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STATUTORY INSTRUMENTS

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1986 No. 1941 (S. 144)

COURT OF SESSION, SCOTLAND

**Act of Sederunt (Rules of Court Amendment No. 9)  
(Jurisdiction and Enforcement) 1986**

*Made* - - - - - 13th November 1986

*Coming into Operation* 1st January 1987

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 16 of the Administration of Justice (Scotland) Act 1933(a), section 48 of the Civil Jurisdiction and Judgments Act 1982(b), 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 Court Amendment No. 9) (Jurisdiction and Enforcement) 1986 and shall come into operation on 1st January 1987.

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

*Amendment to Rules of Court*

2.—(1) The Rules of the Court of Session(c) shall be amended in accordance with the following provisions of this paragraph.

(2) In rule 70(1) (form of summons)(d), after paragraph (b), insert the following paragraph:—

“(c) A condescendence shall include averments stating—

- (i) the domicile of the defender (to be determined in accordance with sections 41 to 46 of, and articles 52 and 53 of Schedule 1 to, that Act);
- (ii) the ground of jurisdiction of the court, unless jurisdiction would arise only if the defender prorogated the jurisdiction of the court (without contesting jurisdiction);
- (iii) where appropriate, whether there is reason to believe that there exists an agreement prorogating the jurisdiction of a court in a particular country; and

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(a) 1933 c.41.

(b) 1982 c.27.

(c) S.I. 1965/321; relevant amending instruments are S.I.1972/1981, 1976/1994, 1978/1804, 1980/1144, 1982/1381, 1984/472, 499, 920, 1986/799.

(d) Rule 70 was last amended by S.I. 1984/472.

(iv) whether proceedings involving the same cause of action are in subsistence between the parties in England, Wales, Northern Ireland or another Contracting State.”.

(3) For rule 72 (*induciae* in summons), substitute the following rule:—

**“72. Induciae in summons**

(1) Subject to rule 75, the *induciae* in a summons shall be—

- (a) in the case of citation within Europe, 21 days after the date of execution of service;
- (b) in the case of personal citation under rule 74B(1)(d) or (e) outside Europe, 21 days after the date of execution of service; and
- (c) in any other case of citation outside Europe, 42 days after the date of execution of service.

(2) Where citation is executed in Scotland by registered or recorded delivery letter, the *induciae* shall be reckoned from 24 hours after the date of posting.

(3) An application to shorten or extend the *induciae* made after signeting of the summons but before service shall be subject to the following provisions of this paragraph:—

- (a) the application shall be made by motion;
- (b) the application shall be heard before a Lord Ordinary in chambers at which the solicitor for the applicant shall attend; and
- (c) the decision of the Lord Ordinary shall be final.”.

(4) In rule 74 (signeting, etc.), omit the words “including edictal citation of any defender furth of Scotland”.

(5) In rule 74A (citation and service)(a)—

(a) in paragraph (1) after the words “paragraph (2)”, insert the words “and rule 74B”;

(b) for paragraph (2), substitute the following paragraph:—

“(2) Where the place where a defender resides cannot be ascertained or citation cannot be successfully effected in accordance with a method permitted under paragraph (1), citation shall be made edictally in accordance with rule 75.”.

(6) After rule 74A, insert the following rule:—

**“74B. Citation and service furth of the United Kingdom**

(1) Citation and service in any cause on a defender in a country furth of the United Kingdom may be made by any of the following methods of service if permitted under a convention providing for service in that country, or, insofar as permitted by the laws of that country—

- (a) by post;
- (b) through the central, or other appropriate, authority of the country in which the defender is to be found, at the request of the Foreign Office;

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(a) Rule 74A was inserted by S.I. 1984/472.

- (c) through a British consular officer in the country in which the defender is to be found, at the request of the Foreign Office;
- (d) by an *huissier*, other judicial officer or competent official in the country in which the defender is to be found, at the request of a messenger-at-arms; and
- (e) personal citation by the pursuer or his agent.

(2) Where the place where a defender resides cannot be ascertained or citation cannot be successfully effected in accordance with a method permitted under paragraph (1), citation shall be made edictally in accordance with rule 75.

(3) Where citation is by post—

(a) it shall be executed by means of—

(i) a messenger-at-arms; or

(ii) a solicitor entitled to practise in the Court of Session, posting a copy of the summons with citation in Form 3 by registered or recorded delivery letter addressed to the defender and having on the face of the envelope the notice set out in rule 74A(6); and

(b) on being executed, the pursuer shall lodge a certificate of execution in Form 3 (with such modification as may be necessary) together with a certificate of delivery or such evidence of actual delivery to the defender or to his place of residence as the court may require.

(4) Where citation is through a central or other appropriate authority of, or through a British consular officer in, another country, at the request of the Foreign Office, the pursuer shall—

(a) send a copy of the summons, with a request for execution of the citation by the method indicated in the request, to the Secretary of State for Foreign and Commonwealth Affairs; and

(b) lodge a certificate signed by the authority serving the citation that it has been, and stating the manner in which it was, executed, together with, where appropriate, a translation into English.

(5) Where citation is by an *huissier*, other judicial officer or competent official at the request of a messenger-at-arms—

(a) the messenger-at-arms shall send a copy of the summons with a request for execution of the citation by the method indicated in the request, to the official in the country in which the citation is to be executed; and

(b) the pursuer shall lodge a certificate signed by the official serving the citation that it has been, and stating the manner in which it was, executed, together with, where appropriate, a translation into English.

