

SCOTTISH STATUTORY INSTRUMENTS

2015 No. 26

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session
Amendment) (Regulation (EU) No. 1215/2012) 2015**

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|--|---------|--------------------------|
| <i>Made</i> | - - - - | <i>27th January 2015</i> |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>28th January 2015</i> |
| <i>Coming into force</i> | - - | <i>7th February 2015</i> |

The Lords of Council and Session, under and by virtue of the powers conferred by section 48 of the Civil Jurisdiction and Judgments Act 1982 ^{M1}, section 5 of the Court of Session Act 1988 ^{M2}, paragraph 1A of Schedule 2 to the European Communities Act 1972 ^{M3} and all other powers enabling them in that behalf, this instrument making provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appearing to the Lords of Council and Session that it is expedient that the reference to Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12th December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ^{M4} be construed as a reference to that instrument as amended from time to time, having approved draft rules submitted by the Scottish Civil Justice Council in accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 ^{M5}, do hereby enact and declare:

Marginal Citations

- M1** 1982 c.27; section 48 was amended by the [Civil Jurisdiction and Judgments Act 1982 \(c.12\)](#), Schedule 2, paragraph 23; the [Crime and Courts Act 2013 \(c.22\)](#), Schedule 11, paragraph 86; [S.I. 2001/3929](#), Schedule 2, paragraph 17; [S.I. 2011/1215](#), regulation 5; [S.I. 2012/1770](#), regulation 5, and [S.I. 2014/2947](#), Schedule 1, paragraph 4.
- M2** 1988 c.36; section 5 was amended by the [Civil Evidence \(Scotland\) Act 1988 \(c.32\)](#), section 2(3); the [Children \(Scotland\) Act 1995 \(c.36\)](#), Schedule 4, paragraph 45; the [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), section 14(1); the [Judiciary and Courts \(Scotland\) Act 2008 \(asp 6\)](#), section 46(3); and the [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), section 126(a).
- M3** 1972 c.68. Paragraph 1A of Schedule 2 was inserted by the [Legislative and Regulatory Reform Act 2006 \(c.51\)](#), section 28, and amended by the [European Union \(Amendment\) Act 2008 \(c.7\)](#), Schedule, Part 1.
- M4** O.J. L351, 20.12.2012, p. 1.
- M5** 2013 asp 3.

Citation, commencement etc. S

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment) (Regulation (EU) No. 1215/2012) 2015.

(2) It comes into force on 7th February 2015.

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

(4) In this Act of Sederunt, “the Rules of the Court of Session” means the Rules of the Court of Session in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994 ^{M6}.

Marginal Citations

M6 [S.I. 1994/1443](#), last amended by [S.S.I. 2014/371](#).

Recognition, registration and enforcement of judgments S

2.—(1) Chapter 62 of the Rules of the Court of Session ^{M7} is amended in accordance with the following subparagraphs.

^{F1}(2)

^{F1}(3)

^{F1}(4)

^{F1}(5)

^{F1}(6)

^{F1}(7)

^{F1}(8)

^{F1}(9)

^{F1}(10)

^{F1}(11)

^{F1}(12)

(13) After rule 62.42 (enforcement in another part of the United Kingdom of Court of Session judgments or documents registered for execution (non-money provisions)) ^{M8}, insert—

“PART VA S

**RECOGNITION AND ENFORCEMENT OF JUDGMENTS
UNDER REGULATION (EU) NO. 1215/2012 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL OF 12TH DECEMBER
2012 ON JURISDICTION AND THE RECOGNITION AND
ENFORCEMENT OF JUDGMENTS IN CIVIL MATTERS (RECAST)**

Application and interpretation of this Part

62.42A.—(1) This Part applies to the recognition and enforcement of a judgment under the Brussels I (recast) Regulation.

(2) In this Part—

“adaptation order” means an order for the adaptation of a measure or order which is contained in a foreign judgment but is unknown under the law of Scotland, pursuant to Article 54 of the Brussels I (recast) Regulation;

“authentic settlement” has the meaning given by Article 2(c) of the Brussels I (recast) Regulation;

“the Brussels I (recast) Regulation” means Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12th December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)^{M9} as amended from time to time 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^{M10};

“court settlement” has the meaning given by Article 2(b) of the Brussels I (recast) Regulation;

“judgment” has the meaning given by Article 2(a) of the Brussels I (recast) Regulation.

