Edinburgh
4th July 2014

BRIAN GILL
Lord President
I.P.D.

SCHEDULE

Paragraph 4(6)

Form 73D

Rule 5.51(1)(a)

INTIMATION OF REGISTRATION FOR ENFORCEMENT IN SCOTLAND OF A
CONVENTION MAINTENANCE DECISION

(Insert place)

(Insert date)

[A.B.], *(Design)*

Intimation is hereby given of the registration in the Maintenance Orders Register kept at *[insert name and address of sheriff court]* of a Convention Maintenance Decision made by *[name and address of Court]* on *[insert date of making order]*.

In terms of the said Convention Maintenance Decision you are required *[narrate terms of order and payee]*.

You may within *[30 days]* or *[where the party against whom enforcement is sought has his/her habitual residence outwith the United Kingdom, 60 days]* from the date of this intimation make an application to *[insert name and address of sheriff court]* to set aside the registration of the order by lodging with the sheriff clerk at *[insert name and address of sheriff court]* a summary application setting out the grounds of the application.

The grounds upon which an application to set aside the registration may be made are set out in Article 23(7) of the 2007 Hague Convention.

[Signed]

(Sheriff Clerk)

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Form 73E

Rule 5.51(1)(b)

NOTICE OF REGISTRATION FOR THE PURPOSES OF ENFORCEMENT IN SCOTLAND OF A CONVENTION MAINTENANCE DECISION

(Insert place)

(Insert date)

[A.B.], (*Design*)

Notice is hereby given of the registration in the Maintenance Orders Register kept at [*insert name and address of sheriff court*] of a Convention Maintenance Decision made by [*name and address of Court*] on [*insert date of making order*].

In terms of the said Convention Maintenance Decision C.D. [*design payer*] is required to pay to you [*narrate terms of order*].

[*Signed*]

(Sheriff Clerk)

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Form 73F

Rule 5.51(2)

NOTICE OF A DECISION NOT TO REGISTER, FOR THE PURPOSES OF ENFORCEMENT IN SCOTLAND, A CONVENTION MAINTENANCE DECISION

(Insert place)

(Insert date)

[A.B.], (*Design*)

Notice is hereby given that the Convention Maintenance Decision made by [*insert name and address of Court*] on [*insert date of making order*] requiring C.D. [*design payer*] to pay you [*narrate terms of order*] has NOT been registered in the Maintenance Orders Register kept at this Sheriff Court.

The Convention Maintenance Decision has not been registered on the grounds that [*narrate grounds*].

You may within 30 days from the date of this intimation make an application to [*insert name and address of sheriff court*] to set aside the decision not to register the order by lodging with the sheriff clerk at [*insert name and address of sheriff court*] a summary application setting out the grounds of the application.

[*Signed*]

(Sheriff Clerk)

EXPLANATORY NOTE

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

Paragraph 4 of this Act of Sederunt amends Chapter 5 (maintenance orders) of the Act of Sederunt (Child Care and Maintenance Rules) 1997 (“the Child Care and Maintenance Rules”). It adds a new Part to that Chapter to provide for the recognition and enforcement of maintenance obligations to which the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007 applies. New Forms 73D, 73E and 73F

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are inserted in Schedule 1 to the Child Care and Maintenance Rules to provide for intimation and notice under the new Part.

In addition, paragraphs 2, 3 and 5 make minor corrections and clarifications to other rules of court. Paragraph 2 corrects a minor cross-referencing error in rule 41.52 of the Rules of the Court of Session 1994. Paragraph 3 inserts a missing cross-reference in rule 28.8(2)(b) of the Ordinary Cause Rules. Paragraph 5(2) corrects a minor cross-referencing error in rule 3.49 of the Child Care and Maintenance Rules, and paragraph 5(3) clarifies the information to be inserted in Form 65A of that Act of Sederunt.