
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 450

**Act of Sederunt (Rules of the Court of Session
Amendment No. 9) (Miscellaneous) 2009**

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 9) (Miscellaneous) 2009 and, subject to subparagraph (2), comes into force on 1st January 2010.

(2) Paragraphs 4 to 7 come into force on 25th January 2010.

(3) This Act of Sederunt is to be inserted in the Books of Sederunt.

Recognition and enforcement of judgments under the 2007 Lugano Convention

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

(2) In rule 62.26(1) (application and interpretation of Part V of Chapter 62)⁽²⁾, for “or under the Council Regulation” substitute “, the Lugano Convention or the Council Regulation”.

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

(4) In rule 62.26(2), after the definition of “the Council Regulation”⁽³⁾ insert—

““the Lugano Convention” means the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark and signed by the European Community on 30th October 2007⁽⁴⁾;”

(5) In rule 62.28 (enforcement of judgments, authentic instruments or court settlements from another Contracting State or Member State)⁽⁵⁾—

(a) in paragraph (1)(a) omit “or 3C”;

(b) after paragraph (1)(b) insert—

“or

(c) Article 38 (enforcement of judgment from another State bound by the Lugano Convention), Article 57 (enforcement of authentic instrument from another State bound by the Lugano Convention) or Article 58 (enforcement of court settlement from another State bound by the Lugano Convention) of the Lugano Convention.”.

(1) [S.I. 1994/1443](#), last amended by [S.S.I. 2009/387](#).

(2) Rule 62.26 was substituted by [S.S.I. 2004/52](#).

(3) The definition of “Council Regulation” was substituted by [S.S.I. 2007/350](#).

(4) O.J. No. L 338, 21.12.2007 p.3.

(5) Rule 62.28 was substituted by [S.S.I. 2004/52](#).

(c) After paragraph (3) insert—

“(3A) Paragraph (2)(b) and (d) shall not apply to a petition under Article 38 (enforcement of judgment from another State bound by the Lugano Convention), Article 57 (enforcement of authentic instrument from another State bound by the Lugano Convention) or Article 58 (enforcement of court settlement from another State bound by the Lugano Convention) of the Lugano Convention but there shall 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 Lugano Convention.”; and

(d) in paragraph (4), for “or (3)” substitute “, (3) or (3A)”.

(6) The heading to rule 62.28 becomes “**Enforcement of judgments, authentic instruments or court settlements from another Contracting State, Member State or State bound by the Lugano Convention**”.

(7) In rule 62.30 (warrant for registration under the Act of 1982 or the Council Regulation)(6), in paragraph (1), after “Council Regulation” insert “or the Lugano Convention”.

(8) The heading to rule 62.30 becomes “**Warrant for registration under the Act of 1982, the Council Regulation or the Lugano Convention**”.

(9) In rule 62.32 (registration under the Act of 1982 or the Council Regulation)(7), in paragraph (1), for “and the Council Regulation” substitute “, the Council Regulation and the Lugano Convention”.

(10) The heading to rule 62.32 becomes “**Registration under the Act of 1982, the Council Regulation or the Lugano Convention**”.

(11) The heading to rule 62.33 becomes “**Service of warrant for registration under the Act of 1982, the Council Regulation or the Lugano Convention**”.

(12) In rule 62.34 (appeals under the Act of 1982 or the Council Regulation)(8)—

(a) for paragraph (1) substitute—

“(1) An appeal under Article 37 of the convention in Schedule 1 to the Act of 1982 (appeal against granting of warrant for registration), an appeal under Article 43 (appeals by either party) of the Council Regulation or an appeal under Article 43 (appeals by either party) of the Lugano Convention against the granting of a warrant for registration shall 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 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, Member State or State bound by the Lugano Convention.”;

(b) for paragraph (2) substitute—

“(2) An appeal under Article 40 of the convention in Schedule 1 to the Act of 1982 (appeal against refusal to grant warrant for registration), an appeal under Article 43 (appeals by either party) of the Council Regulation or an appeal under Article 43 (appeals by either party) of the Lugano Convention against a refusal to grant warrant for registration shall be made by motion—

(a) to the Lord Ordinary; and

(6) Rule 62.30 was substituted by [S.S.I. 2004/52](#).

(7) Rule 62.32 was substituted by [S.S.I. 2004/52](#).