Disapplication of certain rules to this Part

62.42B. Rules 4.1(1) (printed form for petition) and 14.4 (form of petitions) do not apply to an application under this Part.

Form of applications

62.42C.—(1) An application under the following provisions of the Brussels I (recast) Regulation is to be made by petition in Form 62.42C-A—

- (a) Article 36(2) (decision that there are no grounds for refusal of recognition as referred to in Article 45);
- (b) Article 45(1) (refusal of recognition of judgment);
- (c) Article 46 (refusal of enforcement of judgment);
- (d) Article 58(1) (refusal of enforcement of authentic instrument);
- (e) Article 59 (refusal of enforcement of court settlement).

(2) An application for an adaptation order is to be made by petition in Form 62.42C-B.

(3) A challenge under Article 54 (2) of the Brussels I (recast) Regulation to the adaptation of a measure or order without an adaptation order is to be made by petition in Form 62.42C-C.”.

(14) In the Appendix—

- (a) for Forms 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 Council Regulation or the Lugano Convention)^{M11} and 62.33 (form of notice of decree and warrant for registration of a judgment under section 4 of the Civil Jurisdiction and Judgment Act 1982 or under Article 38, Article 57 or Article 58 of the Council Regulation or the Lugano Convention)^{M12}, substitute Forms 62.28 and 62.33 set out in Part 1 of the Schedule to this Act of Sederunt;
- (b) after Form 62.42-B (form of certificate by Keeper of the Registers of non-money provisions in a writ registered for execution in the Books of Council and Session for registration under Schedule 7 to the Civil Jurisdiction and Judgments Act 1982), insert Forms 62.42C-A, 62.42C-B and 62.42C-C set out in Part 2 of the Schedule to this Act of Sederunt.

Textual Amendments

- F1** Para. 2(2)-(12) revoked (28.3.2019) by Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Regulation (EC) No. 44/2001) (Transitional Provisions) 2019 (S.S.I. 2019/85), paras. 1(2), 3

Marginal Citations

- M7** Chapter 62 was last amended by S.S.I. 2011/288.
- M8** Rule 62.42 was substituted by S.S.I. 2004/52.
- M9** O.J. L351, 20.12.2012, p. 1.
- M10** O.J. L299, 16.11.2005, p. 62. By letter dated 20th December 2012, Denmark has notified the European Commission of its intention to implement the contents of the Brussels I (recast) Regulation, in accordance with the Agreement: see O.J. L79, 21.3.2013, p. 4.
- M11** Form 62.28 was last substituted by S.S.I. 2009/450.
- M12** Form 62.33 was last substituted by S.S.I. 2009/450.

I.P.D.
Edinburgh

BRIAN GILL
Lord President

SCHEDULE **S**

Paragraph 2(14)

PART 1 **S**

Rule 62.28

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

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

PETITION

of

[A.B.] (designation and address)

under the Civil Jurisdiction and Judgments Act 1982 [or under the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters signed by the European Community on 30th October 2007]

for registration of

a judgment [or authentic instrument or court settlement [of the (name of court)]

dated the day of

HUMBLY SHEWETH:—

1. That this petition is presented by (name) to register a judgment [or authentic instrument or court settlement] [of the (name of court) [of (date of judgment)]].
2. That in the cause in which the judgment [or as the case may be] was pronounced, [A.B.] was pursuer [or defender or (as the case may be)] and [C.D.] was defender [or pursuer or as the case may be].
3. That the petitioner is a party having an interest to enforce the judgment [or as the case may be] because (state reasons).
4. That this petition is supported by the affidavit of (name of deponent) and the documents produced with it.
5. That the petitioner seeks warrant to register the judgment [or as the case may be] [and for decree in terms thereof] [and for decree to be pronounced in the following or such other terms as to the court may seem proper— (state terms in which decree is to be pronounced in accordance with Scots law)].
6. That the petitioner seeks the authority of the court to execute the protective measure[s] of (state measures), for the following reasons (state reasons).
7. That this petition is made under section 4 of, and under Article 31 [or 50] of the Convention in Schedule 1 to, the Civil Jurisdiction and Judgments Act 1982 [or under Article 38 [or 57 or 58] of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed by the European Community on 30th October 2007] and rule 62.28 of the Rules of the Court of Session 1994.