(6) Where citation is executed personally by the pursuer or his agent—

(a) a copy of the summons shall be served with a citation;

(b) the pursuer shall lodge a certificate of execution, together with, where appropriate, a translation into English; and

(c) the service shall be witnessed by a witness signing the citation and certificate of execution which shall state his occupation and address.

(7) Where citation is to be executed in a country where English is not an official language—

(a) the copy of the summons shall be served together with a translation in an official language of that country; and

(b) for the notice under paragraph (3)(a), there shall be a translation in an official language of that country.

(8) A translation under paragraph (4)(b), (5)(b) or (7)(a) shall be certified as a correct translation by the person making it; and the certificate must contain the full name, address and qualification of the translator.”.

(7) For rule 75 (edictal citation), substitute the following rule:—

**“75. Edictal citation and citation by advertisement**

(1) This rule applies, and edictal citation shall be made, where the domicile of the defender is unknown.

(2) Where citation is sought to be made edictally, a motion shall be enrolled when the summons is presented for signet craving the court—

(a) to grant warrant to cite the defender edictally;

(b) for an order for citation of the defender by the publication, in a specified newspaper circulating in the area of last known address of the defender or elsewhere, of an advertisement, or for an order to dispense with advertisement; and

(c) where there are no averments in the condescendence, stating what steps have been taken to trace the defender.

(3) A motion under paragraph (2) made before calling shall be heard in chambers at which the solicitor for the pursuer shall appear.

(4) Where an order is made for advertisement, the advertisement shall be in Form 4A.

(5) Where citation has been made by advertisement, there shall be lodged in process a copy of the newspaper containing the advertisement.

(6) Where citation is to be made edictally, citation shall be made at the office of the Extractor of the Court of Session in Form 4.

(7) The *induciae* for edictal citation shall be 6 months from the date of service on the Extractor of the Court of Session or, where there is citation by advertisement, the date on which the advertisement is published.

(8) Where the same summons is to be served edictally at the same time on two or more persons, such service may be made by delivery at the office of the Extractor of one copy of the summons provided that it bears on its face that it is delivered for all of such persons.

(9) In paragraph (1), “domicile” has the meaning assigned to it by sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982.”.

(8) Rule 75A shall be omitted.

(9) In rule 75B (intimation to connected persons)(a)—

(a) for “75B”, substitute “75A”; and

(b) in paragraph (9), for “14”, substitute “21”.

(10) In rule 79(1) (motions for interim orders)(b), for “72(b)”, substitute “72(3)”.

(11) Rule 81 (appearance), shall be amended as follows:—

(a) after “81” insert “—(1)”; and

(b) after paragraph (1), insert the following paragraph:—

“(2) The entering of appearance shall not be taken to imply acceptance of the jurisdiction of the court.”.

(12) In rule 83 (defences), after paragraph (d), insert the following paragraph:—

“(e) Where a defender intends to contest the jurisdiction of the court, he must—

(i) lodge defences relating only to the question of jurisdiction in the first instance; and if unsuccessful, be allowed to amend his defences to defend on the substantive issues of the action within such time as the court may allow; or

(ii) lodge defences relating to both jurisdiction and the substantive issues of the action without submitting to the jurisdiction of the court.”.

(13) In rule 89 (decree in absence)(c)—

(a) after paragraph (ab), insert the following paragraph:—

“(ac) The motion enrolled for decree in absence shall state the ground of jurisdiction of the court.”;

(b) for paragraphs (b), (c) and (d), substitute the following paragraphs:—

“(b) In an undefended cause in which the summons has been served on a defender outside the United Kingdom under rule 74B and he has no known solicitor in Scotland, the court shall, in the interlocutor granting decree in absence, supersede extract of the decree for such period beyond 7 days as seems reasonable to the court to allow for the number of days required in the ordinary course of post for the sending of a letter from Edinburgh to the defender and the sending of an answer to Edinburgh.

(c) Where a copy of the summons has been served on a defender outside the United Kingdom under rule 74B and decree in absence is pronounced against that defender because he has not entered appearance, intimation of a copy of the interlocutor granting decree shall be made within 7 days of the date of decree to that defender in accordance with paragraph (1) of rule 74B.

(d) Where a copy of the summons has been served on a defender outside the United Kingdom under rule 74B and decree in absence has been

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(a) Rule 75B was substituted by S.I.1984/920.

(b) Rule 79 was amended by S.I.1984/499.

(c) Rule 89 was amended by S.I.1984/472.

pronounced against that defender because he has not entered appearance, the court may, on the motion of that defender, recall the decree and allow defences to be lodged if—

- (i) the defender, without any fault on his part, did not have knowledge of the summons in sufficient time to defend;
  - (ii) the defender has disclosed a *prima facie* defence to the action on the merits;
  - (iii) the motion is made within a reasonable time after the defender had knowledge of the decree; and
  - (iv) the motion is not made after the expiry of one year from the date of the decree.”;
- (c) in paragraph (i), at the beginning, insert the words “Subject to paragraph (d),” and
- (d) after paragraph (i), insert the following paragraph—
- “(j) The recall of any decree under this rule shall be without prejudice to the validity of anything already done or transacted, or of any contract made or obligation incurred, under and in virtue of the decree recalled, or of any appointment made or power granted therein or thereby.”.

(14) For rule 158 (*induciae*)(a), substitute the following rule:—

**“158. Induciae**

The *induciae* for the citation of a defender or any person in respect of whom a warrant for intimation requires to be endorsed shall be in accordance with rule 72.

