
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 135

**Act of Sederunt (Rules of the Court of Session Amendment)
(Jurisdiction, Recognition and Enforcement of Judgments) 2005**

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment) (Jurisdiction, Recognition and Enforcement of Judgments) 2005 and shall come into force on 2nd March 2005.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994⁽¹⁾ shall be amended in accordance with the following sub-paragraphs.

(2) After Part X of Chapter 62 (recognition, registration and enforcement of miscellaneous decisions) there shall be inserted the following:—

“PART XI

**REGISTRATION AND ENFORCEMENT OF JUDGMENTS UNDER COUNCIL
REGULATION (E.C.) NO. 2201/2003 OF 27TH NOVEMBER 2003⁽²⁾**

Application and interpretation of this Part

62.67.—(1) This Part applies to the registration and enforcement of a judgment under the Council Regulation.

(2) In this Part, unless the context otherwise requires—

“the Council Regulation” means Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;

“judgment” includes an authentic instrument or enforceable agreement; and

“Member State” has the same meaning as in Article 2(3) of the Council Regulation.

Disapplication of certain rules to this Part

62.68. The following rules shall not apply to an application under this Part:—

4.1(1) (printed form for petition),

14.4 (form of petitions),

14.5 (first order in petitions),

⁽¹⁾ S.I.1994/1443, last amended by S.S.I. 2004/514.

⁽²⁾ O.J. No L.338, 23.12.2003, p.1.

- 14.6 (period of notice for lodging answers),
- 14.7 (intimation and service of petitions),
- 14.9 (unopposed petitions).

Enforcement of judgments from another Member State

62.69.—(1) An application under Article 28 of the Council Regulation (enforceable judgments) shall be made by petition in Form 62.69.

(2) There shall be produced with the petition—

- (a) an authentic copy of the judgment to be registered;
- (b) a certificate under Article 39 of the Council Regulation (standard forms of certificate);
- (c) where judgment has been given in absence (that is to say, in default of appearance)—
 - (i) 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 proceedings or with an equivalent; or
 - (ii) a document indicating that the party against whom the judgment was given in absence has accepted the judgment unequivocally;
- (d) where applicable, a document showing that the applicant is in receipt of legal aid in the country in which the judgment was given;
- (e) an affidavit stating—
 - (i) an address within the jurisdiction of the court for service on or intimation to the petitioner;
 - (ii) the name and address of the petitioner and his interest in the judgment;
 - (iii) the name and date of birth of each child in respect of whom the judgment was made, the present whereabouts or suspected whereabouts of that child and the name of any person with whom he is alleged to be;
 - (iv) the name and address of any other person with an interest in the judgment;
 - (v) whether the judgment is already registered and, if so, where it is registered;
 - (vi) details of any order known to the petitioner which affects a child in respect of whom the judgment was made and fulfils the conditions necessary for its recognition in Scotland.

(3) Where the petitioner does not produce a document required by paragraph (2)(b) to (e), the court may –

- (a) fix a period within which that document is to be lodged;
- (b) accept an equivalent document; or
- (c) dispense with the requirement to produce the document.

Warrant for registration under the Council Regulation

62.70.—(1) The court shall, on being satisfied that the petition complies with the requirements of the Council Regulation, pronounce an interlocutor—

- (a) granting warrant for the registration of the judgment; and
- (b) where necessary, granting decree in accordance with Scots law.

(2) The interlocutor pronounced under paragraph (1) shall specify—

- (a) the period within which an appeal mentioned in rule 62.74 (appeals under the Council Regulation) against the interlocutor may be made; and
- (b) that the petitioner—
 - (i) may register the judgment under rule 62.72 (registration under the Council Regulation); and
 - (ii) may not proceed to execution until the expiry of the period for lodging such appeal or its disposal.

Intimation to the petitioner

62.71. Where the court pronounces an interlocutor under rule 62.70(1) 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 Council Regulation

62.72.—(1) Where the court pronounces an interlocutor under rule 62.70(1) granting warrant for registration, the Deputy Principal Clerk shall enter the judgment 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 62.70(1) granting warrant for registration,
- (b) an authentic copy of the judgment and any translation of it, and
- (c) any certificate of currency conversion under rule 62.2(1)(b) for any order concerning costs and expenses of proceedings under the Council Regulation;

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

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

Service of warrant for registration under the Council Regulation

62.73. The petitioner shall serve a copy of the interlocutor under rule 62.70(1) granting warrant for registration of a judgment and notice in Form 62.73 on the person against whom enforcement is sought.

