

STATUTORY INSTRUMENTS

1986 No. 1947 (S. 147)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Enforcement of Judgments under the Civil Jurisdiction and Judgments Act 1982) 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 32 of the Sheriff Courts (Scotland) Act 1971(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 (Enforcement of Judgments under the Civil Jurisdiction and Judgments Act 1982) 1986 and shall come into operation on 1st January 1987.

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

Interpretation

2.—(1) In this Act of Sederunt—

“the 1982 Act” means the Civil Jurisdiction and Judgment Act 1982;

“Ordinary Cause Rules” means the First Schedule to the Sheriff Courts (Scotland) Act 1907(c).

(2) A form referred to by number means the form so numbered in the Schedule to this Act of Sederunt or a form substantially to the same effect, with such variation as circumstances may require.

Enforcement of sheriff court judgments in other parts of the United Kingdom (Money provisions)

3.—(1) An application for a certificate under paragraph 2 of Schedule 6 to the 1982 Act shall be made in writing to the sheriff clerk and shall be accompanied by an affidavit—

(a) stating the sum or aggregate of the sums, including expenses, payable and unsatisfied;

(b) verifying that the time for bringing an appeal against the judgment has expired and no appeal has been brought within that time, or that any

(a) 1971 c.58.

(b) 1982 c.27.

(c) 1907 c.51; Schedule substituted by S.I. 1983/747 and as amended by S.I. 1984/255 and 1986/513 and 1230.

appeal has been finally disposed of; and that enforcement of the judgment has not been suspended and the time available for the 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) A certificate under paragraph 4 of Schedule 6 to the 1982 Act shall be in Form 1 and be signed by the sheriff clerk.

Enforcement of sheriff court judgments in other parts of the United Kingdom (Non-money provisions)

4.—(1) An application for a certified copy of an interlocutor or extract decree and, where appropriate, a copy of the note or opinion of the sheriff under paragraph 2 of Schedule 7 to the 1982 Act shall be made in writing to the sheriff clerk and shall be accompanied by an affidavit—

(a) verifying that the time for bringing an appeal against the judgment has expired and no appeal has been brought within that time, or any appeal has been finally disposed of; and that enforcement of the judgment has not been suspended and the time available for the 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) A copy of an interlocutor, decree, note or opinion issued under paragraph 4 of Schedule 7 to the 1982 Act shall have appended to it a certificate in Form 2 signed by the sheriff clerk.

Enforcement of sheriff court interlocutors and decrees in another Contracting State

5.—(1) Before an application is made under section 12 of the 1982 Act for a copy of a judgment or a certificate giving particulars relating to the judgment and the proceedings in which it was given, the party wishing to enforce the judgment shall serve the judgment on all parties against whom the judgment has been given in accordance with rule 10 or 12 of the Ordinary Cause Rules, as the case may be, accompanied by a notice in Form 4; and the execution of such service shall be in Form 5 unless a form of execution of service is provided by the person effecting service in the other Contracting State where service was effected.

(2) An application under section 12 of the 1982 Act shall be made in writing to the sheriff clerk for—

(a) a certificate in Form 3;

(b) a certified copy interlocutor; and

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

(3) A certificate shall not be issued under sub-paragraph (2) (a) unless there is produced and lodged in the process of the cause an execution of service required under sub-paragraph (1).

Recognition and enforcement in Scotland of foreign maintenance orders

6.—(1) An application under section 5 of the 1982 Act shall be in writing addressed to the Secretary of State, signed by—

- (i) the applicants, or
- (ii) a solicitor or professional person qualified to act in such matters in the Contracting State of origin, on his behalf,

and shall specify—

- (a) an address within Scotland for service on the applicant;
 - (b) the usual and last known address of the person against whom judgment was granted;
 - (c) the place where the applicant seeks to enforce the judgment;
 - (d) whether at the date of the application the judgment has been satisfied in whole or in part;
 - (e) whether interest is recoverable on the judgment in accordance with the law of the country in which it was granted and, if so, the rate of interest and the date from which interest became due; and
 - (f) whether the time for bringing an appeal against the judgment has expired without an appeal having been brought, or whether an appeal has been brought against the judgment and is pending or has been finally disposed of.
- (2) An application under sub-paragraph (1) shall be accompanied by—
- (a) a copy of the judgment authenticated by the court which made the order;
 - (b) documents which establish that, according to the law of the country in which the judgment has been given, the judgment is enforceable and has been served;
 - (c) in the case of a judgment given in default, documents which establish that the party in default was served with the documents instituting the proceedings;
 - (d) where appropriate, a document showing that the applicant is in receipt of legal aid in the country in which the judgment was given; and
 - (e) a translation, certified as correct by a person qualified to make it, of the judgment and any documents referred to in heads (a) to (d) where they are in a language other than English.
- (3) Where the applicant does not produce a document required under sub-paragraph (2), the sheriff clerk may—
- (a) fix a time within which the document is to be produced;
 - (b) accept an equivalent document; or
 - (c) dispense with production of the document.
- (4) Where the sheriff clerk is informed by a solicitor practising in Scotland that he is acting on behalf of the applicant, the business address of the solicitor shall thereafter be treated as the address for service on the applicant.
- (5) A maintenance order authorised to any extent to be enforced under section 5 of the 1982 Act shall, to that extent, be registered by the sheriff clerk in a register to be kept for the purpose in each sheriff court district.
- (6) Where a maintenance order registered under section 5 of the 1982 Act is superseded by a subsequent order registered under that Act, the sheriff clerk shall make an appropriate entry against the entry for the original order.