(15) In rule 159 (citation in consistorial causes)(b)—

- (a) in paragraph (1), after the words “paragraph (2)”, insert the words “and rule 74B”; and
  - (b) for paragraph (2), substitute the following paragraph:—
- “(2) Where the place where the defender resides cannot be ascertained or citation cannot be successfully effected in accordance with a method permitted under paragraph (1) of this rule or rule 74B(1), citation shall be made edictally in accordance with rule 75.”.

(16) For rule 175 (service on nominal raiser), substitute the following rule:—

**“175. Pursuer and service**

(1) A multiplepinding may be raised by any person holding, or having an interest in or claim on, the fund *in medio*, in his own name.

(2) The summons shall be served on, as defenders, all persons so far as known to the pursuer as having an interest in the fund *in medio*, including the holder of the fund where the pursuer is not the holder of the fund.”.

(17) In rule 176 (condescendence of the fund)—

- (a) in paragraph (a), for the words “(and real raiser) is the person possessed”, substitute the words “is the holder”;

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(a) As inserted by S.I.1976/1994 and as amended by S.I.1978/1804.

(b) As inserted by S.I.1976/1994 and as amended by S.I.1980/1144.

(b) in paragraph (b)—

- (i) for the words “nominal raiser is the person possessed”, substitute the word “holder”;
- (ii) after the words “*in medio*” insert the words “is not the pursuer”; and
- (iii) after the words “fourteenth day” where they second occur, insert the words “, and in any event disclose all persons so far as known to him as having an interest in the fund *in medio*.”.

(18) In rule 177 (defences; record on summons and defences), omit the words “(other than the pursuer who is also real raiser)”.

(19) In rule 178 (advertisement for absent parties), for the words “real raiser” substitute the word “pursuer”.

(20) In rule 179, for the words “real raiser” substitute the word “pursuer”.

(21) In rule 189(a) (Outer House petitions), in sub-paragraph (xiv)—

- (a) omit the words “the Judgments Extension Act 1868.”;
- (b) after “1933” insert the words “and applications for registration under section 4 of, or section 18 of and Schedule 7 to, the Civil Jurisdiction and Judgments Act 1982”; and
- (c) after sub-paragraph (xxvi)(a), insert the following sub-paragraph:—  
“(xxvii) Petitions under article 24 of Schedule 1, or Schedule 4, to the Civil Jurisdiction and Judgments Act 1982.”.

(22) For rule 192 (*induciae* in petitions), substitute the following rule:—

**“192. Induciae in petitions**

(1) The *induciae* in a petition shall be—

- (a) in the case of service within Europe, 21 days after the date of execution of service;
- (b) in the case of personal service outside Europe, 21 days after the date of execution of service; and
- (c) in any other case of service outside Europe, 42 days after the date of execution of service.

(2) Where service is executed in Scotland by registered or recorded delivery letter, the *induciae* shall be reckoned from 24 hours after the date of posting.

(3) An application to shorten or extend the *induciae* shall be made by motion.”.

(23) In rule 195 (intimation and service in petitions)—

(a) for paragraph (b), substitute the following paragraph:—

“(b) Rules 74A, 74B and 75 shall apply to the intimation and service of a petition as they apply to the citation and service of a summons;”; and

(b) in paragraph (c), after the word “service”, insert the words “by post”.”.

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(a) Sub-paragraph (xxvi) was inserted by S.I.1982/1381.

(24) In rule 197 (unopposed petitions)—

(a) re-number paragraph (b) as paragraph (d); and

(b) for paragraph (a), substitute the following paragraphs:—

“(a) Where a petition has been served on a respondent outside the United Kingdom under rule 74B and the whole or a part of the prayer of the petition other than a procedural order has been granted without that respondent having lodged answers, intimation of a copy of the interlocutor granting the whole or a part of the prayer of the petition shall be made to that respondent in accordance with rule 74B.

(b) Where a petition has been served on a respondent outside the United Kingdom under rule 74B and an interlocutor has been pronounced granting the whole or a part of the prayer of the petition other than a procedural order without that respondent having lodged answers, the court may, on the motion of that respondent recall the interlocutor and allow answers to be lodged if—

(i) the respondent, without any fault on his part, did not have knowledge of the petition in sufficient time to lodge answers;

(ii) the respondent has disclosed a *prima facie* answer to the petition on the merits;

(iii) the motion is made within a reasonable time after the respondent had knowledge of the petition; and

(iv) the motion is not made after the expiry of one year from the date of the interlocutor sought to be recalled.

(c) The recall of any interlocutor under paragraph (b) shall be without prejudice to the validity of anything already done or transacted, or of any contract made or obligation incurred, under and in virtue of the interlocutor recalled, or of any appointment made or power granted therein or thereby.”.

(25) In rules 248(d) and (e) and 249.7, for the words “Register of Deeds” wherever they occur, substitute the words “Register of Judgments”.

(26) After section 8B of Chapter IV(a), insert the following section—

“SECTION 8C

*RECOGNITION AND ENFORCEMENT OF JUDGMENTS UNDER  
THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982*

**249D. Interpretation**

(1) In this section—

“the Act of 1982” means the Civil Jurisdiction and Judgments Act 1982(b);

“domicile” is to be determined in accordance with the provisions of sections 41 to 46 of, and articles 52 and 53 of Schedule 1 to, the Act of 1982;

“Keeper of the Registers” means the Keeper of the Registers of Scotland;

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(a) Section 8B (rules 249B and 249C) was inserted by S.I. 1986/799.

