

2014 No. 302

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session and Sheriff Court
Rules Amendment No. 2) (Marriage and Civil Partnership
(Scotland) Act 2014) 2014**

<i>Made</i>	- - - -	<i>12th November 2014</i>
<i>Laid before the Scottish Parliament</i>		<i>14th November 2014</i>
<i>Coming into force</i>	- -	<i>16th December 2014</i>

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a), section 5 of the Court of Session Act 1988(b), section 114 of the Adoption and Children (Scotland) Act 2007(c) and of all other powers enabling them in that behalf, having approved with such modifications as they think appropriate 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(d), do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session and Sheriff Court Rules Amendment No. 2) (Marriage and Civil Partnership (Scotland) Act 2014) 2014.

(2) It comes into force on 16th December 2014.

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

(4) In this Act of Sederunt—

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- (a) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12; the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4); the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2); the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 13; the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43; the Vulnerable Witnesses (Scotland) Act (asp 3), section 14(2); the Consumer Credit Act 2006 (c.14), section 16(4); the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3), section 33 and Schedule 5, paragraph 10 (in part); the Legal Services (Scotland) Act 2010 (asp 16), section 127(a); the Children's Hearings (Scotland) Act 2011 (asp 1), section 185; and the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), section 15(2).
- (b) 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).
- (c) 2007 asp 4.
- (d) 2013 asp 3.

“the Ordinary Cause Rules” means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(a);

“the Rules of the Court of Session” means the Rules of the Court of Session 1994 in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(b);

“the Sheriff Court Adoption Rules” means the Sheriff Court Adoption Rules 2009 in the Schedule to the Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009(c).

Amendment of Chapter 49 of the Rules of the Court of Session

2.—(1) Chapter 49 of the Rules of the Court of Session is amended in accordance with the following subparagraphs.

(2) In rule 49.1 (Interpretation of this Chapter)—

(a) at the end of paragraph (1) insert—

“(s) an action for declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of paragraph 1 of Schedule 1B to the Domicile and Matrimonial Proceedings Act 1973, or of a judgment to which paragraph 2(1)(b) of that Schedule refers.”;

(b) in paragraph (2), before the definition of “local authority”, insert—

““Gender Recognition Panel” is to be construed in accordance with Schedule 1 to the Act of 2004;”.

(3) After rule 49.6 (Averments where aliment sought for a child), insert—

“Averments where divorce sought on ground of issue of interim gender recognition certificate

49.6A.—(1) This rule applies to an action of divorce in which divorce is sought on the ground that an interim gender recognition certificate has been issued to either party.

(2) In an action to which this rule applies, the pursuer shall state in the condescendence of the summons—

(a) where the pursuer is the party to whom the interim gender recognition certificate was issued, whether or not the Gender Recognition Panel has issued a full gender recognition certificate to the pursuer, and

(b) where the defender is the party to whom the interim gender recognition certificate was issued, whether—

(i) since the issue of the interim gender recognition certificate, the pursuer has made a statutory declaration consenting to the marriage continuing, and

(ii) the Gender Recognition Panel has given the pursuer notice of the issue of a full gender recognition certificate to the defender.”.

(4) At the end of rule 49.28(1)(a) insert—

“(vii) for declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of paragraph 1 of Schedule 1B to the Domicile and Matrimonial Proceedings Act 1973, or of a judgment to which paragraph 2(1)(b) of that Schedule refers.”.

(5) In rule 49.91(1)—

(a) before “a decree”, insert “(a)”; and

(b) at the end insert—

(a) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2014/201.

(b) 1994 S.I. 1994/1443, last amended by S.S.I. 2014/201.

(c) S.S.I. 2009/284, as amended by S.S.I. 2013/139 and S.S.I. 2013/172.

“(b) a decree of divorce, nullity or separation in respect of a same sex marriage when granted in a member state of the European Union.”.

