
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 440

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session 1994 and Sheriff
Court Rules Amendment) (Miscellaneous) 2020**

Made - - - - - *17th December 2020*

Laid before the Scottish Parliament *18th December 2020*

Coming into force in accordance with article 1(2)

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 12 and 48(1) of the Civil Jurisdiction and Judgments Act 1982(b), sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(c), section 36(1) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016(d), and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2020.

(2) It comes into force on IP completion day.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session 1994

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

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).
(b) 1982 c.27. Sections 12 and 48(1) of the Civil Jurisdiction and Judgments Act 1982 were relevantly amended by S.I. 2015/1644 and are prospectively amended by S.I. 2019/479. Section 48(1) is prospectively amended by the Private International Law (Implementation of Agreements) Act 2020 (c.24).
(c) 2014 asp 18.
(d) 2016 asp 2.
(e) 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) In the heading of Part V of Chapter 62 (recognition, registration and enforcement of foreign judgments, etc.)(a), 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)(b)—

(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”(c) insert—

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

(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)(e)—

(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)(f); 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 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)(g), 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)(h)—

(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”.

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

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

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

(d) 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).

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

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

(g) Rule 62.29 was substituted by S.S.I. 2004/52.

(h) Rule 62.30 was last amended by S.S.I. 2019/85.

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

- (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)(b) 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)(c) or, as the case may be, rule 16.5 (service where address of person is not known).

(3) Where an appeal under paragraph (1) is successful, the court must, on the motion of the appellants, 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)”;
- (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)(d)—

(a) Rules 62.32 to 62.36 were last amended by S.S.I. 2019/85.
(b) Section 6B of the Civil Jurisdiction and Judgments Act 1982 (c.27) was inserted by S.I. 2015/1644.
(c) Rule 16.2 was last amended by S.I. 2020/942.
(d) Rule 62.39 was last amended by S.S.I. 2019/85.

- (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.)(a)—
- (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
 - (b) an extract of the court settlement.”;
 - (e) in paragraph (6), after “paragraph (4), (5)” insert “, (5ZA)”.
- (14) In rule 74.1(2) (application and interpretation of Chapter 74: Companies)(b)—
- (a) omit the definition of “main proceedings”(c);
 - (b) omit the definition of “territorial proceedings”(d).
- (15) In rule 74.10(2) (form of petition in administration procedure)(e), 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;”.

(a) Rule 62.40 was last amended by S.S.I. 2019/85.
 (b) Rule 74.1(2) was last amended by S.S.I. 2020/198.
 (c) The definition was amended by S.S.I. 2017/202.
 (d) The definition was amended by S.S.I. 2007/449.
 (e) Rule 74.10(2) was last amended by S.S.I. 2016/318.

(16) In rule 74.21(1) (petition to wind up a company)(a)—

(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;”; and

(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)(b) omit paragraph (1A)(c).

(18) In rule 74.25(1)(b) (provisional liquidator)(d) 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)(e)—

(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]”.

Amendment of Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986

3.—(1) The Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986(f) is amended in accordance with this paragraph.

(2) For rule 10(1)(h) (petitions for administration orders)(g) substitute—

“(h) 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 (other than Denmark);

(ii) where the centre of main interests of the company is situated in a member State (other than Denmark), whether or not the company possesses an establishment in the United Kingdom;

(iii) whether there are insolvency proceedings elsewhere in respect of the company;”.

(3) For rule 18(1)(aa) (petitions to wind up a company)(h) substitute—

“(aa) 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 (other than Denmark);

(ii) where the centre of main interests of the company is situated in a member State (other than Denmark), whether or not the company possesses an establishment in the United Kingdom;

(a) Rule 74.21(1) was last amended by S.S.I. 2020/198.

(b) Rule 74.24 was last amended by S.S.I. 2017/202.

(c) Paragraph (1A) was inserted by S.S.I. 2003/385 and amended by S.S.I. 2017/202.

(d) Rule 74.25(1) was last amended by S.S.I. 2019/81.

(e) Form 62.28 was substituted by S.S.I. 2015/26.

(f) S.I. 1986/2297, last amended by S.S.I. 2020/198.

(g) Rule 10(1)(h) was substituted by S.S.I. 2008/223 and amended by S.S.I. 2013/171.