(b) 1982 c.27.



“protective measures” include arrestment, inhibition, poinding or interim interdict.

(2) Words and expressions which are used in this section and are used in the Act of 1982 have the same meaning as in that Act, unless the context otherwise requires.

(3) In this section a form referred to by number means the form so numbered in the Appendix to the rules or a form substantially to the like effect, with such variation as circumstances may require.

#### **249E. Application for registration**

(1) An application for registration of a judgment under section 4 of the Act of 1982 shall be—

(a) made *ex parte* in Form 53; and

(b) signed by—

- (i) the applicant;
- (ii) a solicitor entitled to practice before the Court of Session; or
- (iii) an Advocate.

(2) There shall be produced with the application—

(a) the following documents—

- (i) a certified copy of the judgment to be registered;
- (ii) a document which establishes that, according to the law of the country in which the judgment has been given, the judgment is enforceable and has been served;
- (iii) where judgment has been given in absence (that is to say, in default of appearance), 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 the proceedings or with an equivalent document;
- (iv) where appropriate, a document showing that the applicant is in receipt of legal aid in the country in which the judgment was given;
- (v) where the judgment or any other document produced is in a language other than English, a translation into English certified by a person qualified as a translator;

(b) an affidavit stating—

- (i) whether the judgment provides for the payment of a sum of money;
- (ii) whether interest is recoverable on the judgment in accordance with the law of the country in which judgment was given, and if so, the rate of interest, the date from which interest is due and the date on which interest ceases to accrue; and
- (iii) where appropriate, the sterling equivalent at the relevant rate of exchange of the amount of money expressed in a foreign currency which is recoverable by the applicant;

- (iv) an address within the jurisdiction of the court for service on the applicant;
- (v) so far as known to the deponent, the usual or last known address or place of business of the person against whom the judgment was given;
- (vi) to the knowledge and belief of the deponent, the grounds on which the applicant is entitled to enforce the judgment; and
- (vii) whether at the date of the application the judgment has not been satisfied or the part or amount in respect of which it is unsatisfied.

(3) Where the applicant does not produce the documents required under paragraph (2)(a), the court may—

- (a) fix a time within which the documents are to be lodged in process;
- (b) accept equivalent documents; or
- (c) dispense with the requirement to produce the documents.

#### **249F. Hearing of application**

(1) The application shall be dealt with in the Outer House by a Lord Ordinary and shall not require an appearance for the applicant unless the court so requires.

(2) Where the court requires an appearance, the hearing shall be in chambers.

#### **249G. Warrant for registration**

(1) The court shall, on being satisfied that the application meets the requirements of the Act of 1982, grant warrant for the registration of the judgment and—

- (a) grant decree in terms of the judgment to be registered; or
- (b) where necessary, grant decree in accordance with Scots law.

(2) The interlocutor granting decree and warrant under paragraph (1) shall—

- (a) state the period within which the interlocutor may be appealed against; and
- (b) give notice that the applicant may extract the decree and proceed to do diligence in execution, save that—
  - (i) no action of furthcoming following upon an arrestment;
  - (ii) no sale following upon a poinding; and
  - (iii) no adjudication following upon an inhibition,
 shall be competent until the expiry of the period of lodging an appeal and any appeal has been disposed of.

(3) The applicant may apply to the court at any time in the process of the application under rule 249E(1) for protective measures until the expiry of the period for lodging an appeal and any appeal has been disposed of.

(4) Any diligence in execution or other protective measures shall be of no effect unless intimation of the decree and warrant for registration under rule

249J(1) is made within 21 days from the date of execution of the diligence or other protective measures.

#### **249H. Intimation to applicant**

The court shall, on granting or refusing the application to register a judgment under rule 249E(1), intimate the decision to the applicant by sending him a copy of the interlocutor in a registered or recorded delivery letter to the address for service in Scotland of the applicant.

#### **249I. Registration**

(1) Where the court grants decree and warrant for registration of a judgment, the Deputy Principal Clerk shall enter the decree in a register of judgments to be registered under the Act of 1982.

(2) Upon presentation by the applicant to the Keeper of the Registers of—

- (a) a certified copy of the decree and warrant for registration; and
- (b) a certified copy of the judgment to be registered, and, where the judgment is in a language other than English, a translation into English certified by a person qualified as a translator,

the same shall be registered in the Books of Council and Session in a register called the Register of Judgments whereupon the Keeper of the Registers shall issue an extract of the registered judgment with warrant for execution.

#### **249J. Intimation of registration**

(1) Intimation of the decree and warrant for registration of a judgment shall be made by the applicant to the person against whom judgment was given and decree and warrant for registration granted, by serving a notice in Form 54.

(2) Service of intimation under paragraph (1) shall be made in accordance with rule 74A, 74B or 75 as the case may be.

#### **249K. Appeals**

(1) An appeal under article 37 of Schedule 1 to the Act of 1982 by a person against whom judgment was given and decree and warrant for registration granted shall be made to the Outer House in Form 42.

(2) An appeal under article 40 of Schedule 1 to the Act of 1982 by an applicant against a refusal to grant decree and warrant for registration of a judgment shall be made to the Outer House in Form 42.

(3) Subject to paragraphs (4) and (5) of this rule, rule 290 shall apply to an appeal under paragraph (1) or (2) of this rule as it applies to an appeal under that rule.

