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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 450**

**COURT OF SESSION**

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

Made - - - - 22nd December 2009  
Coming into force in accordance with paragraph 1(1)  
and (2)

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(1), section 5 of the Court of Session Act 1988(2) and of all other powers enabling them in that behalf, do hereby enact and declare:

**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(3) are amended in accordance with the following subparagraphs.

(2) In rule 62.26(1) (application and interpretation of Part V of Chapter 62)(4), 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**”

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(1) 1982 c.27; section 48 was amended by the Civil Jurisdiction and Judgments Act 1991 (c.12), Schedule 2, paragraph 23 and by the Civil Jurisdiction and Judgments Order 2001 (S.I. 2001/3929), Schedule 2, paragraphs 17 and 23.  
(2) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3), the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), Schedule 9, the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45, the Vulnerable Witnesses (Scotland) Act 2004 (asp 6), section 14(1) and the Judiciary and Courts (Scotland) Act 2008 (asp 3), section 46(3).  
(3) S.I. 1994/1443, last amended by S.S.I. 2009/387.  
(4) Rule 62.26 was substituted by S.S.I. 2004/52.

**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”(5) 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(6);”

(5) In rule 62.28 (enforcement of judgments, authentic instruments or court settlements from another Contracting State or Member State)(7)—

(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.”.

(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)(8), 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)(9), 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**”.

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

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

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

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

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

(12) In rule 62.34 (appeals under the Act of 1982 or the Council Regulation)(10)—

(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

(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)(11), 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)(12) 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

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

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

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

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)(13), 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—

“(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—

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

- (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(**14**);
- (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(**15**).

### **Companies**

**4.**—(1) The Rules of the Court of Session 1994(**16**) are amended in accordance with the following subparagraphs.

(2) In rule 62.92 (recognition application)(**17**), in paragraph (1)(e), for “1985” substitute “2006”.

(3) In rule 74.1 (application and interpretation of Chapter 74)(**18**), in paragraph (2), in the definition of “registered office” —

- (a) in subparagraph (i), for “section 10 of the Companies Act 1985(**19**)” substitute “section 9 of the Companies Act 2006(**20**)”; and
- (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(**21**) are amended in accordance with the following subparagraph.

(2) In rule 69.5 (service and intimation of an election petition)(**22**), 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)(**23**), 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”.

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

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

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

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

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

(19) 1985 c.6.

(20) 2006 c.46.

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

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

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

### 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)(**24**) 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)(**25**) 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)(**26**), for “paragraph 3(3)” insert “paragraph 4(3)”.

(6) In rule 96.8 (election by Treasury not to disclose material or to provide summary)(**27**), 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)(**28**)—

(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.

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(24) Rule 21A was inserted by [S.S.I. 2008/349](#).

(25) Rule 35A.14 was inserted by [S.S.I. 2007/450](#).

(26) Rule 95.2 was inserted by [S.S.I. 2008/123](#).

(27) Rule 96.8 was inserted by [S.S.I. 2008/401](#).

(28) Rule 96.10 was inserted by [S.S.I. 2008/401](#).

SCHEDULE

Paragraph 2(20)

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 Council Regulation or 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 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 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*).

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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 Council Regulation (E.C.) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters] [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 30 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]



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## Form 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 Council Regulation or 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 Council Regulation (E.C.) No. 22/2002 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters or 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.

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*)

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

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## EXPLANATORY NOTE

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

This Act of Sederunt makes miscellaneous amendments to the Rules of the Court of Session 1994.

Paragraph 2 makes amendments to Part V of Chapter 62 of the Rules in connection with the recognition and enforcement of judgments in civil and commercial matters, agreed by the European Community, the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark on 30th October 2007 (“the new Lugano Convention”).

The new Lugano Convention replaces an earlier Lugano Convention made in 1988. The new Convention enters into force for the European Community and Norway on 1st January 2010. It will not enter into force on that date in relation to Switzerland and Iceland because those countries will not have ratified it, as at that date. In relation to those countries the earlier Lugano Convention will continue to apply until such time as those ratifications take place. Paragraph 3 therefore makes savings provision to reflect the transitional application of the existing rules.

Paragraph 4 makes minor amendments to rule 62.92 (recognition application) and rule 74.1 (application and interpretation of Chapter 74) to reflect the repeal of provisions in the Companies Act 1985 and their re-enactment in the Companies Act 2006.

Paragraph 5 inserts a provision in rule 69.5 (service and intimation of an election petition) requiring a copy of an election petition to be sent to the Electoral Commission.

Paragraph 6 makes amendments to Form 64.6 (form of order of court in procedure for recovery of documents under Chapter 64).

Paragraph 7 makes amendments to correct minor errors and inconsistencies in the Rules.