Amendment of Chapter 91 of the Rules of the Court of Session

3.—(1) Chapter 91 of the Rules of the Court of Session is amended in accordance with the following subparagraph.

(2) After rule 91.2 insert—

“Applications to quash decisions

91.3.—(1) An application under section 8(5B) of the Act of 2004 shall be made by petition.

(2) Where, on an application under section 8(5B) of the Act of 2004, the court quashes a decision to issue a gender recognition certificate, the Deputy Principal Clerk shall send a certified copy of the interlocutor to—

- (a) the Registrar General for Scotland, and
- (b) the Gender Recognition Panel.”.

Amendment of the Appendix to the Rules of the Court of Session

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

(2) In Form 13.2-B (Principal forms of conclusion), omit paragraph (16).

(3) In Form 49.14-A (Form of notice to defender where it is stated that he consents to decree of divorce)—

- (a) in paragraphs 1 and 2, for “husband [*or wife*]” substitute “spouse”;
- (b) in paragraph 2(a), for “wife’s [*or husband’s*]” substitute “spouse’s”;
- (c) in paragraph 2(b), omit “(the State widow’s pension will not be payable to you when your husband dies)” and substitute “or widower”.

(4) In Form 49.14-C (Form of notice to defender where it is stated that he consents to decree of separation)—

- (a) in paragraphs 1, 2 and 3, for “husband [*or wife*]” substitute “spouse”;
- (b) in paragraph 2, for “husband” wherever it appears substitute “spouse”.

(5) In Form 49.14-E (Form of notice to defender in action of divorce where it is stated there has been two years non-cohabitation)—

- (a) in paragraph 2(a), for “wife’s [*or husband’s*]” substitute “spouse’s”;
- (b) in paragraph 2(b), omit “(the State widow’s pension will not be payable to you when your husband dies)” and substitute “or widower”.

(6) In Form 49.14-F (Form of notice to defender in an action of separation where it is stated there has been two years non-cohabitation)—

- (a) in paragraphs 2(a) and 3(b), for “husband [*or wife*]” substitute “spouse”;
- (b) in paragraph 2(b), for “husband” substitute “spouse”.

(7) In Form 49.14-G (Form of notice to defender in action of divorce where an interim gender recognition certificate has been issued)—

- (a) for paragraph 1 substitute—

“ 1. The summons states that an interim gender recognition certificate has been issued to you [*or* the pursuer]. If the pursuer establishes this as a matter of fact, and that the Gender Recognition Panel has not issued a full gender recognition certificate, the pursuer will obtain a decree of divorce. ”

(b) in paragraph 2(a), for “wife’s [*or* husband’s]” substitute “spouse’s”.

(8) In Form 49.73-A—

- (a) in the heading, for “husband and wife” substitute “spouses”;
- (b) for “husband/wife” where it appears, substitute “spouse”;
- (c) in Part 1, in the Notes on Sections 1 and 2, paragraph (ii) is omitted and paragraph (iii) is renumbered as paragraph (ii);
- (d) in Part 1, in the Notes on Section 4, for “husband’s and wife’s” substitute “spouses”.

(9) In Form 49.73-B—

- (a) in the heading, for “husband and wife” substitute “spouses”;
- (b) for “husband/wife” where it appears, substitute “spouse”;
- (c) in Part 1, in the Notes on Sections 1 and 2, paragraph (ii) is omitted and paragraph (iii) is renumbered as paragraph (ii);
- (d) in Part 1, in the Notes on Section 4, for “husband’s and wife’s” substitute “spouses”.