(4) Where the respondent is domiciled furth of the United Kingdom—

- (a) in relation to an appeal under paragraph (1) of this rule, intimation required by paragraph (f) of rule 290 shall be made to the address for service of the respondent in Scotland;
- (b) in relation to an appeal under paragraph (2) of this rule, intimation required by paragraph (f) of rule 290 shall be made in accordance with rule 74B or 75 as the case may be.

(5) An appeal under paragraph (1) or (2) shall be made—

(a) in the case of an appeal under paragraph (1), within one month of intimation of the decree and warrant for registration of the judgment, or within two months of intimation of such decree and warrant where intimation was made on a person domiciled in another Contracting State;

(b) in the case of an appeal under paragraph (2), within one month of the interlocutor refusing the application under rule 249E(1).

(6) Where an appeal under paragraph (1) is successful, the court shall, on the motion of the appellant, pronounce an interlocutor recalling any protective measure.

#### **249L. Reclaiming**

(1) Any party dissatisfied with the interlocutor of the Lord Ordinary in an appeal under rule 249K on a point of law may reclaim against that interlocutor by a motion for review by the Inner House in accordance with rules 262 to 264.

(2) Where a reclaiming motion under paragraph (1) against the registration of a judgment is successful, the court shall, on the motion of the appellant, pronounce an interlocutor recalling any protective measure.

#### **249M. Application for recognition**

(1) For the purposes of the second paragraph of article 26 of Schedule 1 to the Act of 1982, the registration of a judgment under the foregoing rules of this section shall be a decision also that the judgment is recognised.

(2) Where an application is made for recognition of a judgment under article 26 of Schedule 1 to the Act of 1982, the foregoing rules of this section shall apply to such an application as they apply to an application for registration under section 4 of the Act of 1982, except that—

(a) it shall not be necessary to produce any documents required by rule 249E(2)(a)(ii) or (iv); and

(b) 249I(2) shall not apply.

#### **249N. Enforcement of Court of Session decree or writ registered in the Books of Council and Session in another Contracting State**

(1) Where a person seeks to enforce a decree or other interlocutor of the Court of Session under section 12 of the Act of 1982 in another Contracting State he shall apply in writing to the Deputy Principal Clerk for—

(a) a certificate in Form 55;

(b) a certified copy interlocutor; and

(c) if required, a certified copy of the opinion of the court.

(2) A certificate shall not be issued under paragraph (1)(a) unless there is produced an execution of service of the decree or other interlocutor on the person upon whom it is sought to be enforced in accordance with rule 74A, 74B or 75 as the case may be.

(3) Where a person seeks to enforce a writ registered for execution in the Books of Council and Session under article 50 of Schedule 1 to the Act of 1982 he shall apply in writing to the Keeper of the Registers for a certificate in Form 59 and produce—

- (a) an extract of the writ in respect of which the certificate is sought; and
- (b) an affidavit verifying that enforcement has not been suspended and that the time available for enforcement has not expired.

**249P. Enforcement of United Kingdom judgments in other parts of the United Kingdom (Money provisions)**

(1) Where a person seeks to enforce a money provision in a judgment of the Court of Session under section 18 of, and Schedule 6 to, the Act of 1982, or in a writ registered in the Books of Council and Session under article 50 of Schedule 1 to the Act of 1982, in another part of the United Kingdom he shall apply in writing—

- (i) in the case of a decree or other interlocutor, to the Deputy Principal Clerk for a certificate in Form 56; or
- (ii) in the case of a writ registered for execution in the Books of Council and Session, to the Keeper of the Registers for a certificate in Form 60 together with an extract of the writ for which a certificate is sought,

and produce an affidavit—

- (a) in the case of an application to the Deputy Principal Clerk, stating the sum or aggregate of the sums, including expenses, payable and unsatisfied;
- (b) verifying that the time for enrolling a reclaiming motion or appeal has expired without a reclaiming motion or appeal having been enrolled, or, a reclaiming motion or appeal having been enrolled, that such motion or appeal has been finally disposed of; and that enforcement of the judgment has not been suspended and the time available for its enforcement has not expired; and
- (c) stating the address of the party entitled to enforce, and the usual or last known address of the party liable to execution on, the judgment.

(2) An application for registration in the Court of Session of a certificate in relation to a money provision in a judgment from another part of the United Kingdom under section 18 of, and Schedule 6 to, the Act of 1982 shall be made within 6 months from the date of issue of the certificate by producing to the Keeper of the Registers a certificate in the appropriate form prescribed by the original court under paragraph 4(1) of Schedule 6 to the Act of 1982.

(3) Upon presentation by the applicant of the certificate under paragraph (2), 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 warrant for execution.

(4) An application—

- (a) under paragraph 9 of Schedule 6 to the Act of 1982 to sist proceedings for enforcement of a certificate registered under paragraph (3) of this rule; or
- (b) under paragraph 10 of Schedule 6 to the Act of 1982 to reduce the registration of a certificate under paragraph (3) of this rule,

shall be made by petition to the Outer House, and rules 191 to 198 shall apply.