According to Justice etc.

(Signed)

Petitioner

[or Solicitor [or Agent] for petitioner]

(Address of solicitor or agent)

[or counsel or other person having a right of audience]

Form 62.33

Rule 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

IN THE COURT OF SESSION

in the

PETITION

of

[A.B.] (designation and address)

under section 4 of the Civil Jurisdiction and Judgments Act 1982 [or under Article 38 [or 57 or 58] of the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters signed by the European Community on 30th October 2007]

Date: (date of posting or other method of service)

To: (name of person against whom judgment was given and decree and warrant granted).

TAKE NOTICE

That an interlocutor dated the day of , a certified copy of which is attached, was pronounced at the Court of Session granting decree and warrant for registration of the judgment [or as the case may be] [of the (name of court)] dated the day of , for (state briefly the terms of the judgment).

You have the right to appeal to a Lord Ordinary in the Outer House of the Court of Session, Parliament Square, Edinburgh EH1 1RQ against the interlocutor granting decree and warrant for registration within one month [or two months as the case may be] after the date of service of this notice upon you. The date of service is the date stated at the top of this notice unless service has been executed by post in which case the notice of service is the day after that date.

An appeal must be by motion enrolled in the process of the petition.

The registered judgment and decree of the Court of Session may not be enforced in Scotland until the expiry of the period within which you may appeal and any appeal has been disposed of.

Changes to legislation: There are currently no known outstanding effects for the Act of Sederunt (Rules of the Court of Session Amendment) (Regulation (EU) No. 1215/2012) 2015. (See end of Document for details)

Intimation of an appeal should be made to the petitioner, [A.B.], at the following address for service in Scotland:-(address).

(Signed)
Messenger-at-Arms
[or Petitioner [or Solicitor] [or Agent]
for petitioner]
(Address)

PART 2 S

Form 62.42C-A

Rule 62.42C(1)
Form of petition under Articles 36(2), 45(1), 46, 58(1) or 59 of the Brussels I (recast) Regulation

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION
PETITION
of
[A.B.] (designation and address)
under Regulation (E.U.) 1215/2012 of the European Parliament and of the Council of 12th December 2012 on jurisdiction and the recognition and enforcement of judgments in civil matters (recast)
for
a decision under Article 36(2) that there are no grounds for refusal of recognition
[or refusal of recognition of a judgment under Article 45(1)]
[or refusal of enforcement of a judgment under Article 46]
[or refusal of enforcement of an authentic instrument under Article 58(1)]
[or refusal of enforcement of a court settlement under Article 59]

HUMBLY SHEWETH:
1. That this petition is presented by (name) for (specify nature of petition, including the Article of the Brussels I (recast) Regulation under which it is brought) in respect of a judgment [or authentic instrument] [or court settlement] [of the (name of court) of (date of judgment etc.)].
2. That in the cause in which the judgment [or authentic instrument] [or court settlement] was pronounced, [A.B.] was defender [or pursuer (or as the case may be)] and [C.D.] was pursuer [or defender (or as the case may be)].
3. That the petitioner has an interest to seek a decision that there are no grounds for refusal of recognition [or to seek refusal of recognition [or enforcement]] because: (specify reasons).
4. That the petitioner seeks a decision that there are no grounds for refusal of recognition [or seeks refusal of recognition [or enforcement]] because: (specify reasons).

According to Justice etc.