Appeals under the Council Regulation

62.74.—(1) An appeal under Article 33 (appeals against the enforcement decision) of the Council Regulation shall be made by motion—

- (a) to the Lord Ordinary; and
 - (b) where the appeal is against the granting of warrant for registration under rule 62.70(1) within one month of service under rule 62.73 (service of warrant for registration under the Council Regulation) or within two months of such service where service was executed on a person domiciled in another Member State.
- (2) Where the respondent in any such appeal is domiciled furth of the United Kingdom—
- (a) in relation to an appeal against the granting of warrant for registration under rule 62.70(1), intimation of the motion shall be made to the address for service of the respondent in Scotland;

- (b) in relation to an appeal against a refusal to grant warrant for registration under rule 62.70(1), intimation of the motion shall be made in accordance with rule 16.2 (service forth of United Kingdom) or rule 16.5 (service where address of the person is not known), as the case may be.

Reclaiming under the Council Regulation

62.75. Any party dissatisfied with the interlocutor of the Lord Ordinary in any appeal mentioned in rule 62.74 (appeals under the Council Regulation) may reclaim on a point of law against that interlocutor.

Recognition of judgments from another Member State

62.76.—(1) For the purpose of Article 21 of the Council Regulation (recognition of a judgment), an interlocutor pronounced under rule 62.70(1) (warrant for registration under the Council Regulation) shall imply recognition of the judgment so dealt with.

(2) In an application under Article 21(3) of the Council Regulation for recognition of a judgment, rules 62.67 to 62.75 shall apply to such an application as they apply to an application under Article 28 of the Council Regulation (declarator of enforceability).

(3) In an application under Article 21(3) of the Council Regulation for non-recognition of a judgment, the rules under this part shall apply to such an application as they apply to an application under Article 28 of the Council Regulation (declarator of enforceability) subject to the following provisions—

- (a) where the application relies on grounds under Article 22(b) or 23(c) of the Council Regulation (judgment given in default of appearance) for the judgment not to be recognised, it shall not be necessary to produce documents required by rule 62.69(2) (c)(document establishing service or acceptance of judgment); and
- (b) rule 62.69(2)(b)(certificate under Article 39 of the Council Regulation);
rule 62.70(warrant for registration under the Council Regulation); and
rule 62.72(registration under the Council Regulation); shall not apply.

Cancellation of registration under the Council Regulation

62.77. Where an interlocutor under rule 62.70(1) (warrant for registration under the Council Regulation) is recalled and registration under rule 62.72(2) (registration under the Council Regulation) is ordered to be cancelled after an appeal under Article 33 of the Council Regulation (appeal against decision on enforceability) 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.

Enforcement in another Member State of Court of Session judgments etc.

62.78.—(1) Where a person seeks to apply under the Council Regulation for recognition or enforcement in another Member State of a judgment given by the court, he shall apply by letter to the Deputy Principal Clerk for—

- (a) a certificate under Article 39 of the Council Regulation (certificates concerning judgments in matrimonial matters or on matters of parental responsibility);
- (b) a certified copy of the judgment; and
- (c) if required, a certified copy of the opinion of the court.

(2) The Deputy Principal Clerk shall not issue a certificate under paragraph (1)(a) above unless there is produced to him an execution of service of the judgment on the person against whom it is sought to be enforced.

(3) Where a judgment granting rights of access delivered by the Court of Session acquires a cross-border character after the judgment has been delivered and a party seeks to enforce the judgment in another Member State, he shall apply by letter to the Deputy Principal Clerk for—

- (a) a certificate under Article 41 of the Council Regulation (certificate concerning rights of access); and
- (b) a certified copy of the judgment.

Rectification of certificates under Articles 41 and 42 of the Council Regulation

62.79. Where a party seeks rectification of a certificate issued under Article 41 or 42 of the Council Regulation (certificate concerning rights of access or return of a child) he shall apply by letter to the Deputy Principal Clerk stating the details of the certificate that are to be rectified.

Practical arrangements for the exercise of rights of access

62.80.—(1) An application by a party having an enforceable judgment granting a right of access, that has been certified under Article 41 of the Council Regulation or registered for enforcement, seeking an order making practical arrangements for organising the exercise of rights of access under Article 48 of the Council Regulation, shall be made by petition.

(2) There shall be produced with the petition—

- (a) an authentic copy of the judgment;
- (b) any certificate under Article 41 of the Council Regulation;
- (c) any extract of the registered judgment with a warrant for execution; and
- (d) where applicable, a document showing that the applicant is in receipt of legal aid in the country where the judgment was given.”.

(3) In rule 70.5(1) (applications for return of a child)**(3)** for “An application for the return of a child” there shall be substituted “Subject to rule 70.16 (warrant for intimation on a child), an application for the return of a child”.

(4) In rule 70.6(2) (service of causes)**(4)** for “Such a petition” there shall be substituted “Subject to rule 70.16 (intimation of notice on child), such a petition”.

(5) In rule 70.6(5) (hearings)**(5)** for “At the first hearing” there shall be substituted “Subject to rule 70.17 (views of the child), at the first hearing”.