(10) In Form 49.73-C, in Part 1—

- (a) for “husband/wife” wherever it appears, substitute “spouse”;
- (b) in the Notes on Sections 1 and 2, paragraph (ii) is omitted and paragraph (iii) is renumbered as paragraph (ii);
- (c) in the Notes on Section 4, for “husband’s and wife’s” substitute “spouses”.
- (d) in section 7, after paragraph (ii), insert—

“ Please answer the following question only if the interim gender recognition certificate was issued to you—

- (iii) Has the Gender Recognition Panel issued you with a full gender recognition certificate? YES NO

Please answer the following question only if the interim gender recognition certificate was issued to your spouse—

- (iv) Since the date referred to in question (ii), have you made a statutory declaration consenting to the marriage continuing? YES NO ”

(11) In Form 49.76-A (Form of citation in simplified divorce application under section 1(2)(d) of the Divorce (Scotland) Act 1976)—

- (a) in the heading, for “husband and wife” substitute “spouses”;
- (b) for “husband [*or* wife]” substitute “spouse”.

(12) In Form 49.76-B (Form of citation in simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976)—

- (a) in the heading, for “husband and wife” substitute “spouses”;
- (b) for “husband [*or* wife]” wherever it appears substitute “spouse”.

(13) In form 49.76-BA (Form of citation in simplified divorce application under section 1(1)(b) of the Divorce (Scotland) Act 1976), throughout the form for “husband/wife” and for “husband [*or* wife]” substitute “spouse”.

(14) In Form 49.76-C (Form of intimation to child or next-of-kin in simplified divorce application under section 1(2)(e) or (1)(b) of the Divorce (Scotland) Act 1976), in the heading, for “husband and wife” substitute “spouses”.

(15) In Form 67.8-A (Application for an adoption order under section 29 or 30 of the Adoption and Children (Scotland) Act 2007), in statement of fact B5 for “husband and wife/civil partners” substitute “married to each other”.

(16) In Form 67.8-B (Application for an order under section 59(1) of the Adoption and Children (Scotland) Act 2007), in statement of fact B5 for “husband and wife/civil partners” substitute “married to each other”.

(17) In Form 67.25 (Application for a Convention adoption order under regulation 53 of the Adoption with Foreign Element (Scotland) Regulations 2009), in statement of fact B5 for “husband and wife/civil partners” substitute “married to each other”.

(18) In Form 97.3 (Form of petition for parental order under section 54 of the Human Fertilisation and Embryology Act 2008), in statement of fact 1 for “husband and wife” substitute “spouses”.

Amendment of Chapter 33 of the Ordinary Cause Rules

5.—(1) Chapter 33 of the Ordinary Cause Rules is amended in accordance with the following subparagraphs.

(2) At the end of rule 33.1(1) insert—

“(r) an action for declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of paragraph 1 of Schedule 1B to the Domicile and Matrimonial Proceedings Act 1973, or of a judgment to which paragraph 2(1)(b) of that Schedule refers.”.

(3) After rule 33.6 (Averments where aliment or financial provision sought), insert—

“Averments where divorce sought on ground of issue of interim gender recognition certificate

33.6ZA.—(1) This rule applies to an action of divorce in which divorce is sought on the ground that an interim gender recognition certificate has been issued to either party.

(2) In an action to which this rule applies, the pursuer shall state in the condescendence of the initial writ—

(a) where the pursuer is the party to whom the interim gender recognition certificate was issued, whether or not the Gender Recognition Panel has issued a full gender recognition certificate to the pursuer, and

(b) where the defender is the party to whom the interim gender recognition certificate was issued, whether—

(i) since the issue of the interim gender recognition certificate, the pursuer has made a statutory declaration consenting to the marriage continuing, and

(ii) the Gender Recognition Panel has given the pursuer notice of the issue of a full gender recognition certificate to the defender.”.

(4) At the end of rule 33.28(1)(a) insert—

“(vii) for declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of paragraph 1 of Schedule 1B to the Domicile and Matrimonial Proceedings Act 1973, or of a judgment to which paragraph 2(1)(b) of that Schedule refers.”.

(5) In rule 33.96(1)—

(a) before “a decree”, insert “(a)”; and

(b) at the end insert—

“(b) a decree of divorce, nullity of separation in respect of a same sex marriage when granted in a member state of the European Union.”.