(8) Rule 62.34 was substituted by [S.S.I. 2004/52](#).

(b) within one month of the interlocutor pronounced under rule 62.30(1) (warrant for registration under the Act of 1982, the Council Regulation or the Lugano Convention).”.

(13) The heading to rule 62.34 becomes “**Appeals under the Act of 1982, the Council Regulation or the Lugano Convention**”.

(14) In rule 62.35 (reclaiming under the Act of 1982 or the Council Regulation)(9), in paragraph (1), for “or the Council Regulation” substitute “, the Council Regulation or the Lugano Convention”.

(15) The heading to rule 62.35 becomes “**Reclaiming under the Act of 1982, the Council Regulation or the Lugano Convention**”.

(16) For rule 62.36 (recognition of judgments from another Contracting State or Member State)(10) substitute—

“Recognition of judgments from another Contracting State, Member State or State bound by the Lugano Convention

62.36.—(1) For the purposes of Article 26 of the convention in Schedule 1 to the Act of 1982, Article 33 of the Council Regulation (recognition of judgment) or Article 33 of the Lugano Convention (recognition of judgment), an interlocutor pronounced under rule 62.30(1) (warrant for registration under the Act of 1982, the Council Regulation or the Lugano Convention) shall imply recognition of the judgment so dealt with.

(2) In an application under Article 26(2) of the convention in Schedule 1 to the Act of 1982 (application for recognition of a judgment), Article 33(2) of the Council Regulation (application for recognition of a judgment) or Article 33(2) of the Lugano Convention (application for recognition of a judgment), rules 62.26 to 62.35 shall apply to such an application as they apply to an application under Article 31 of the convention in Schedule 1 to the Act of 1982, subject to the following provisions—

(a) it shall not be necessary to produce any documents required by rule 62.28(2)(b) and (d); and

(b) rule 62.32 shall not apply.”.

(17) In rule 62.39 (cancellation of registration under the Act of 1982 or the Council Regulation)(11), for paragraph (a) substitute—

“(a) an interlocutor under rule 62.30(1) (warrant for registration under the Act of 1982, the Council Regulation or the Lugano Convention) is recalled and registration under rule 62.32 (registration under the Act of 1982, the Council Regulation or the Lugano Convention) is ordered to be cancelled after an appeal under Article 37 of the convention in Schedule 1 to the Act of 1982, an appeal under Article 43 of the Council Regulation or an appeal under Article 43 of the Lugano Convention; or”

(18) The heading to rule 62.39 becomes “**Cancellation of registration under the Act of 1982, the Council Regulation or the Lugano Convention**”.

(19) In rule 62.40 (enforcement in another Contracting State or Member State of Court of Session judgments etc.)—

(a) in paragraph (2)(a), for “Judgments” substitute “Council”;

(b) after paragraph (2) insert—

(9) Rule 62.35 was substituted by [S.S.I. 2004/52](#).

(10) Rule 62.36 was substituted by [S.S.I. 2004/52](#).

(11) Rule 62.39 was substituted by [S.S.I. 2004/52](#).

“(2A) Where a person seeks to apply under Title III of the Lugano Convention for recognition or enforcement in another State bound by the Lugano Convention of a judgment given by the court, he shall apply by letter to the Deputy Principal Clerk for—

- (a) a certificate under Article 54 of the Lugano 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), for “or 2(a)” insert “,(2)(a) or (2A)(a)”;

(d) in paragraph (4) omit “or 3C”;

(e) after paragraph (5) insert—

“(5A) Where a person seeks to apply under Article 57 or 58 of the Lugano Convention for enforcement in another State bound by the Lugano Convention of an authentic instrument or court settlement registered for execution in the Books of Council and Session, he shall apply by letter to the Keeper of the Registers for—

- (a) a certificate under Article 57 or 58 of the Lugano Convention; and
- (b) an extract of the authentic instrument or court settlement.”; and

(f) in paragraph (6), for “paragraph (4) or (5)” substitute “paragraph (4), (5) or (5A).”.

(20) In the appendix, for Forms 62.28 and 62.33 respectively substitute the forms of those numbers set out in the Schedule to this Act of Sederunt.