(6) After Part II of Chapter 70 (international child abduction (the Hague Convention)) there shall be inserted the following:—

(3) Rule 70.5(1) was amended by S.I. [1996/1756](#).

(4) Rule 70.6(2) was amended by S.I. [1996/1756](#).

(5) Rule 70.6(5) was inserted by S.I. [1996/1756](#).

“PART IIA APPLICATIONS UNDER THE HAGUE CONVENTION WHERE THE COUNCIL REGULATION APPLIES

Application and interpretation of this Part

70.15.—(1) This Part applies to petitions under rule 70.5(1) (applications for the return of a child) under the Hague Convention where the Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility applies⁽⁶⁾.

(2) In this Part—

“the Council Regulation” means Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;

“central authority” means a central authority designated under Article 53 of the Council Regulation;

“the Hague Convention” means the Convention defined in section 1(1) of the Child Abduction and Custody Act 1985⁽⁷⁾ and as set out in Schedule 1 to that Act;

“Member State” has the same meaning as in Article 2(3) of the Council Regulation;

“wrongful removal or retention” has the same meaning as in Article 2(11) of the Council Regulation.

Intimation on child

70.16.—(1) In a petition under rule 70.5(1)(application for the return of a child) where the Council Regulation applies, the petitioner shall insert a warrant for intimation to the child to whom the petition relates, if not a party to the petition.

(2) Where paragraph (1) applies a copy of the petition shall not be intimated to the child but a notice of intimation in Form 49.8-N⁽⁸⁾ shall be intimated.

(3) Where a petitioner considers that a warrant for intimation to a child under paragraph (1) is inappropriate, he shall—

(a) apply by motion to dispense with intimation to that child; and

(b) include in the petition averments setting out the reasons why such intimation is inappropriate,

and the court may dispense with such intimation or make such other order as it thinks fit.

Views of child

70.17.—(1) In an application under rule 70.5(1)(application for the return of a child) where the Council Regulation applies and the child has—

(a) returned Form 49.8-N (form of notice of intimation to a child), or

(b) otherwise indicated to the court a wish to express views on a matter affecting him,

the court shall not grant any order unless an opportunity has been given for the views of that child to be obtained or heard.

⁽⁶⁾ O.J. No L338, 23.12.2003, p. 1.

⁽⁷⁾ 1985 c. 60.

⁽⁸⁾ Form 49.8-N was inserted by S.I. 1996/2587.

(2) Where a child has indicated his wish to express his views, the court shall order such steps to be taken as it considers appropriate to ascertain the views of that child.

(3) The court shall not grant an order in a petition under rule 70.5(1) (return of a child) affecting a child who has indicated his wish to express his views, unless due weight has been given by the court to the views expressed by that child, having regard to his age and maturity.

Continuations

70.18. In an application under rule 70.5(1) (application for the return of the child), where the Council Regulation applies, the court may allow a continuation of the hearing for a period not exceeding 7 days or to the first suitable court date thereafter but any further continuations shall only be allowed on special cause shown.

Recording of hearings under Article 12 of the Hague Convention

70.19.—(1) Evidence at a hearing on an application for the return of a child under rule 70.5(1) and Article 12 of the Hague Convention, where the Council Regulation applies, shall be recorded by—

- (a) a shorthand writer to whom the oath de fidelis administratione officii has been administered on his appointment as a shorthand writer in the Court of Session; or
- (b) tape recording or other mechanical means approved by the Lord President.

(2) The record of the evidence taken at the hearing shall include—

- (a) any objection taken to a question or to the line of evidence;
- (b) any submission made in relation to such an objection; and
- (c) the ruling of the court in relation to the objection and submission.

(3) A transcript of the record of the evidence shall be made only where an order is made under Article 13 of the Hague Convention refusing to order the return of a child in an application where the Council Regulation applies.

(4) The transcript of the record of evidence shall be certified as a faithful record of the evidence by—

- (a) the shorthand writer or shorthand writers, if more than one, who recorded the evidence; or
- (b) where the evidence was recorded by tape recording or other mechanical means, the person who transcribed the record.

(5) The court may make such alterations to the transcript of the record of the evidence as appear to it to be necessary after hearing parties; and, where such alterations are made, the Lord Ordinary shall authenticate the alterations.

Order under Article 13 of the Hague Convention

70.20. Where an order is made under Article 13 of the Hague Convention refusing to order the return of a child in an application under rule 70.5(1) where the Council Regulation applies, the Deputy Principal Clerk shall transmit a copy of the order and a transcript of the proceedings to the central authority of the Member State where the child was habitually resident immediately before the wrongful removal or retention.”.