Amendment of Appendix 1 to the Ordinary Cause Rules

6.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.

(2) In Form F21 (Form of notice to defender where it is stated that defender consents to the granting of decree of separation), in paragraph 1(b) for “wife [*or* husband]” substitute “spouse”.

(3) In Form F24 (Form of notice to defender in action of separation where it is stated there has been two years’ non-cohabitation), in paragraph 2 for “wife [*or* husband]” substitute “spouse”.

(4) In Form F24A (Form of notice to defender in action of divorce where an interim gender recognition certificate has been issued), for paragraph 1 substitute—

“ 1. The copy initial writ served on you together with this notice states that an interim gender recognition certificate has been issued to you [*or* the pursuer]. If the pursuer establishes this as a matter of fact, and that the Gender Recognition Panel has not issued a full gender recognition certificate, decree will be granted. ”

(5) In Form F31 (Form of simplified divorce application under section 1(2)(d) of the Divorce (Scotland) Act 1976)—

(a) in each of the heading of the form, and the heading of Part 2, for “husband and wife” substitute “spouses”;

(b) in Part 2, in the notice to consenting spouse, for “husband or wife” substitute “spouse”;

(c) In Part 3, in the applicant’s affidavit, for “husband/wife” substitute “spouse”.

(6) In Form F33 (Form of simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976)—

(a) in the heading of the form, for “husband and wife” substitute “spouses”;

(b) in paragraph 12 of Part 1, for “husband or wife” substitute “spouse”.

(7) In Form F33A (Form of simplified divorce application under section 1(1)(b) of the Divorce (Scotland) Act 1976), in Part 1—

(a) in section 7, after paragraph (ii), insert—

“ Please answer the following question only if the interim gender recognition certificate was issued to you—

(iii) Has the Gender Recognition Panel issued you with a full *[YES/NO] gender recognition certificate?

Please answer the following question only if the interim gender recognition certificate was issued to your spouse—

(iv) Since the date referred to in question (ii), have you made a *[YES/NO] statutory declaration consenting to the marriage continuing? ”

(b) in paragraph 11, for “husband or wife” substitute “spouse”.

(8) In Form F34 (Form of citation in application relying on the facts in section 1(2)(d) of the Divorce (Scotland) Act 1976), in the heading of the form for “husband and wife” substitute “spouses”.

(9) In Form F35 (Form of citation in application relying on the facts in section 1(2)(e) of the Divorce (Scotland) Act 1976), in the heading of the form for “husband and wife” substitute “spouses”.

Amendment of the Summary Application Rules

7.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(a) is amended in accordance with the following subparagraphs.

(2) In Chapter 3, after Part XLIII (Proceeds of Crime Act 2002 (External Investigations) Order 2013) insert—

“PART XLIV

Gender Recognition Act 2004

3.44.1. In this Part,—

“the 2004 Act” means the Gender Recognition Act 2004;

“full gender recognition certificate” and “interim gender recognition certificate” have the meanings assigned by section 25 of the 2004 Act;

“Gender Recognition Panels” is to be construed in accordance with Schedule 1 to the 2004 Act.

3.44.2.—(1) This rule applies where a party to a protected Scottish marriage who has been issued with an interim gender recognition certificate makes an application to the sheriff under section 4E of the 2004 Act for the issue of a full gender recognition certificate.

(2) The sheriff shall make an order for intimation of the application on the applicant’s spouse, but no such order may be made unless there has been produced with the initial writ—

- (a) an extract of the relevant entry in the register of marriages; and
- (b) the interim gender recognition certificate or, failing that, a certified copy of the interim gender recognition certificate.

(3) For the purpose of this rule, a certified copy of an interim gender recognition certificate shall be a copy of that certificate sealed with the seal of the Gender Recognition Panels and certified to be a true copy by an officer authorised by the President of the Gender Recognition Panels.