(7) The applicant may obtain an extract of an order under sub-paragraph (5) or (6) and proceed to arrest in execution, to inhibit and to charge and poind thereon, but may not proceed to an action of furthcoming in respect of an arrestment, adjudication in respect of an inhibition, or sale in respect of a poinding until the time for appeal against the determination of the sheriff clerk under sub-paragraph (10) or (11) has elapsed and any appeal has been disposed of.

(8) The sheriff clerk shall, immediately after registering, or refusing to register, an order under sub-paragraph (5) or (6) to any extent, serve a notice on the applicant, and on the person against whom enforcement is sought, in Form 6.

(9) Service by the sheriff clerk of a notice under sub-paragraph (8) shall be as nearly as may be in accordance with rule 10 or 15 of the Ordinary Cause Rules, and where service is by post the notice shall be posted by the sheriff clerk.

(10) Where enforcement of a maintenance order is authorised, the party against whom enforcement is sought may appeal by way of summary application to the sheriff against the decision of the sheriff clerk—

(a) within one month of service; or,

(b) if the person against whom enforcement is sought is domiciled in a Contracting State other than the United Kingdom, within 2 months of service,

and a single further appeal to the Inner House of the Court of Session on a point of law shall proceed in accordance with the rules of procedure for such appeals in the Ordinary Cause Rules.

(11) Where the application for enforcement of a maintenance order is refused, the applicant may appeal by way of summary application to the sheriff within one month, and a single further appeal to the Inner House of the Court of Session on a point of law shall proceed in accordance with the rules of procedure for such appeals in the Ordinary Cause Rules.

Consequential amendments

7.—(1) In paragraph 2 of the Act of Sederunt (Enforcement Abroad of Sheriff Court Judgments) 1962(a), for the word “abroad” wherever it occurs, substitute the words “in a country other than a country to which Parts I and II of the Civil Jurisdiction and Judgments Act 1982 applies”.

(2) In rule 13(1) of the Act of Sederunt (Maintenance Orders (Reciprocal Enforcement) Act 1972 Rules) 1974(b), after the word “Act”, where it second and third appears in that rule, insert the words “or any other enactment”.

Emslie,
Lord President,
I.P.D.

Edinburgh.
13th November 1986.

(a) S.I. 1962/1517.

(b) S.I. 1974/939.

SCHEDULE

para 3(2)

FORM 1

Certificate by sheriff clerk under section 18 of, and paragraph 4(1) of Schedule 6 to, the Civil Jurisdiction and Judgments Act 1982

Sheriff Court (*address*)

..... (Pursuer) v(Defender)

I, **Sheriff Clerk at Sheriff Court,**
hereby certify:—

1. That [AB] obtained judgment against [CD] in the above sheriff court on (*date*) for payment of _____ with _____ of expenses of which _____ is unsatisfied.
2. That the money provision in the judgment carries interest at the rate of _____ *per centum per annum* from the _____ day of _____ 19 _____ until payment.
3. That the time for appealing against the judgment has expired [and no appeal has been brought within that time] [*or* and an appeal having been brought within that time has been finally disposed of].
4. That enforcement of the judgment 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 section 18 of, and paragraph 4(1) of Schedule 6 to, the Civil Jurisdiction and Judgments Act 1982 and paragraph 3(2) of the Act of Sederunt (Enforcement of Judgments under the Civil Jurisdiction and Judgments Act 1982) 1986.

Dated at (*place*) this _____ day of _____ 19 _____ .

