
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 85

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Regulation (EC) No. 44/2001) (Transitional Provisions) 2019

Citation, commencement and application etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Regulation (EC) No. 44/2001) (Transitional Provisions) 2019.

(2) It comes into force on 28th March 2019.

(3) This Act of Sederunt applies to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered, and to court settlements approved or concluded before 10th January 2015 which fall within the scope of Council Regulation (EC) No. 44/2001(1).

(4) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session

2.—(1) Part V (recognition and enforcement of judgments under the Civil Jurisdiction and Judgments Act 1982 or under the Lugano Convention of 30th October 2007) of Chapter 62 of the Rules of the Court of Session 1994(2) is amended in accordance with this paragraph.

(2) The heading of Part V of Chapter 62 becomes “RECOGNITION AND ENFORCEMENT OF JUDGMENTS UNDER THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982, COUNCIL REGULATION (EC) NO. 44/2001 OF 22ND DECEMBER 2001 OR THE LUGANO CONVENTION OF 30TH OCTOBER 2007”.

(3) In rule 62.26 (application and interpretation of Part V of Chapter 62)(3)—

(a) for paragraph (1), substitute—

“(1) This Part applies to the recognition and enforcement of a judgment under the Act of 1982, the Council Regulation or the Lugano Convention.”;

(b) in paragraph (2)—

(i) after the definition of “Contracting State”, insert—

““the Council Regulation” means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of

(1) OJ L 12, 16.01.2001, p.1. Article 66 of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p.1) makes transitional provisions saving the operation of Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters in certain specified cases.

(2) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2019/81. Part V of Chapter 62 of the Rules of the Court of Session was last amended by S.S.I. 2015/26.

(3) Rule 62.26 was substituted by S.S.I. 2004/52 and last amended by S.S.I. 2015/26.

judgments in civil and commercial matters⁽⁴⁾ and as applied by the Agreement of 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽⁵⁾”;

(ii) after the definition of “the Lugano Convention”, insert—

““Member State” has the same meaning as Member State in the Council Regulation.”.

(4) In rule 62.28 (enforcement of judgments, authentic instruments or court settlements from another Contracting State or State bound by the Lugano Convention)⁽⁶⁾—

(a) the cross-heading becomes “**Enforcement of judgments, authentic instruments or court settlements from another Contracting State, Member State or State bound by the Lugano Convention**”;

(b) in paragraph (1)—

(i) at the end of sub-paragraph (a), omit “or”;

(ii) after sub-paragraph (a), insert—

“(b) Article 38 (enforcement of judgment from Member State), Article 57 (enforcement of authentic instrument from another Member State) or Article 58 (enforcement of court settlement from another Member State) of the Council Regulation;”;

(c) in paragraph (2), before “There shall be produced”, insert “Subject to paragraph (3),”;

(d) after paragraph (2), insert—

“(3) Paragraph (2)(b) and (d) do not apply to a petition under Article 38 (enforcement of judgment from another Member State), Article 57 (enforcement of authentic instrument from another Member State) or Article 58 (enforcement of settlement from another Member State) of the Council Regulation but there must be produced with such a petition a certificate under Article 54 (standard form of certificate of judgment), Article 57 (standard form of certificate of authentic instrument) or Article 58 (standard form of certificate of court settlement) of the Council Regulation.”;

(e) in paragraph (4), after “paragraph (2)(a) to (d)”, insert “, (3)”.

(5) In rule 62.30 (warrant for registration under the Act of 1982 or the Lugano Convention)⁽⁷⁾—

(a) the cross-heading becomes “**Warrant for registration under the Act of 1982, the Council Regulation or the Lugano Convention**”;

(b) in paragraph (1), after “the Act of 1982”, insert “or, as the case may be, the Council Regulation”.

(6) In rule 62.32 (registration under the Act of 1982 or the Lugano Convention)⁽⁸⁾—

(a) the cross-heading becomes “**Registration under the Act of 1982, the Council Regulation or the Lugano Convention**”;

(b) in paragraph (1), after “the Act of 1982”, insert “, the Council Regulation”.

⁽⁴⁾ OJ L 12, 16.01.2001, p.1. Repealed by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p.1), subject to transitional provisions set out in Article 66 of that Regulation.

⁽⁵⁾ OJ L 299, 16.11.2005, p.62.

⁽⁶⁾ Rule 62.28 was substituted by [S.S.I. 2004/52](#) and last amended by [S.S.I. 2015/26](#).

⁽⁷⁾ Rule 62.30 was substituted by [S.S.I. 2004/52](#) and last amended by [S.S.I. 2015/26](#).

⁽⁸⁾ Rule 62.32 was inserted by [S.S.I. 2004/52](#) and last amended by [S.S.I. 2015/26](#).

(7) In rule 62.33 (service of warrant for registration under the Act of 1982 or the Lugano Convention)(9) the cross-heading becomes “**Service of warrant for registration under the Act of 1982, the Council Regulation or the Lugano Convention**”.

(8) In rule 62.34 (appeals under the Act of 1982 or the Lugano Convention)(10)—

(a) the cross-heading becomes “**Appeals under the Act of 1982, the Council Regulation or the Lugano Convention**”;

(b) in paragraph (1)—

(i) after “the Act of 1982 (appeal against granting of warrant for registration),” insert “an appeal under Article 43 (appeals by either party) of the Council Regulation”;

(ii) in sub-paragraph (b)—

(aa) after “the Act of 1982”, insert “, the Council Regulation”;

(bb) after “another Contracting State or, as the case may be,” insert “Member State or”;

(c) in paragraph (2)—

(i) after “the Act of 1982 (appeal against refusal to grant warrant for registration)”, insert “, an appeal under Article 43 (appeals by either party) of the Council Regulation”;

(ii) in sub-paragraph (b), after “the Act of 1982”, insert “, the Council Regulation”.

