
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 397

SHERIFF COURT

Act of Sederunt (Jurisdiction, Recognition and Enforcement of Judgments in Matrimonial Matters and Matters of Parental Responsibility Rules) 2006

Made - - - - *7th July 2006*
Coming into force - - *1st August 2006*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(1), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of that Act, do hereby enact and declare:

Citation and commencement

1. This Act of Sederunt may be cited as the Act of Sederunt (Jurisdiction, Recognition and Enforcement of Judgments in Matrimonial Matters and Matters of Parental Responsibility Rules) 2006 and shall come into force on 1st August 2006.

Interpretation

2.—(1) In this Act of Sederunt—

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

“the Council Regulation” means Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility(2);

“foreign court” means a court in a Member State other than the United Kingdom;

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

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

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- (1) 1971 c. 58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and was extended by the Child Support Act 1991 (c. 48), sections 39(2) and 49 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2).
- (2) O.J. No. L 338, 23.12.2003, p.1.

“these Rules” means the rules set out in this Act of Sederunt.

(2) A form referred to in these Rules 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.

(3) A reference in these Rules to a numbered Article is a reference to the Article of the Council Regulation so numbered.

(4) Except as provided for in these Rules or any order made by a sheriff hereunder, any action to which these Rules apply shall proceed as an ordinary cause under the First Schedule to the Sheriff Courts (Scotland) Act 1907(3).

Transfer of case involving matters of parental responsibility to sheriff court

3.—(1) A request to a sheriff court under Article 15(1)(a) (request by parties to transfer case involving parental responsibilities) shall be made by initial writ under these Rules.

(2) Where a sheriff court receives a request from a foreign court under Article 15(1)(b) (request by court to assume jurisdiction)—

(a) the sheriff clerk shall forthwith—

- (i) acknowledge receipt of the request to the foreign court;
- (ii) intimate the request to the parties to the action, their Scottish agents, if known, and any other party to whom the sheriff considers that intimation should be made; and
- (iii) intimate to the parties and, if known, their Scottish agents, the requirement to lodge an initial writ under subparagraph (b) within the time limit set by the foreign court under Article 15(4) (time limit for seising the court); and

(b) one of the parties shall lodge an initial writ under these Rules.

(3) Where no initial writ has been lodged within the time limit set by the foreign court under Article 15(4), the sheriff clerk shall advise the foreign court that the sheriff court has not been seised under Article 16 (seising of a court).

General provisions for transfer to sheriff court

4.—(1) An initial writ under these Rules shall—

(a) include the following heading printed above the instance:—

“ACT OF SEDERUNT (JURISDICTION, RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN MATRIMONIAL MATTERS AND MATTERS OF PARENTAL RESPONSIBILITY RULES) 2006”; and

(b) include averments stating—

- (i) the full name, designation, postal address, telephone and facsimile numbers and, where appropriate, e-mail address of each of the parties to the action involving parental responsibilities, including any Scottish agent instructed to represent any of the parties;
- (ii) the postal address and telephone and facsimile numbers of the foreign court and the name and, where appropriate, e-mail address of any official of the court to whom any document may be sent by the sheriff clerk;
- (iii) the full name, postal address and date of birth of the child;
- (iv) the status of the proceedings in the foreign court;

- (v) the particular connection the child has with Scotland;
- (vi) why it is in the best interests of the child that the case should be heard in the sheriff court;
- (vii) the time limit set by the foreign court under Article 15(4);

(2) There shall be lodged with an initial writ under these Rules any document considered by the pursuer to be relevant to the action involving parental responsibilities including any papers forming part of the process of the case in the foreign court.

(3) A warrant for citation in respect of an initial writ under these Rules shall be signed by the sheriff.

(4) The sheriff may make such order as to intimation or service, fixing a hearing to determine jurisdiction or otherwise as he thinks fit.

(5) On the fixing of a date for a hearing to determine jurisdiction the pursuer shall—

- (a) intimate to every other party a notice in Form 1;
- (b) lodge a certificate of intimation in Form 2,

within any time limit specified by the sheriff.

Acceptance of jurisdiction by sheriff court in matters of parental responsibility

5.—(1) An interlocutor accepting or refusing to accept jurisdiction to hear an action commenced by initial writ under these Rules shall be signed by the sheriff.

(2) After the expiry of the time limit for any appeal the sheriff clerk shall intimate the decision of the sheriff court to the foreign court by sending to the foreign court—

- (a) a copy interlocutor by electronic mail or facsimile transmission; and
- (b) a certified copy interlocutor by first class recorded delivery or registered post.

Application by sheriff court to foreign court for transfer of case involving matters of parental responsibility

6.—(1) Where in any action a sheriff decides to make an application to a foreign court under Article 15(2)(c) (application for transfer of case involving parental responsibilities to sheriff court) he shall append to the interlocutor a note containing—

- (a) the full name, designation and postal address, telephone and facsimile numbers and, where appropriate, e-mail address of all the parties to the case involving parental responsibilities, including any agent instructed to represent the parties in the foreign court;
- (b) details of the particular connection the child is considered to have with Scotland; and
- (c) such other matters as he considers would be of assistance to the foreign court in deciding whether or not to seek a transfer of the case under Article 15(1) (transfer to a court better placed to hear the case).

(2) The sheriff clerk shall forthwith send to the foreign court—

- (a) a copy interlocutor and note under paragraph (1) by electronic mail or by facsimile transmission; and
- (b) a certified copy interlocutor and note by first class recorded delivery or registered post.

Application by foreign court to sheriff court for transfer of case involving matters of parental responsibility

7. On receipt of an application by a foreign court under Article 15(2)(c) (application for transfer of case involving parental responsibilities to foreign court) the sheriff clerk shall—

- (a) give written intimation of the application and any accompanying documents to each party to the case;
- (b) fix a time and date for a hearing to consider the application; and
- (c) intimate the hearing to each party to the action.