3.—(1) Notwithstanding the amendments made by paragraph 2, the Rules of the Court of Session 1994, as they applied immediately before 1st January 2010, continue to have effect for the purposes of proceedings, judgments and authentic instruments to which the 1988 Convention continues to apply by virtue of Article 63 of the 2007 Lugano Convention (transitional provision).

(2) In this paragraph—

- (a) “the 1988 Convention” means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16th September 1988(**12**);
- (b) “the 2007 Lugano Convention” means the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark and signed by the European Community on 30th October 2007(**13**).

Companies

4.—(1) The Rules of the Court of Session 1994(**14**) are amended in accordance with the following subparagraphs.

(2) In rule 62.92 (recognition application)(**15**), in paragraph (1)(e), for “1985” substitute “2006”.

(3) In rule 74.1 (application and interpretation of Chapter 74)(**16**), in paragraph (2), in the definition of “registered office” —

- (a) in subparagraph (i), for “section 10 of the Companies Act 1985(**17**)” substitute “section 9 of the Companies Act 2006(**18**)”; and

(12) O.J. No. L 319, 25.11.1998, p.9.

(13) O.J. No. L 339, 21.12.2007, p.3.

(14) S.I. 1994/1443, last amended by S.S.I. 2009/387.

(15) Rule 62.92 was inserted by S.S.I. 2006/199.

(16) Rule 74.1 was amended by S.I. 1996/1756, S.S.I. 2003/385, 2006/83.

(17) 1985 c.6.

- (b) in subparagraph (ii), for “section 287 of the Companies Act 1985” substitute “section 87 of the Companies Act 2006”.

Election petitions

5.—(1) The Rules of the Court of Session 1994(19) are amended in accordance with the following subparagraph.

- (2) In rule 69.5 (service and intimation of an election petition)(20), after paragraph (3) insert—
“**(4)** Where the court makes an order for intimation and service of an election petition, the Deputy Principal Clerk shall send a copy of the petition to the Electoral Commission.”.

Applications under section 1 of the Administration of Justice (Scotland) Act 1972

6.—(1) The Rules of the Court of Session 1994 are amended in accordance with the following subparagraph.

(2) In the appendix, in Form 64.6 (form of order of court in procedure for recovery of documents under Chapter 64)(21), in the paragraph beginning “**ORDERS** the haver”—

- (a) in subparagraph (2), at the beginning insert “(if appropriate)”; and
(b) in subparagraph (5), omit “of everyone who has supplied him with any of the listed items and of the names and addresses”.

Miscellaneous amendments

7.—(1) The Rules of the Court of Session 1994 are amended in accordance with the following subparagraphs.

- (2) Rule 21A (dismissal of claim due to delay)(22) is renumbered rule 21A.1.
(3) The heading to rule 21A.1 as renumbered becomes “**Dismissal of a claim due to delay**”.
(4) Rule 34A.14 (lodging of video record and documents)(23) is renumbered 35A.14.
(5) In rule 95.2 (reports to the Court of Session under schedules 2 and 3 to the Act of 2006)(24), for “paragraph 3(3)” insert “paragraph 4(3)”.
(6) In rule 96.8 (election by Treasury not to disclose material or to provide summary)(25), in paragraph (1)—
(a) in subparagraph (1)(a)—
(i) for “do” substitute “does”; and
(ii) for “elect” substitute “elects”; and
(b) in subparagraph (1)(b)—
(i) for “are” substitute “is”; and
(ii) for “elect” substitute “elects”.
(7) In rule 96.10 (special advocates: communication about proceedings)(26)—

(18) 2006 c.46.

(19) S.I. 1994/1443, last amended by S.S.I. 2009/387.

(20) Rule 69.5 was amended by S.I. 1999/1386.

(21) Form 64.6 was inserted by S.S.I. 2000/319 as Form 64-A and renumbered by S.S.I. 2004/52.

(22) Rule 21A was inserted by S.S.I. 2008/349.

(23) Rule 35A.14 was inserted by S.S.I. 2007/450.

(24) Rule 95.2 was inserted by S.S.I. 2008/123.

(25) Rule 96.8 was inserted by S.S.I. 2008/401.

(26) Rule 96.10 was inserted by S.S.I. 2008/401.

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

- (a) in paragraph (2)(b), for “their” substitute “its”; and
- (b) in paragraph (6), for “oppose” substitute “opposes”.

Edinburgh
22nd December 2009

A.C. HAMILTON
Lord President
I.P.D.