
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 440

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) (No. 2) 2020

Amendment of the Rules of the Court of Session 1994

2.—(1) The Rules of the Court of Session 1994⁽¹⁾ are amended in accordance with this paragraph.

(2) In the heading of Part V of Chapter 62 (recognition, registration and enforcement of foreign judgments, etc.)⁽²⁾, after “COUNCIL REGULATION (EC) NO. 44/2001 OF 22ND DECEMBER 2001” insert “, THE CONVENTION ON CHOICE OF COURT AGREEMENTS OF 30TH JUNE 2005”.

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

(a) in paragraph (1), after “the Council Regulation” insert “, the 2005 Hague Convention”; and

(b) in paragraph (2), after the definition of “the Council Regulation”⁽⁴⁾ insert—

““the 2005 Hague Convention” means the Convention on Choice of Court Agreements concluded on 30th June 2005 at the Hague⁽⁵⁾”.

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

(a) in paragraph (1)—

(i) at the end of sub-paragraph (b) omit “or”; and

(ii) after sub-paragraph (b) insert—

“(ba) section 4B of the Act of 1982 (registration and enforcement of judgments under the 2005 Hague Convention)⁽⁷⁾; or”;

(b) in paragraph (2), for “Subject to paragraph (3), there shall” substitute “Subject to paragraphs (3), (3AA) and (3AB), there must”;

(c) after paragraph (3), insert—

“(3AA) For applications to which paragraph (1)(ba) applies, in addition to the information specified in paragraph (2), the following must be produced with the petition—

(a) the exclusive choice of court agreement, a certified copy thereof, or other evidence of its existence; and

(b) in the case referred to in Article 12 (judicial settlements) of the 2005 Hague Convention, a certificate of a court of the State of origin that the judicial

(1) 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.I. 2020/942.

(2) The heading of Part V of Chapter 62 was last substituted by S.S.I. 2019/85.

(3) Rule 62.26 was substituted by S.S.I. 2004/52 and last amended by S.S.I. 2019/85.

(4) The definition was inserted by S.S.I. 2019/85.

(5) For the text of the Convention see Schedule 3F of the Civil Jurisdiction and Judgments Act 1982 (c.27), as introduced by section 3D(3) of that Act, inserted by section 1 of the Private International Law (Implementation of Agreements) Act 2020 (c.24).

(6) Rule 62.28 was last amended by S.S.I. 2019/85.

(7) Section 4B of the Civil Jurisdiction and Judgments Act 1982 (c.27) was inserted by S.I. 2015/1644.

settlement or a part of it is enforceable in the same manner as a judgment in the State of origin.

(3AB) An application for recognition or enforcement may be accompanied by a certificate issued by a court (including an officer of the court) of the State of origin under Article 13(3) of the 2005 Hague Convention.”; and

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

(5) In rule 62.29 (protective measures and interim interdict)(8), after “rule 62.34” where it twice occurs insert “or 62.34A”.

(6) In rule 62.30 (warrant for registration under the Act of 1982, the Council Regulation or the Lugano Convention)(9)—

(a) in the cross-heading, after “**the Council Regulation**” insert “, **the 2005 Hague Convention**”;

(b) in paragraph (1), after “the Council Regulation” insert “, the 2005 Hague Convention”; and

(c) in paragraph (2)(a), after “rule 62.34” insert “or 62.34A”.

(7) In rule 62.32 (registration under the Act of 1982, the Council Regulation or the Lugano Convention)(10)—

(a) in the cross-heading, after “**the Council Regulation**” insert “, **the 2005 Hague Convention**”; and

(b) in paragraph (1), after “the Council Regulation” insert “, the 2005 Hague Convention”.

(8) In rule 62.33 (service of warrant for registration under the Act of 1982, the Council Regulation or the Lugano Convention), in the cross-heading, after “**the Council Regulation**” insert “, **the 2005 Hague Convention**”.

(9) After rule 62.34 (appeals under the Act of 1982, the Council Regulation or the Lugano Convention), insert—

“Appeals under section 6B(1) of the Act of 1982 (appeals in relation to registration of judgments under the 2005 Hague Convention)

62.34A.—(1) An appeal under section 6B(1) of the Act of 1982 (appeals in relation to registration of judgments under the 2005 Hague Convention)(11) is to be made by motion—

(a) to the Lord Ordinary; and

(b) within one month of service under rule 62.33 (service of warrant for registration under the Act of 1982, the Council Regulation, the 2005 Hague Convention or the Lugano Convention) or within two months of such service where service was executed on a person domiciled in another Contracting State or, as the case may be, State bound by the 2005 Hague Convention or the Lugano Convention.

(2) Where the respondent in any such appeal is domiciled furth of the United Kingdom—

(a) where that respondent has an address for service in Scotland, intimation of the motion must be made to that address for service; and

(b) in any other case, intimation of the motion must be made in accordance with rule 16.2 (service furth of United Kingdom)(12) or, as the case may be, rule 16.5 (service where address of person is not known).

(8) Rule 62.29 was substituted by [S.S.I. 2004/52](#).

(9) Rule 62.30 was last amended by [S.S.I. 2019/85](#).

(10) Rules 62.32 to 62.36 were last amended by [S.S.I. 2019/85](#).

(11) Section 6B of the Civil Jurisdiction and Judgments Act 1982 (c.27) was inserted by [S.I. 2015/1644](#).

(12) Rule 16.2 was last amended by [S.I. 2020/942](#).