(7) After Chapter 87 (causes relating to Articles 81 and 82 of the Treaty establishing the European Community) there shall be inserted the following:—

“CHAPTER 88
CIVIL MATTERS INVOLVING PARENTAL
RESPONSIBILITIES UNDER THE COUNCIL REGULATION

Interpretation

88.1. In this Chapter —

“the Council Regulation” means Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;

“parental responsibility” has the same meaning as in Article 2(7) of the Council Regulation;

“Member State” has the same meaning as in Article 2(3) of the Council Regulation;

“requesting court” means a court in another Member State that requests the Court of Session to accept or decline jurisdiction in an action.

Transfers of cases involving matters of parental responsibility

88.2. Where the court receives a request from a court in another Member State under Article 15 of the Council Regulation (transfer to court better placed to hear the case) to accept or decline jurisdiction of an action involving parental responsibilities the request shall—

- (a) contain a detailed statement on the particular connection the child is considered to have with either Scotland or the Member State of the requesting court;
- (b) contain the full name, designation and address of all the parties to the action involving parental responsibilities, including any Scottish agent instructed to represent any of the parties;
- (c) be accompanied by a copy of any order of the requesting court confirming that at least one of the parties has accepted the request; and
- (d) be accompanied by any other documents considered by the requesting court to be relevant to the action involving parental responsibilities including any papers forming part of the process of the case in the requesting court.

Transfers where proceedings ongoing in the sheriff court

88.3.—(1) Where a request to decline jurisdiction is received under rule 88.2 (transfer of case involving matters of parental responsibility) and states that proceedings involving the same parties and matters involving parental responsibility are ongoing in a sheriff court, the Deputy Principal Clerk shall, within four days after the request is received, transmit the request to the sheriff clerk of the sheriff court specified in the request.

(2) When transmitting a request under paragraph (1) the Deputy Principal Clerk shall give written intimation of the transmission to—

- (a) the parties; and
- (b) to the requesting court.

(3) Failure by the Deputy Principal Clerk to comply with paragraph (2) shall not affect the validity of a transfer under paragraph (1).

Translations of documents

88.4. Where any document received under rule 88.2 (transfer of cases involving matters of parental responsibility) is in a language other than English, there shall be lodged with that document a translation into English certified as correct by the translator; and the certificate shall include his full name, address and qualifications.

Requests to accept transfer from a court in another Member State

88.5.—(1) A request to the court to accept jurisdiction of an action involving parental responsibilities under rule 88.2 (request to transfer a case) shall be lodged with a summons in Form 13.2-A⁽⁹⁾.

(2) When the summons lodged under paragraph (1) is signetted the pursuer shall request the Keeper of the Rolls to allocate a hearing within 14 days of the signetting, to determine whether the court will accept jurisdiction in the action.

(3) On allocation of the date of the hearing the pursuer shall serve a copy of the summons on the defender and at the same time intimate the date and time of the hearing on the defender by serving on him a notice in Form 88.5 (form of notice of intimation of a hearing to determine jurisdiction), not less than 7 days before the date of the hearing.

(4) The pursuer shall lodge a certificate of intimation in Form 16.2 (certificate of intimation furth of United Kingdom), 16.3 (certificate of service by messenger-at-arms) or 16.4 (certificate of service by post), as appropriate, at least 2 days before the date of the hearing.

(5) Where the court orders that it will accept jurisdiction of an action after a hearing under paragraph (2) the Deputy Principal Clerk shall, within seven days, send a copy of the interlocutor to the requesting court.

Request to decline jurisdiction from a court in another Member State

88.6. Where a request is received under rule 88.2 (request for transfer of a case) for the court to decline jurisdiction in an action involving parental responsibilities the Deputy Principal Clerk shall—

- (a) on receipt of the request and any accompanying documents, give written intimation of the request to each party to the action and to any Scottish agents identified in the request as being instructed to represent any of the parties; and
- (b) within two sederunt days of receipt of the request, cause it to be put out on the By Order Roll before the Lord Ordinary.”.

(8) In the Appendix—

- (a) for Form 49.8-N⁽¹⁰⁾ there shall be substituted the form set out in Part 1 of the Schedule to this Act of Sederunt;
- (b) after Form 62.65⁽¹¹⁾ there shall be inserted the forms set out in Part 2 of the Schedule to this Act of Sederunt;
- (c) after Form 87.1⁽¹²⁾ there shall be inserted the form set out in Part 3 of the Schedule to this Act of Sederunt.

⁽⁹⁾ Form 13.2-A was amended by S.I. 1994/2901 and S.S.I. 2004/537.

⁽¹⁰⁾ Form 49.8-N was inserted by S.I. 1996/2587.

⁽¹¹⁾ Form 62.65 was inserted by S.I. 1996/2168.

⁽¹²⁾ Form 87.1 was inserted by S.S.I. 2004/514.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Edinburgh
1st March 2005

CULLEN of WHITEKIRK
Lord President I.P.D.