(h) Rule 18(1)(aa) was inserted by S.S.I. 2008/223.

- (iii) whether there are insolvency proceedings elsewhere in respect of the company;”.

Amendment of the Act of Sederunt (Fatal Accident Inquiry Rules) 2017

4.—(1) The Act of Sederunt (Fatal Accident Inquiry Rules) 2017^(a) is amended in accordance with this paragraph.

(2) In schedule 2 (intimation), Part 2 (intimation furth of Scotland)—

- (a) in paragraph 8 (interpretation of Part 2), in the definition of “Hague Convention country” omit “, other than an EU member State”;
- (b) in paragraph 9 (intimation furth of Scotland)—
 - (i) omit sub-paragraph (3); and
 - (ii) in sub-paragraph (4) omit “(other than an EU member State)”;
- (c) omit paragraph 11 (service in an EU member State); and
- (d) in paragraph 12(1) (service in a Hague Convention country) omit “(other than an EU member State)”.

Savings

5.—(1) Chapter 74 of the Rules of the Court of Session 1994^(b) and the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986 continue to apply, as if they had not been amended by paragraphs 2(14) to (18) and 3(2) to (3), respectively, in relation to proceedings to which Article 67(3)(c) of the EU withdrawal agreement applies.

(2) The Act of Sederunt (Fatal Accident Inquiry Rules) 2017 continues to apply, as if it had not been amended by paragraph 4(2), in relation to the intimation of documents to which Article 68(a) of the EU withdrawal agreement applies.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
17th December 2020

^(a) S.S.I. 2017/103, last amended by S.I. 2020/942.

^(b) 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. Chapter 74 was last amended by S.S.I. 2020/198.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session 1994 (the “RCS”), the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986 (the “1986 Rules”) and the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (the “2017 Rules”). It comes into force on IP completion day. The amendments made to Chapter 74 of the RCS, the 1986 Rules and the 2017 Rules are in consequence of the United Kingdom’s withdrawal from the European Union.

The amendments to the RCS concern two matters.

Firstly, paragraph 2(2) to (13) and (19) implement the Convention on Choice of Court Agreements (“the Convention”), which was concluded at The Hague on 30th June 2005. The Convention requires a court of a Contracting State, which has been designated by an agreement to deal with disputes arising under it, to hear a case (and other courts to decline to do so) and that any judgment given by a chosen court must be recognised and enforced in other Contracting States. Part V of Chapter 62 of the RCS makes provision in relation to the recognition and enforcement of judgments under the Civil Jurisdiction and Judgments Act 1982 (“the 1982 Act”), Council Regulation (EC) No. 44/2001 of 30th June 2005 and the Lugano Convention of 30th October 2007. Its application is extended by this Act of Sederunt to include the recognition and enforcement of judgments under the Convention.

The rules provide that applications under section 4B of the 1982 Act for the registration and enforcement of judgments under the Convention are made by petition, and set out the information which must be provided with such applications. Judgments are registered, and enforced, in the same way as other foreign judgments under private international law agreements. New rule 62.34A makes provision for appeals made under section 6B of the 1982 Act in relation to the registration of judgments under the Convention. Provision is made by the Act of Sederunt concerning the procedure relating to the recognition and enforcement in another Contracting State of judgments given by the Court of Session.

Secondly, paragraph 2(14) to (18) amends Chapter 74 (companies) of the RCS to address deficiencies arising in relation to court procedure in cross-border insolvency proceedings following the withdrawal of the United Kingdom from the European Union. The amendments are consequential to legislative changes made by the Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146) and the Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94).

Paragraph 3 amends rules 10 and 18 of the 1986 Rules to make equivalent amendments as those set out above in relation to Chapter 74 of the RCS.

Paragraph 4 makes minor amendments to schedule 2 of the 2017 Rules to address deficiencies in relation to the service of documents under the Convention of 15th November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (commonly referred to as the “Hague Service Convention”) arising from EU exit and the application of the Hague Service Convention post-exit.

Under paragraph 5 of this Act of Sederunt the amendments made to Chapter 74 of the RCS, the 1986 Rules and the 2017 Rules are subject to saving provision in those circumstances which are provided by Articles 67(3)(c) and 68(a) of the Withdrawal Agreement between the United Kingdom and the European Union.