**249Q. Enforcement of United Kingdom judgments in other parts of the United Kingdom (Non-money provisions)**

(1) Where a person seeks to enforce a non-money provision in a judgment of the Court of Session under section 18 of, and Schedule 7 to, the Act of 1982 in another part of the United Kingdom, he shall apply in writing—

- (i) in the case of a decree or interlocutor, to the Deputy Principal Clerk for a certified copy interlocutor and, if necessary, a certified copy of the opinion of the court;
- (ii) in the case of a writ registered for execution in the Books of Council and Session, to the Keeper of the Registers for a certificate in Form 61, together with an extract of the writ for which a certificate is sought,

and produce an affidavit—

- (a) verifying that the time for enrolling a reclaiming motion or appeal has expired without a reclaiming motion or appeal having been enrolled, or, a reclaiming motion or appeal having been enrolled, that such motion or appeal has been finally disposed of; and that enforcement of the judgment has not been suspended and the time available for its enforcement has not expired; and
- (b) stating the address of the party entitled to enforce, and the usual or last known address of the party liable to execution on, the judgment.

(2) The Deputy Principal Clerk shall, on certifying the copy interlocutor, and, where required, the opinion of the court, attach the same to a certificate in Form 57.

(3) The Keeper of the Registers shall, on issuing a certificate in Form 61, attach the same to an extract of the document to be enforced.

(4) An application for registration in the Court of Session of non-money provisions in a judgment from another part of the United Kingdom under section 18 of, and Schedule 7 to, the Act of 1982 shall be made in Form 58.

(5) There shall be produced with the application under paragraph (4)—

- (a) a certified copy of the judgment of the original court; and
- (b) a certificate in the appropriate form prescribed by the original court under paragraph 4(1)(b) of Schedule 7 to the Act of 1982 issued not more than 6 months before the date of the application.

(6) The application under paragraph (4) shall be dealt with in the Outer House by a Lord Ordinary in chambers and shall not require an appearance for the applicant unless the court so requires.

(7) The court shall, in relation to an application under paragraph (4), on being satisfied that the application meets the requirement of section 18 of, and Schedule 7 to, the Act of 1982, grant warrant for the registration of the judgment and where necessary pronounce decree in accordance with Scots law.

(8) Where the court grants warrant for registration, rule 249I shall apply to the registration of a judgment under paragraph (7) as it applies to registration of a judgment under section 4 of the Act of 1982.

**(9) An application—**

**(a)** under paragraph 8 of Schedule 7 to the Act of 1982 to sist proceedings for enforcement of a judgment registered under paragraph (8) of this rule; or

**(b)** under paragraph 9 of Schedule 7 to the Act of 1982 to reduce a judgment registered under paragraph (8) of this rule,

shall be made by petition to the Outer House, and rules 191 to 198 shall apply.

**249R. Cancellation of registration**

Where—

**(a)** warrant for registration under rule 249G or registration under rule 249I is ordered to be cancelled after an appeal or a reclaiming motion; or

**(b)** registration under rule 249P(3) or 249Q(8) is reduced, 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.”.

**(27)** In rule 296A(ii) (meaning of reference to the European Court)(a), after the words “E.C.S.C. Treaty” insert the words “or a ruling on the interpretation of the Conventions (as defined by section 1(1) of the Civil Jurisdiction and Judgments Act 1982) under article 3 of Schedule 2 to that Act”.

**(28)** In rule 347 (Fees for solicitors)(b), in Chapter III of the Table of Fees—

**(a)** in Part I (Un defended action), insert at the end of the following item:—

“Where advertisement is ordered under rule 75, an additional fee of £28.40, together with the whole cost of the advertisement, should be allowed”;

**(b)** in Part II (Un defended consistorial actions), in section 1, insert at the end, under the Note, the following words:—

“Where advertisement is ordered under rule 75, an additional fee of £28.40 shall be allowed”; and

**(c)** in part IV (Defended actions), in section 1, after paragraph (c), insert the following paragraph:—

“(d) Where advertisement is ordered under rule 75 ..... 28.40”.

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**(a)** Rule 296A was inserted by S.I. 1972/1981.

**(b)** Chapter III of the Table of Fees in rule 347 was amended by S.I. 1986/967.

(29) In the Appendix (Forms)—

- (a) after Form 4, insert Form 4A in the Schedule to this Act of Sederunt;  
and
- (b) at the end, insert Forms 53 to 61 in the Schedule to this Act of Sederunt.

*Emslie,*  
Lord President  
I.P.D.

Edinburgh.  
13th November 1986.



SCHEDULE

FORMS

FORM 4A

rule 75(3)

**Citation by advertisement**

IN THE COURT OF SESSION

*in causa*

[AB] (*address*)

*Pursuer*

against

[CD]

*Defender*

An action has been raised in the Court of Session, Parliament Square, Edinburgh, [Scotland,] by AB, pursuer. The pursuer calls as a defender, CD, whose last known address was

If CD wishes to challenge the jurisdiction of the court or to defend the action he should immediately contact the Deputy Principal Clerk of Session, Court of Session, Parliament Square, Edinburgh (Telephone 031-225 2595).

(*Signed*)  
[Solicitor for pursuer]  
(*Address*)



**Intimation of decree and warrant for registration of a judgment under section 4 of  
the Civil Jurisdiction and Judgments Act 1982**

**IN THE COURT OF SESSION**

*in causa*

**APPLICATION**

of

[AB] (*address*)

under section 4 of the Civil Jurisdiction  
and Judgments Act 1982

for registration of

a judgment of the (*name of court*)

dated the            day of            19

To (*name of person against whom judgment was given and decree and warrant for registration granted*).

TAKE NOTICE that an interlocutor dated the            day of            19 ,  
a certified copy of which is attached, was pronounced in the Court of Session granting  
decree and warrant for registration of the (*judgment, decision or other order*) of the  
(*name of court*) dated the            day of            19 , 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 against the interlocutor granting decree and  
warrant for registration within one month [*or two months as the case may be*] from the  
date of service of this notice upon you. Where service has been executed by post, service  
shall be reckoned from 24 hours after the date of posting.