Transfer by sheriff court of case involving matters of parental responsibility

8.—(1) An interlocutor pronounced by a sheriff sisting a case and inviting parties to make a request to a foreign court under Article 15(1)(a) or requesting a foreign court to assume jurisdiction under Article 15(1)(b) shall—

- (a) specify the particular connection the child has to the Member State of the foreign court;
- (b) set a time limit within which the foreign court may be seised in terms of Article 15(4);
- (c) specify which of sub-paragraphs (a) to (c) of Article 15(2) applies and, where appropriate, which of the parties to the action have accepted the transfer.

(2) The sheriff shall append to the interlocutor a note stating—

- (a) the reasons why he considers that it would be in the best interests of the child that the foreign court should hear the case; and
- (b) such other matters as he considers would be of assistance to the foreign court in deciding whether or not to accept jurisdiction under Article 15(5) (acceptance of jurisdiction).

(3) Where an interlocutor under Article 15(1)(b) has been pronounced on the sheriff's own motion or on an application from the foreign court, the sheriff clerk shall send a certified copy of the interlocutor and note to each of the parties.

(4) Within seven days of any interlocutor pronounced under Article 15(1)(b) (request by court to assume jurisdiction), the sheriff clerk shall send to the foreign court—

- (a) a copy of the interlocutor and note under paragraph (2) by electronic mail or by facsimile transmission;
- (b) a certified copy of the interlocutor and note by first class recorded delivery or registered post.

(5) The party who effects seisure of the foreign court shall no later than seven days after the expiry of the time limit specified by the sheriff under paragraph (1)(b) lodge in process a certificate stating the date on which the seisure was effected.

(6) Within 14 days of the date of the decision of the foreign court whether or not to accept jurisdiction in accordance with Article 15(5), the party who effected seisure of that court shall lodge in process a certified copy of the order of the foreign court or other document confirming its decision.

Translation of documents

9. Where any document received from a foreign court or otherwise under these Rules is in a language other than English, the sheriff may order that 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.

Enforcement in another Member State of sheriff court judgments etc.

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

- (a) a certificate under Article 39 of the Council Regulation (certificates concerning judgments in matrimonial matters or matters of parental responsibility); and
- (b) a certified copy of the judgment (incorporating the sheriff's interlocutor and note).

(2) The sheriff clerk shall not issue a certificate under paragraph (1)(a) 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 sheriff court 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 sheriff 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 (incorporating the sheriff's interlocutor and note).

Placement of child in another Member State

11. Where the sheriff requires under Article 56 of the Council Regulation to obtain the consent of a competent authority in another Member State to the placement of a child he shall send a request in Form 3 and any other documents he considers to be relevant to the Scottish central authority for transmission to the central authority in the other Member State.

Edinburgh,
7th July 2006

A C HAMILTON
Lord President I.P.D

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

SCHEDULE

FORM 1

Rule 4(5)

Form of notice of intimation of a hearing to determine jurisdiction under Article 15 of Council Regulation (EC) No. 2201/2003 of 27th November 2003

Date: (date of posting or other method of intimation)

To: (name and address)

TAKE NOTICE

(Name and address of pursuer) has lodged an initial writ in the Sheriff Court at (place) against (name and address of defender).

The parties are presently engaged in proceedings involving matters of parental responsibility in (specify court in other Member State where proceedings have been raised) and a request has been made to the sheriff court to accept jurisdiction of these proceedings and for the action to be dealt with in the Sheriff Court.

A hearing has been fixed on (date) at (time) within the Sheriff Court to determine the issue of jurisdiction.

You may appear or be represented by a person having a right of audience before the Sheriff Court at the hearing.

You or your representative will be asked whether you agree to jurisdiction being accepted by the Sheriff Court and the proceedings involving matters of parental responsibility being dealt with in the Sheriff Court.

If you do not appear or are not represented at the hearing the court may decide whether to accept jurisdiction in your absence.

(signed)

Solicitor for pursuer

(add name and business address)

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FORM 2

Rule 4(5)

Certificate of Intimation of a hearing to determine jurisdiction under Article 15 of Council Regulation (EC) No. 2201/2003 of 27th November 2003

in causa

AB Pursuer

against

CD Defender

I certify that intimation of a hearing to determine jurisdiction under Article 15 of Council Regulation (EC) No. 2201/2003 of 27th November 2003 was made to:

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

To: *(name and address)*

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

To: *(name and address)*

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

To: *(name and address)*

Date: *(insert date)*

(signed)

Solicitor for pursuer

(add name and business address)

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

FORM 3

Rule 11

**Form of request for consent to placement of child under Article 56 of Council Regulation
(E.C.) No. 2201/2003 of 27th November 2003**

Date: *(date of request)*

To: *(name and address of competent authority in other Member State)*

The Sheriff Court has jurisdiction in matters of parental responsibility under the Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 in respect of *(name and address of child)*. The court is contemplating the placement of *(name of child)* in *(name and address of institution)* [or with *(name and address of foster family)*] and requests your consent to the placement in accordance with Article 56 of Council Regulation.

(Signed)

Sheriff Clerk

EXPLANATORY NOTE

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

This Act of Sederunt makes rules in respect of civil cases involving matrimonial matters and matters of parental responsibility to which Council Regulation (E.C.) No. 2201/2003 applies. Rules 2 to 9 provide for the procedure for transfer between the sheriff court and courts in other Member States under Article 15 of the Council Regulation. Rule 10 provides for applications for certificates under Articles 39 and 41 of the Council Regulation. Rule 11 makes provision for requests for the consent of a competent authority to the placement of a child in another Member States under Article 56 of the Council Regulation.