- (3) Where an appeal under paragraph (1) is successful, the court must, on the motion of the appellant, pronounce an interlocutor recalling any protective measure or interim interdict.”
- (10) In rule 62.35 (reclaiming under the Act of 1982, the Council Regulation or the Lugano Convention)—
- (a) in the cross-heading, after “**the Council Regulation**” insert “, **the 2005 Hague Convention**”; and
 - (b) in paragraph (1), after “or the Lugano Convention)” insert “or rule 62.34A (appeals under section 6B(1) of the Act of 1982)”.
- (11) In rule 62.36(1) (recognition of judgments from another Contracting State, Member State or State bound by the Lugano Convention)—
- (a) after “Article 33 of the Council Regulation (recognition of judgment)” insert “, section 4B of the Act of 1982 (registration and enforcement of judgments under the 2005 Hague Convention)”; and
 - (b) after “under the Act of 1982, the Council Regulation” insert “, the 2005 Hague Convention”.
- (12) In rule 62.39 (cancellation of registration under the Act of 1982, the Council Regulation or the Lugano Convention)(13)—
- (a) in the cross-heading, after “**the Council Regulation**” insert “, **the 2005 Hague Convention**”; and
 - (b) in paragraph (a)—
 - (i) after “the Council Regulation”, where it first and second occurs, insert “, the 2005 Hague Convention”; and
 - (ii) after “Article 43 of the Council Regulation” insert “, an appeal under section 6B of the Act of 1982 (appeals in relation to registration of judgments under the 2005 Hague Convention)”.
- (13) In rule 62.40 (enforcement in another Contracting State or Member State of Court of Session judgments etc.)(14)—
- (a) in paragraph (1), for “Where a person” substitute “Subject to paragraph (2ZA), where a person”;
 - (b) after paragraph (2), insert—

“(2ZA) Where a person seeks to apply under Chapter III of the 2005 Hague Convention for recognition or enforcement in another Contracting State of a judgment given by the court, that person must apply by letter to the Deputy Principal Clerk for—

 - (a) a certificate under Article 13(3) of the 2005 Hague Convention;
 - (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 “, (2)(a)” insert “, (2ZA)(a)”;
 - (d) after paragraph (5), insert—

“(5ZA) Where a person seeks to apply under Article 12 of the 2005 Hague Convention for enforcement in another Contracting State of a court settlement registered for execution in the Books of Council and Session, that person must apply by letter to the Keeper of the Registers for—

 - (a) a certificate under Article 13(1)(e) of the 2005 Hague Convention; and

(13) Rule 62.39 was last amended by [S.S.I. 2019/85](#).

(14) Rule 62.40 was last amended by [S.S.I. 2019/85](#).

- (b) an extract of the court settlement.”; and
- (e) in paragraph (6), after “paragraph (4), (5)” insert “, (5ZA)”.
- (14) In rule 74.1(2) (application and interpretation of Chapter 74: Companies)(**15**)—
 - (a) omit the definition of “main proceedings”(16);
 - (b) omit the definition of “territorial proceedings”(17).
- (15) In rule 74.10(2) (form of petition in administration procedure)(18), for sub-paragraph (j) substitute—
 - “(j) in the case of a petition under the Act of 1986, averments stating, in so far as it is within the petitioner’s knowledge—
 - (i) whether or not the centre of main interests of the company is situated within the United Kingdom or in a Member State;
 - (ii) where the centre of main interests of the company is situated in a Member State, whether or not the company possesses an establishment in the United Kingdom;
 - (iii) whether there are insolvency proceedings elsewhere in respect of the company;”.
- (16) In rule 74.21(1) (petition to wind up a company)(19)—
 - (a) for sub-paragraph (b)(iv) substitute—
 - “(iv) whether or not the centre of main interests of the company is situated within the United Kingdom or in a Member State;
 - (v) where the centre of main interests of the company is situated in a Member State, whether or not the company possesses an establishment in the United Kingdom;”;
 - (b) in sub-paragraph (f) omit “and whether those proceedings are main or territorial proceedings”.
- (17) In rule 74.24 (substitution of creditor or contributory for petitioner)(20) omit paragraph (1A)(21).
- (18) In rule 74.25(1)(b) (provisional liquidator)(22) omit “, a member State insolvency practitioner appointed in main proceedings”.
- (19) In the appendix (forms), 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)(23)—
 - (a) in the preamble, after “Civil Jurisdiction and Judgments Act 1982” insert “[or under the Convention on Choice of Court Agreements concluded on 30th June 2005 at the Hague]”; and
 - (b) in paragraph 7, after “Civil Jurisdiction and Judgments Act 1982” insert “[or under section 4B of the Civil Jurisdiction and Judgments Act 1982]”.

(15) Rule 74.1(2) was last amended by [S.S.I. 2020/198](#).

(16) The definition was amended by [S.S.I. 2017/202](#).

(17) The definition was amended by [S.S.I. 2007/449](#).

(18) Rule 74.10(2) was last amended by [S.S.I. 2016/318](#).

(19) Rule 74.21(1) was last amended by [S.S.I. 2020/198](#).

(20) Rule 74.24 was last amended by [S.S.I. 2017/202](#).

(21) Paragraph (1A) was inserted by [S.S.I. 2003/385](#) and amended by [S.S.I. 2017/202](#).

(22) Rule 74.25(1) was last amended by [S.S.I. 2019/81](#).

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