(*Signed*)
Sheriff Clerk

FORM 2

para 4(2)

Certificate by sheriff clerk under section 18 of, and paragraph 4(1)(b) of Schedule 7 to, the Civil Jurisdiction and Judgments Act 1982

Sheriff Court (*address*)

I, Sheriff Clerk at Sheriff Court,
hereby certify:—

1. That [AB] obtained judgment against [CD] in the above sheriff court on (*date*).
2. That the copy of the interlocutor attached is a true copy of the decree [*or other order*] [and that the copy of the note or opinion of the sheriff attached is a true copy thereof].
3. That the time for appealing against the interlocutor has expired [and no appeal has been brought within that time] [*or* and an appeal having been brought within that time has been finally disposed of].
4. 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.
5. 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 paragraph 4(2) of the Act of Sederunt (Enforcement of Judgments under the Civil Jurisdiction and Judgments Act 1982) 1986.

Dated at (*place*) this day of 19 .

(*Signed*)
Sheriff Clerk

para 5(2)

FORM 3

Certificate by sheriff clerk under section 12 of the Civil Jurisdiction and Judgments Act 1982

Sheriff Court (address)

..... (Pursuer) v(Defender)

I, Sheriff Clerk at Sheriff Court, hereby certify:—

1. That the initial writ raised by the pursuer, [AB] (address), was executed by citation of the defender, [CD] (address), served on him on the day of 19 by (state mode of service).

2. That in the initial writ the pursuer sought [payment of the sum of £ in respect of (state briefly the nature of the claim)] [and (state other craves of the writ)].

3. That [no] notice of intention to defend the action was lodged by the defender [on the day of 19] [and lodged defences on the day of 19].

4. That decree [or other order] was granted against the defender by the Sheriff of at for payment of the sum of £ [or state briefly the terms of the interlocutor or opinion of the sheriff] [and (state briefly any other craves of the initial writ)] together with expenses of the action 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 has been served on the defender.

8. That the time within which an appeal may be brought against the interlocutor [expires on [or has expired]].

9. That an [or no] appeal against the interlocutor has been brought [and has been finally disposed of].

10. That enforcement of the decree has not for the time being been suspended and the time available for its enforcement has not expired.

11. That the whole pleadings of the parties are contained in the closed record [or initial writ] a copy of which is attached.

12. That the pursuer [*or* defender] benefited from legal aid.

13. That this certificate is issued under section 12 of the Civil Jurisdiction and Judgments Act 1982 and paragraph 5(2) of the Act of Sederunt (Enforcement of Judgments under the Civil Jurisdiction and Judgments Act 1982) 1986.

Dated at (*place*) this day of 19 .

(*Signed*)
Sheriff Clerk

para 5(1)

FORM 4

Notice to accompany service copy of judgment

To [AB] (*address*)

You are hereby served with a copy of the interlocutor of the Sheriff of
at given on the day of
19 . [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)

FORM 5

para 5(1)

Execution of service of judgment and notice where service effected by officer of court or solicitor in Scotland*(place and date)*

I, [AB] (*address*), hereby certify that upon the day of 19 , I duly served a copy of this judgment together with notice in terms of paragraph 5(1) of the Act of Sederunt (Enforcements of Judgments under the Civil Jurisdiction and Judgments Act 1982) 1986 upon [CD], defender. This I did by posting (*set forth mode of service; if by officer and not by post, add in presence of EF (address) witness, hereto with me subscribing*).

(Signed)
(Address)
Solicitor for Pursuer
[or Defender]

[or

(Signed)
Sheriff Officer

(Signed)
Witness]

para 6(8)

FORM 6

Notice of determination by sheriff clerk of application under section 5 of the Civil Jurisdiction and Judgments Act 1982Sheriff Court (*address*)

..... (Appellant) v (Respondent)

TAKE NOTICE that the application by (*name and design*), for the recognition and/or enforcement of a maintenance order granted by (*state court or tribunal*) on the day of 19 ; has been GRANTED [*or REFUSED*] (*state reasons in brief for refusal*); and [has been registered in the Books of Court] [*or has been registered in the Books of Court to the extent that (state the extent).*].

(*Signed*)
 Sheriff Clerk
 (*date*)

NOTE:

1. If your application has been granted, the person against whom enforcement is sought may appeal against this decision within one month of service on him, unless he is domiciled in another Contracting State in which case he may appeal within two months of the date of service on him.
2. If your application has been refused you may appeal against the decision within (*insert months*). You should consult a solicitor qualified in Scots law for this purpose.

EXPLANATORY NOTE

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

This Act of Sederunt makes new provisions for the enforcement of sheriff court interlocutors and decrees in other parts of the United Kingdom and in other countries and for enforcement in Scotland of foreign maintenance orders, under the Civil Jurisdiction and Judgments Act 1982.