(9) In rule 62.35 (reclaiming under the Act of 1982 or the Lugano Convention)(11)—

(a) the cross-heading becomes “**Reclaiming under the Act of 1982, the Council Regulation or the Lugano Convention**”;

(b) in paragraph (1), after “the Act of 1982”, insert “, the Council Regulation”.

(10) In rule 62.36 (recognition of judgments from another Contracting State or State bound by the Lugano Convention)(12)—

(a) the cross-heading becomes “**Recognition of judgments from another Contracting State, Member State or State bound by the Lugano Convention**”;

(b) in paragraph (1)—

(i) after “Schedule 1 to the Act of 1982”, insert “, Article 33 of the Council Regulation (recognition of judgment)”;

(ii) after “(warrant for registration under the Act of 1982”, insert “, the Council Regulation”;

(c) in paragraph (2), after “the Act of 1982 (application for recognition of a judgment)”, insert “, Article 33(2) of the Council Regulation (application for recognition of a judgment)”.

(11) In rule 62.39 (cancellation of registration under the Act of 1982 or the Lugano Convention)(13)—

(a) the cross-heading becomes “**Cancellation of registration under the Act of 1982, the Council Regulation or the Lugano Convention**”;

(b) in paragraph (a)—

(i) after “(warrant for registration under the Act of 1982”, insert “, the Council Regulation”;

(ii) after “(registration under the Act of 1982”, insert “, the Council Regulation”;

(9) Rule 62.33 was substituted by [S.S.I. 2004/52](#) and last amended by [S.S.I. 2015/26](#).

(10) Rule 62.34 was substituted by [S.S.I. 2004/52](#) and last amended by [S.S.I. 2015/26](#)

(11) Rule 62.35 was substituted by [S.S.I. 2004/52](#) and last amended by [S.S.I. 2015/26](#).

(12) Rule 62.36 was substituted by [S.S.I. 2004/52](#) and then by [S.S.I. 2009/450](#), and amended by [S.S.I. 2015/26](#).

(13) Rule 62.39 was substituted by [S.S.I. 2004/52](#) and last amended by [S.S.I. 2015/26](#).

- (iii) after “Schedule 1 to the Act of 1982”, insert “, an appeal under Article 43 of the Council Regulation”.
- (12) In rule 62.40 (enforcement in another Contracting State or State bound by the Lugano Convention of Court of Session judgments etc.)(**14**)—
- (a) the cross-heading becomes “**Enforcement in another Contracting State or Member State of Court of Session judgments etc.**”;
- (b) after paragraph (1), insert—
- “(2) Where a person seeks to apply under Chapter III of the Council Regulation for recognition or enforcement in another Member State of a judgment given by the court, the person must apply by letter to the Deputy Principal Clerk for—
- (a) a certificate under Article 54 of the Council Regulation;
- (b) a certified copy of the judgment; and
- (c) if required, a certified copy of the opinion of the court.”;
- (c) in paragraph (3), after “paragraph (1)(a)”, insert “, (2)(a)”;
- (d) after paragraph (4), insert—
- “(5) Where a person seeks to apply under Article 57 or 58 of the Council Regulation for enforcement in another Member State of an authentic instrument or court settlement registered for execution in the Books of Council and Session, the person must apply by letter to the Keeper of the Registers for—
- (a) a certificate under Article 57 or 58 of the Council Regulation; and
- (b) an extract of the authentic instrument or court settlement.”;
- (e) in paragraph (6), after “paragraph (4)”, insert “, (5)”.

Revocation

3. Paragraph 2(2) to (12) of Act of Sederunt (Rules of the Court of Session Amendment) (Regulation (EU) No. 1215/2012) 2015(**15**) is revoked.

Form of applications

4. In the Appendix—
- (a) in Form 62.28 (form of petition for registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982 or under Article 38, Article 57 or Article 58 of the Lugano Convention)(**16**)—
- (i) in the heading, after “or Article 58 of”, insert “the Council Regulation or”;
- (ii) in the instance, for “Civil Jurisdiction and Judgments Act 1982 [or under the Lugano Convention”, substitute “Civil Jurisdiction and Judgments Act 1982 [or under Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil or commercial matters or under the Lugano Convention”;
- (iii) in paragraph 7, for “Civil Jurisdiction and Judgments Act 1982 [or under Article 38”, substitute “Civil Jurisdiction and Judgments Act 1982 [or under Article 38 [or 57 or 58] of Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction

(14) Rule 62.40 was substituted by [S.S.I. 2004/52](#) and last amended by [S.S.I. 2015/26](#).

(15) [S.S.I. 2015/26](#).

(16) Form 62.28 was last substituted by [S.S.I. 2015/26](#).

and the recognition and enforcement of judgments in civil or commercial matters [or under Article 38”;

- (b) in Form 62.33 (form of notice of decree and warrant for registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982 or under Article 38, Article 57 or Article 58 of the Lugano Convention)(**17**)—

(i) in the heading, after “Article 58 of”, insert “the Council Regulation or”;

(ii) in the preamble, for “[or under Article 38 [or 57 or 58] of the Lugano Convention”, substitute “[or under Article 38 [or 57 or 58] of Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil or commercial matters or the Lugano Convention”.

Edinburgh
11th March 2019

CJM SUTHERLAND
Lord President
I.P.D.