An appeal shall be in Form 42 of the Appendix to the Rules of the Court of Session.

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.

The applicant may, however, take certain steps of diligence in execution of the registered  
judgment and decree of the Court of Session as a protective measure, **without actual  
enforcement**, until the expiry of the period within which you may appeal and any appeal  
has been disposed of.

[The applicant applied to the court for other protective measures until the expiry of the  
period for lodging an appeal and any appeal has been disposed of. The following other  
protective measures were granted by the court:—

.]

Diligence in execution or other protective measures shall be of no effect unless service  
of this notice has been made within 21 days from the date of execution of the diligence  
or other protective measure.

Intimation of an appeal should be made to the applicant, A.B., at the following address  
for service in Scotland:—

Dated this            day of            19

19

*(Signed)*  
Applicant [*or Solicitor for Applicant,*  
Messenger-at-Arms *or other officer*]  
*(Address)*

## Certificate under section 12 of the Civil Jurisdiction and Judgments Act 1982

## IN THE COURT OF SESSION

## CERTIFICATE

under the Civil Jurisdiction and Judgments Acts 1982

*in causa*

[or in petition of]

[AB] (*address*)

Pursuer [or Petitioner]

against

[CD] (*address*)

Defender [or Respondent]

I, \_\_\_\_\_, a Deputy Principal Clerk of the Court of Session, do hereby certify—

1. That the summons [or petition], raised [or presented] by the pursuer [or petitioner] AB was executed by citation of the defender CD served on him [or was served on the respondent CD] on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ by (*state method of service*).

2. That in the summons [or petition] the pursuer, sought [payment of the sum of £ \_\_\_\_\_ in respect of (*state briefly the nature of the claim*)] [and (*state other conclusions of the summons or orders sought in the prayer of petition*)].

3. [That the defender CD entered appearance on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ ] [and lodged defences on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ ] [or That the defender CD did not enter appearance].

4. That the pursuer [or petitioner] obtained decree [or other order] against the defender [or respondent] in the Court of Session for [payment of the sum of £ \_\_\_\_\_ ] [or *state briefly the terms of the interlocutor or opinion of the court*] [and *state briefly other conclusions of the summons or orders sought in the prayer of the petition granted*] together with the expenses of the cause in the sum of £ \_\_\_\_\_, all in terms of the certified copy interlocutor attached hereto.

5. That [no] objection to the jurisdiction of the court has been made [on the grounds that \_\_\_\_\_ ].

6. That the decree includes interest at the rate of \_\_\_\_\_ per centum per annum on the total of the sum of £ \_\_\_\_\_ and expenses of £ \_\_\_\_\_ from the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ until payment.

7. That the interlocutor containing the decree [or other order] has been served on the defender.

8. That the time for reclaiming (appealing) against the interlocutor has expired [and no reclaiming motion (appeal) has been enrolled within that time] [or and a reclaiming



**Certificate of money provisions in an interlocutor for registration under Schedule 6  
to the Civil Jurisdiction and Judgments Act 1982**

[Heading as in Form 55]

I, \_\_\_\_\_, a Deputy Principal Clerk of the Court of Session, do hereby certify—

1. That the pursuer AB obtained decree [*or other order*] against the defender CD on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ in the Court of Session for payment of the sum of £ \_\_\_\_\_ in respect of (*state briefly the nature of the claim and terms of the interlocutor*) together with the sum of £ \_\_\_\_\_ as expenses.
2. That the interlocutor granting decree [*or other order*] was obtained on the grounds (*state grounds briefly*).
3. That the decree [*or other order*] carries interest at the rate of \_\_\_\_\_ per centum per annum on the total of the sum of £ \_\_\_\_\_ and expenses of £ \_\_\_\_\_ from the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ until payment.
4. That the time for reclaiming (appealing) against the interlocutor has expired [and no reclaiming motion (appeal) has been enrolled within that time] [and a reclaiming motion (appeal) having been enrolled within that time, has been finally disposed of].
5. That enforcement of the decree [*or other order*] has not for the time being been suspended and that the time available for its enforcement has not expired.
6. That this certificate is issued under section 18 of, and paragraph 4(1) of Schedule 6 to, the Civil Jurisdiction and Judgments Act 1982 and rule 249P(1) of the Rules of the Court of Session.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .

(Signed)  
Deputy Principal Clerk of Session.

**Certificate of non-money provisions in an interlocutor for registration under  
Schedule 7 of the Civil Jurisdiction and Judgments Act 1982**

[Heading as in Form 55]

I, \_\_\_\_\_, a Deputy Principal Clerk of the Court of Session, do hereby certify—

1. That the copy of the interlocutor attached hereto is a true copy of the decree [*or other order*] obtained in the Court of Session [and that the copy of the opinion of the court attached hereto is a true copy thereof] and is issued in accordance with section 18 of the Civil Jurisdiction and Judgments Act 1982.
2. That the time for reclaiming (appealing) against the interlocutor has expired [and no reclaiming motion (appeal) has been enrolled within that time] [and a reclaiming motion (appeal) having been enrolled within that time has been finally disposed of].
3. That enforcement of the decree [*or other order*] has not for the time being been suspended and that the time available for its enforcement has not expired.
4. That this certificate is issued under section 18 of, and paragraph 4(1)(b) of Schedule 7 of the Civil Jurisdiction and Judgments Act 1982 and rule 249Q(2) of the Rules of the Court of Session.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

(Signed)  
Deputy Principal Clerk of Session.



