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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 386**

**Act of Sederunt (Sheriff Court Rules)  
(Miscellaneous Amendments) (No. 3) 2011**

**Amendment of the 1997 Act of Sederunt**

- 9.—(1) The 1997 Act of Sederunt is amended in accordance with the following subparagraphs.
- (2) In rule 5.1 (interpretation)(1)—
- (a) insert the following definitions in the appropriate sequential order—
- ““2011 Regulations” means the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011(2);
- “Maintenance Decision” has the meaning given to “decision” by Article 2(1) of the Maintenance Regulation;
- “Maintenance Regulation” means Council Regulation (EC) No 4/2009(3) of 18th December 2008 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark(4);
- “Maintenance Regulation State” in the application of any provision in relation to the Maintenance Regulation, refers to any of the Member States;”;
- (b) omit the definition of “Hague Convention”;
- (c) for the definition of “Hague Convention Country” substitute “means a country or territory specified in Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993(5)”.
- (3) In rule 5.2 (application) after paragraph (5) insert—
- “(6) Part VII of this Chapter shall have effect in relation to a Maintenance Decision.
- (7) Part VIII of this Chapter shall have effect only in relation to—
- (a) a Maintenance Decision made by a court in Denmark; and
- (b) a Maintenance Decision to which sections 2 and 3 of Chapter IV of the Maintenance Regulation apply by virtue of Article 75(2)(a) or (b) of that Regulation.”.
- (4) In rule 5.3(1)(a) (prescribed officer) for “and the 1982 Act” substitute “the 1982 Act and the 2011 Regulations”.
- (5) In rule 5.4 (maintenance orders register)—
- (a) in paragraph (1) for “and the 1982 Act” substitute “the 1982 Act and the Maintenance Regulation”;

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(1) Rule 5.1 was last amended by [S.S.I. 2009/29](#).

(2) [S.I. 2011/1484](#).

(3) OJ No. L7, 10.1.2009, p1-79.

(4) OJ No. L 299 16.11.2005, p. 62-70.

(5) [S.I. 1993/1593](#). The list of countries in Schedule 1 to that S.I. is amended by paragraph 25 of Schedule 7 to the 2011 Regulations.

- (b) in paragraph (2) for “the provisions of those Acts” substitute “the relevant provisions”;
  - (c) in paragraph (3) for “the section of the Act and” substitute “the relevant provision including”.
- (6) Omit the following rules—
- (a) rule 5.15 (application for transmission of order in the Republic of Ireland);
  - (b) rule 5.34 (intimation of registration of, or of decision not to register, an order made in the Republic of Ireland);
  - (c) rule 5.35 (application to set aside registration of, or to set aside decision not to register, an order made in the Republic of Ireland).
- (7) In rule 5.38(1) (applications under sections 5 or 5A of the 1982 Act)(6)—
- (a) for “sections 5 or 5A” substitute “section 5A”;
  - (b) the heading of that rule becomes “Applications under section 5A of the 1982 Act”.
- (8) After Part VI of Chapter 5 (incoming orders under the 1982 Act), insert—

## “PART VII

### MAINTENANCE DECISIONS UNDER THE MAINTENANCE REGULATION

#### **Application for transmission of a Maintenance Decision to another Maintenance Regulation State**

**5.44.**—(1) This rule applies to applications under Article 40 of the Maintenance Regulation to enforce a Maintenance Decision of a sheriff in another Maintenance Regulation State.

(2) On receipt of an application in the form of a letter, the sheriff clerk will provide the applicant with a certified copy of the Maintenance Decision and a completed extract from the decision in the form of Annex I or II to the Maintenance Regulation as the case may be.

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

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

#### **Enforcement of a Maintenance Decision made by a court in a Maintenance Regulation State other than Denmark**

**5.45.** The “enforcing court” under paragraph 4(2) of Schedule 1 to the 2011 Regulations, means the sheriff court having jurisdiction in the matter in accordance with Schedule 8 to the 1982 Act.

## PART VIII

### RECOGNITION AND ENFORCEMENT OF MAINTENANCE DECISIONS MADE BY COURTS IN DENMARK ETC.

#### **Recognition and enforcement of a Maintenance Decision made in Denmark etc.**

**5.46.** The “registering court” under paragraph 6(2) of Schedule 1 to the 2011 Regulations, means the sheriff court having jurisdiction in the matter in accordance with Schedule 8 to the 1982 Act.

#### **Intimation of registration of, or refusal to register, a Maintenance Decision made in Denmark etc.**

**5.47.—**(1) Intimation of the registration of a Maintenance Decision in accordance with Article 31 of the Maintenance Regulation shall be given by the sheriff clerk—

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

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

#### **Application to set aside registration of, or to set aside decision not to register, a Maintenance Decision made in Denmark etc.**

**5.48.** An application under Article 32 of the Maintenance Regulation shall be by summary application setting out the grounds of the application.

#### **Sist of proceedings**

**5.49.** An application under Article 35 of the Maintenance Regulation shall be made by motion.”

(9) In Schedule 1 (forms)—

- (a) omit Form 69 (notice of registration for enforcement in Scotland of a maintenance order made in the Republic of Ireland);
- (b) in Form 70 (notice of registration for the purposes of enforcement in Scotland of a maintenance order made in the \*Republic of Ireland/a Hague Convention Country)—
  - (i) for “of the Maintenance Orders (Reciprocal Enforcement) Act 1972 Registers” substitute “in the Maintenance Orders Register”;
  - (ii) omit “Republic of Ireland or”;
  - (iii) omit “as the case may be”;
  - (iv) the heading of the Form becomes “Notice of registration for the purposes of enforcement in Scotland of a maintenance order made in a Hague Convention Country”;
- (c) in Form 71 (notice of a decision not to register, for the purposes of the enforcement in Scotland, a maintenance order made in the \*Republic of Ireland/a Hague Convention Country)—
  - (i) omit “Republic of Ireland or”;
  - (ii) omit “as the case may be”;
  - (iii) omit “(Reciprocal Enforcement) Act 1972”;

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

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- (iv) the heading of the Form becomes “Notice of a decision not to register, for the purposes of the enforcement in Scotland, a Maintenance Order made in a Hague Convention Country”;
- (d) in Form 72 (intimation of registration for enforcement in Scotland of a maintenance order made in a Hague Convention Country) omit “(Reciprocal Enforcement) Act 1972”;
- (e) the heading of Form 73 becomes “Notice of determination by sheriff clerk of application under section 5A of the Civil Jurisdiction and Judgements Act 1982”;
- (f) after Form 73 insert Forms 73A, 73B and 73C set out in Part 2 of the Schedule to this Act of Sederunt.