(4) On the granting of the application the sheriff clerk shall give the applicant’s spouse a certified copy of the full gender recognition certificate.

3.44.3. When a full gender recognition certificate has been issued on an application under section 4E of the 2004 Act, an application for a corrected gender recognition certificate under section 6 of the 2004 Act (Errors in certificates) shall be made by minute in the process in the application pursuant to which the full gender recognition certificate was issued.”.

(3) In Schedule 1, in paragraph 2 of Form 11E (Form of application to court by entitled resident)—

(a) for subparagraph (d) substitute—

“(d) he or she is a person living together with the debtor or the proprietor as if they were married to each other;”;

(b) omit subparagraph (e);

(c) re-number existing subparagraph (f) as subparagraph (e); and

(d) in paragraph (e), as re-numbered, delete “or (e)”.

(4) In Schedule 1, in Form 11F (Form of minute for recall of decree)—

(a) S.I. 1999/929, last amended by S.S.I. 2013/293.

- (a) for paragraph (d) substitute—
 - “(d) I am a person living with the debtor or the proprietor as if we were married to each other.”;
- (b) omit paragraph (e);
- (c) re-number existing paragraph (f) as paragraph (e); and
- (d) in paragraph (e), as re-numbered, delete “or (e)”.

Amendment of the Sheriff Court Adoption Rules

8.—(1) The Sheriff Court Adoption Rules are amended as follows.

(2) In Form 1 (Application for an adoption order under section 29 or 30 of the Adoption and Children (Scotland) Act 2007), in paragraph B5 for “husband and wife/civil partners” substitute “married to each other.”

(3) In Form 2 (Application for an order under section 59(1) of the Adoption and Children (Scotland) Act 2007), in paragraph B5 for “husband and wife/civil partners” substitute “married to each other”.

(4) In Form 10 (Application for a Convention adoption order under regulation 53 of the Adoption with Foreign Element (Scotland) Regulations 2009), in paragraph B6 for “husband and wife/civil partners” substitute “married to each other.”

BRIAN GILL
Lord President
I.P.D.

Edinburgh
12th November 2014

EXPLANATORY NOTE

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

This Act of Sederunt makes changes to the Rules of the Court of Session, the Ordinary Cause Rules, the Summary Application Rules, and the Sheriff Court Adoption Rules consequent on the coming into force of the Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”).

Paragraphs 2(2), (4) and (5), and 5(2), (4) and (5) amend the Rules of the Court of Session and the Ordinary Cause Rules to make provision concerning actions for declarator of recognition, or non-recognition, of foreign decrees relating to same-sex marriages. The provisions are consequent on amendments to the Domicile and Matrimonial Proceedings Act 1973 effected by the 2014 Act.

Paragraphs 2(3) and 5(3), and certain provisions in paragraphs 4 and 6, make provision consequent on amendments to the Divorce (Scotland) Act 1976 (“the 1976 Act”) effected by the 2014 Act. The effect of the amendments is to require a pursuer in an action of divorce under section 1(1)(b) of the 1976 Act to state whether or not the party issued with an interim gender recognition certificate has since been issued with a full gender recognition certificate by the Gender Recognition Panel.

Paragraphs 3 and 7(2) make provision consequent on amendments to the Gender Recognition Act 2004 (“the 2004 Act”) effected by the 2014 Act. Paragraph 3 amends Chapter 91 of the Rules of the Court of Session to make provision for applications under section 8(5)(b) of the 2004 Act. Paragraph 7(2) inserts provisions in the Summary Application Rules in relation to applications under section 4E of the 2004 Act.

Paragraphs 4, 6, 7(3) and (4), and 8 amend certain forms prescribed in the Rules of the Court of Session, the Ordinary Cause Rules, the Summary Application Rules and the Sheriff Court Adoption Rules, principally to replace gender-specific references that have been superseded by the 2014 Act.

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