
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 417

**Act of Sederunt (Rules of the Court of Session
Amendment No. 5) (Miscellaneous) 2010**

Foreign decrees in family actions

- 3.—**(1) The Rules are amended in accordance with the following subparagraphs.
- (2) In rule 49.1 (interpretation of Chapter 49)(1), in paragraph (1), after subparagraph (q) insert—
- “(r) an action for declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of section 7(9) of the Domicile and Matrimonial Proceedings Act 1973(2).”.
- (3) In rule 49.28 (evidence in certain undefended family actions)(3), after paragraph (1)(a)(v) insert—
- “(vi) for declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of section 7(9) of the Domicile and Matrimonial Proceedings Act 1973;”.
- (4) After Part XVA of Chapter 49 (application by survivor for provision on intestacy)(4), insert—

“PART XVI

ACTION FOR DECLARATOR OF RECOGNITION
OR NON-RECOGNITION OF A FOREIGN DECREE

Action for declarator in relation to certain foreign decrees

- 49.91.—**(1) This rule applies to an action for declarator of recognition, or non-recognition, of a decree of divorce, nullity or separation granted outwith a member state of the European Union.
- (2) In an action to which this rule applies, the pursuer shall state in the condescendence of the summons—
- the court, tribunal or other authority which granted the decree;
 - the date of the decree of divorce, annulment or separation to which the action relates;
 - the date and place of the marriage to which the decree of divorce, nullity or separation relates;
 - the basis on which the court has jurisdiction to entertain the action;

(1) Rule 49.1 was substituted by [S.S.I. 2005/632](#) and amended by [S.S.I. 2006/206](#).
(2) [1973 c.45](#). Section 7 was amended by the Presumption of Death (Scotland) Act [1977 \(c.27\)](#), Schedule 2 and the Family Law (Scotland) Act [2006 \(asp 2\)](#), section 37(2) and schedule 2, paragraph 1 and by [S.S.I. 2001/36](#) and [2005/42](#).
(3) Rule 49.28 was amended by [S.I. 1996/2587](#) and [S.S.I. 2001/305](#) and [2005/632](#).
(4) Part XVA was inserted by [S.S.I. 2006/206](#).

- (e) whether to the pursuer's knowledge any other proceedings whether in Scotland or in any other country are continuing in respect of the marriage to which the action relates or are capable of affecting its validity or subsistence; and
- (f) where such proceedings are continuing—
 - (i) the court, tribunal or authority before which the proceedings have been commenced;
 - (ii) the date of commencement;
 - (iii) the names of the parties; and
 - (iv) the date, or expected date of any proof (or its equivalent), in the proceedings.

(3) Where—

- (a) such proceedings are continuing;
- (b) the action in the Court of Session is defended; and
- (c) either—
 - (i) the summons does not contain the statement referred to in paragraph (2)(e), or
 - (ii) the particulars mentioned in paragraph (2)(f) as set out in the summons are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any person to the action shall include that statement and, where appropriate, the further or correct particulars mentioned in paragraph (2)(f).

(4) Unless the court otherwise directs, a declarator of recognition, or non-recognition, of a decree under this rule shall not be granted without there being produced with the summons—

- (a) the decree in question or a certified copy of the decree;
- (b) the marriage extract or equivalent document to which the action relates.

(5) Where a document produced under paragraph (4)(a) or (b) is not in English it shall, unless the court otherwise directs, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(6) For the purposes of this rule, proceedings are continuing at any time after they have commenced and before they are finally disposed of.”

(5) In rule 62.76 (recognition of judgments from another Member State)(5), for paragraph (3)(b) substitute—

“(b) rule 62.69(2)(b) (certificate under Article 39 of the Council Regulation) shall not apply.”.