**Application for registration of a judgment under section 18 of, and Schedule 7 to,  
the Civil Jurisdiction and Judgments Act 1982**

[*Heading as in Form 53*]

1. That this application is made by (*name of applicant*) to register a judgment [*or decision or other order*] of the (*name of court*) of (*date of judgment*).
2. That in the cause in which the judgment [*or decision or other order*] was pronounced AB was plaintiff [*or defendant or as the case may be*] and CD was defendant [*or plaintiff or as the case may be*].
3. The applicant is a party having an interest to enforce the judgment [*or decision or other order*] because (*state reasons*).
4. That the applicant believes and avers that the usual [*or last known*] address of the (*state party liable in execution*) is (*state address*).
5. That the applicant seeks warrant to register the judgment [and for decree in terms thereof] [and for decree to be pronounced in the following or such other terms as to the court may seem proper:— (*state terms in which decree is to be pronounced in accordance with Scots law*)].
6. That this application is made under section 18 of, and paragraph 5(1) of Schedule 7 to, the Civil Jurisdiction and Judgments Act 1982 and rule 249Q(4) of the Rules of the Court of Session.

IN RESPECT WHEREOF

(*Signed*)  
Applicant [*or Solicitor for*  
Applicant]  
(*Address*)

**Certificate by Keeper of the Registers of writ registered for execution in the Books of Council and Session for registration under Article 50 of Schedule 1 to the Civil Jurisdiction and Judgments Act 1982**

**REGISTERS OF SCOTLAND**

**CERTIFICATE**

Under the Civil Jurisdiction and Judgments Act 1982

of

Deed [*or other writ*]

between

[AB] (*address*)

and

[CD] (*address*)

registered for execution in the Books of Council and Session

I, \_\_\_\_\_, the Keeper of the Registers of Scotland, and as such, Keeper of the Register of Deeds, Bonds, Protests and other writs registered for execution in the Books of Council and Session, do hereby certify—

1. That AB registered in the Books of Council and Session on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ for execution against CD a (*describe writ and state terms of writ for which enforcement is to be sought*).

2. That the extract of the deed [*or other writ*] attached hereto is a true copy of the deed [*or other writ*] registered for execution by AB.

[3. That the deed [*or other writ*] carries interest at the rate of \_\_\_\_\_ *per centum per annum* from the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ until payment.]

[4. That enforcement of the deed] [*or other writ*] has not for the time being been suspended and that the time available for its enforcement has not expired.

5. That this certificate is issued under article 50 of Schedule 1 to the Civil Jurisdiction and Judgments Act 1982 and rule 249N(3) of the Rules of the Court of Session.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .

(*Signed*)

Keeper of the Registers of Scotland.

**Certificate by Keeper of the Registers of money provisions in a writ registered for execution in the Books of Council and Session for registration under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982**

*[Heading as in Form 59]*

I, \_\_\_\_\_, the Keeper of the Registers of Scotland, and as such, Keeper of the Register of Deeds, Bonds, Protests and other writs registered for execution in the Books of Council and Session, do hereby certify—

1. That AB registered in the Books of Council and Session on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ for execution against CD a (*describe writ and state terms of money provision in writ for which enforcement is to be sought*).
2. That the money provision in the deed [*or other writ*] carries interest at the rate of \_\_\_\_\_ per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ until payment.
3. That enforcement of the deed [*or other writ*] has not for the time being been suspended and that the time available for its enforcement has not expired.
4. That this certificate is issued under section 18 of, and paragraph 4(1) of Schedule 6 to, the Civil Jurisdiction and Judgments Act 1982 and rule 249P(1) of the Rules of the Court of Session.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .

*(Signed)*

Keeper of the Registers of Scotland.

**Certificate by Keeper of the Registers of non-money provisions in a writ registered for execution in the Books of Council and Session for registration under Schedule 7 to the Civil Jurisdiction and Judgments Act 1982**

*[Heading as in Form 59]*

I, \_\_\_\_\_, the Keeper of the Registers of Scotland, and as such, Keeper of the Register of Deeds, Bonds, Protests and other writs registered for execution in the Books of Council and Session, do hereby certify—

1. That the extract of the deed [*or other writ*] attached hereto is a true copy of the deed [*or other writ*] registered for execution by AB and is issued in accordance with section 18 of the Civil Jurisdiction and Judgments Act 1982.
2. That enforcement of the deed [*or other writ*] has not for the time being been suspended and that the time available for its enforcement has not expired.
3. That this certificate is issued under section 18 of, and paragraph 4(1)(b) of Schedule 7 to the Civil Jurisdiction and Judgments Act 1982 and rule 249Q(1) of the Rules of the Court of Session.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ .

*(Signed)*

Keeper of the Registers of Scotland.

## EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session following the coming into force of the Civil Jurisdiction and Judgments Act 1982 so as—

- (a)* to make new provisions for causes to which the 1982 Act applies (paragraph 2);
- (b)* to provide new rules for citation and service of, entering appearance and decree in absence in, all causes, whether or not the cause is one to which the 1982 Act applies (paragraph 2(3) to (16) and (21) to (24));
- (c)* to amend the rules relating to multiple poindings (paragraph 2(18) to (20)); and
- (d)* to make provisions for the recognition and enforcement of judgments under the 1982 Act (paragraph 2(26) and (29)) and consequential amendments (paragraph 2(25), (27) and (29)).