(Signed)
Petitioner
[or Solicitor [or Agent] for petitioner]
(address of solicitor or agent)
[or counsel or other person having a right of audience]

Form 62.42C-B

Rule 62.42C(2)
Form of petition for an adaptation order under Article 54(1) of the Brussels I (recast) Regulation

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION
PETITION
of
[A.B.] (designation and address)
under Regulation (E.U.) 1215/2012 of the European Parliament and of the Council of 12th December 2012 on jurisdiction and the recognition and enforcement of judgments in civil matters (recast)
for
an adaptation order

HUMBLY SHEWETH:
1. That this petition is presented by (name) for an adaptation order in respect of a judgment [or authentic instrument] [or court settlement] [of the (name of court) of (date of judgment etc.)].
2. That in the cause in which the judgment [or authentic instrument] [or court settlement] was pronounced, [A.B.] was pursuer [or defender (or as the case may be)] and [C.D.] was defender [or pursuer (or as the case may be)].
3. That the judgment [or authentic instrument] [or court settlement] contains the following measure or order which is not known to the law of Scotland: (specify measure or order and its nature and effect).
4. That the petitioner seeks an adaptation order in respect of that measure or order, and for decree to be pronounced in the following terms, or such other terms as to the court seem proper: (specify terms in which the measure or order is to be adapted, and decree pronounced in accordance with Scots law).

According to Justice etc.
(Signed)
Petitioner
[or Solicitor [or Agent] for petitioner]
(address of solicitor or agent)
[or counsel or other person having a right of audience]

Changes to legislation: There are currently no known outstanding effects for the Act of Sederunt (Rules of the Court of Session Amendment) (Regulation (EU) No. 1215/2012) 2015. (See end of Document for details)

Form 62.42C-C

Rule 62.42C(3)
Form of petition for a challenge to the adaptation of a measure or order under Article 54 of the Brussels I (recast) Regulation

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

PETITION

of

[A.B.] (designation and address)

under Regulation (E.U.) 1215/2012 of the European Parliament and of the Council of 12th December 2012 on jurisdiction and the recognition and enforcement of judgments in civil matters (recast)

challenging the adaptation of a measure or order which is not known to the law of Scotland

HUMBLY SHEWETH:

1. That this petition is presented by (name) to challenge the adaptation of a measure or order contained in a judgment [or authentic instrument] [or court settlement] [of the (name of court) of (date of judgment) etc.].
2. That in the cause in which the judgment [or authentic instrument] [or court settlement] was pronounced, [A.B.] was pursuer [or defender (or as the case may be)] and [C.D.] was defender [or pursuer (or as the case may be)].
3. That the measure or order in question is in the following terms: (specify measure or order and its nature and effect).
4. That the measure or order was adapted as follows: (specify the circumstances of the adaptation, including the authority by whom it was adapted, the nature of the adaptation and the date of the adaptation).
5. That the petitioner challenges the adaptation of the measure or order because: (specify reasons).
6. That the petitioner considers that the measure or order should not be adapted, and seeks to have the adaptation set aside.

[or 6. That the petitioner seeks an adaptation order in respect of the measure or order, and for decree to be pronounced in the following terms, or such other terms as the court seem proper: (specify terms in which the measure or order is to be adapted, and decree pronounced in accordance with Scots law.)

According to Justice etc.

(Signed)
Petitioner

[or Solicitor [or Agent] for petitioner]
(address of solicitor or agent)

[or counsel or other person having a right of audience]

EXPLANATORY NOTE

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

This Act of Sederunt amends Chapter 62 (recognition, registration and enforcement of foreign judgments etc.) of the Rules of the Court of Session. It makes provision in consequence of the coming into force of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12th December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (“the Brussels I (recast) Regulation”). The Brussels I (recast) Regulation replaces Council Regulation (E.C.) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“the Brussels I Regulation”).

Paragraph 2(2) to (12) makes textual amendments to Part V of Chapter 62 to remove references to the Brussels I Regulation.

Paragraph 2(13) inserts a new Part VA of Chapter 62. The new Part prescribes the form of petition to be used in making various applications under the Brussels I (recast) Regulation.

Paragraph 2(14) substitutes certain existing forms which relate to Part V of Chapter 62, and inserts new forms for the purposes of Part VA.

Changes to legislation:

There are currently no known outstanding effects for the Act of Sederunt (Rules of the Court of Session Amendment) (Regulation (EU) No. 1215/2012) 2015.