

2019 No. 85

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session 1994
Amendment) (Regulation (EC) No. 44/2001) (Transitional
Provisions) 2019**

<i>Made</i> - - - -	<i>11th March 2019</i>
<i>Laid before the Scottish Parliament</i>	<i>13th March 2019</i>
<i>Coming into force</i> - -	<i>28th March 2019</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 48 of the Civil Jurisdiction and Judgments Act 1982(b), section 103(1) of the Courts Reform (Scotland) Act 2014(c) and all other powers enabling it to do so.

Citation, commencement and application etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Regulation (EC) No. 44/2001) (Transitional Provisions) 2019.

(2) It comes into force on 28th March 2019.

(3) This Act of Sederunt applies to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered, and to court settlements approved or concluded before 10th January 2015 which fall within the scope of Council Regulation (EC) No. 44/2001(d).

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

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(b) 1982 c.27. Section 48 was amended by the Civil Jurisdiction and Judgments Act 1991 (c.12), schedule 2, paragraph 23; the Crime and Courts Act 2013 (c.22), schedule 11, paragraph 86(16); S.I. 2001/3929; S.I. 2011/1215; S.I. 2012/1770; S.I. 2014/2947; and S.I. 2015/1644. There are proposals for prospective amendments to be made to section 48 of this Act by the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 and the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019.

(c) 2014 asp 18.

(d) OJ L 12, 16.01.2001, p.1. Article 66 of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p.1) makes transitional provisions saving the operation of Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters in certain specified cases.

Amendment of the Rules of the Court of Session

2.—(1) Part V (recognition and enforcement of judgments under the Civil Jurisdiction and Judgments Act 1982 or under the Lugano Convention of 30th October 2007) of Chapter 62 of the Rules of the Court of Session 1994(a) is amended in accordance with this paragraph.

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

(3) In rule 62.26 (application and interpretation of Part V of Chapter 62)(b)—

(a) for paragraph (1), substitute—

“(1) This Part applies to the recognition and enforcement of a judgment under the Act of 1982, the Council Regulation or the Lugano Convention.”;

(b) in paragraph (2)—

(i) after the definition of “Contracting State”, insert—

““the Council Regulation” means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters(c) 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(d);”
;

(ii) after the definition of “the Lugano Convention”, insert—

““Member State” has the same meaning as Member State in the Council Regulation.”.

(4) In rule 62.28 (enforcement of judgments, authentic instruments or court settlements from another Contracting State or State bound by the Lugano Convention)(e)—

(a) the cross-heading becomes “**Enforcement of judgments, authentic instruments or court settlements from another Contracting State, Member State or State bound by the Lugano Convention**”;

(b) in paragraph (1)—

(i) at the end of sub-paragraph (a), omit “or”;

(ii) after sub-paragraph (a), insert—

“(b) Article 38 (enforcement of judgment from Member State), Article 57 (enforcement of authentic instrument from another Member State) or Article 58 (enforcement of court settlement from another Member State) of the Council Regulation;”;

(c) in paragraph (2), before “There shall be produced”, insert “Subject to paragraph (3),”;

(d) after paragraph (2), insert—

“(3) Paragraph (2)(b) and (d) do not apply to a petition under Article 38 (enforcement of judgment from another Member State), Article 57 (enforcement of authentic instrument from another Member State) or Article 58 (enforcement of settlement from another Member State) of the Council Regulation but there must 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 Council Regulation.”;

(a) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2019/81. Part V of Chapter 62 of the Rules of the Court of Session was last amended by S.S.I. 2015/26.

(b) Rule 62.26 was substituted by S.S.I. 2004/52 and last amended by S.S.I. 2015/26.

(c) OJ L 12, 16.01.2001, p.1. Repealed by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p.1), subject to transitional provisions set out in Article 66 of that Regulation.

(d) OJ L 299, 16.11.2005, p.62.

(e) Rule 62.28 was substituted by S.S.I. 2004/52 and last amended by S.S.I. 2015/26.

- (e) in paragraph (4), after “paragraph (2)(a) to (d)”, insert “, (3)”.
- (5) In rule 62.30 (warrant for registration under the Act of 1982 or the Lugano Convention)(a)—
 - (a) the cross-heading becomes “**Warrant for registration under the Act of 1982, the Council Regulation or the Lugano Convention**”;
 - (b) in paragraph (1), after “the Act of 1982”, insert “or, as the case may be, the Council Regulation”.
- (6) In rule 62.32 (registration under the Act of 1982 or the Lugano Convention)(b)—
 - (a) the cross-heading becomes “**Registration under the Act of 1982, the Council Regulation or the Lugano Convention**”;
 - (b) in paragraph (1), after “the Act of 1982”, insert “, the Council Regulation”.
- (7) In rule 62.33 (service of warrant for registration under the Act of 1982 or the Lugano Convention)(c) the cross-heading becomes “**Service of warrant for registration under the Act of 1982, the Council Regulation or the Lugano Convention**”.
- (8) In rule 62.34 (appeals under the Act of 1982 or the Lugano Convention)(d)—
 - (a) the cross-heading becomes “**Appeals under the Act of 1982, the Council Regulation or the Lugano Convention**”;
 - (b) in paragraph (1)—
 - (i) after “the Act of 1982 (appeal against granting of warrant for registration),”, insert “an appeal under Article 43 (appeals by either party) of the Council Regulation”;
 - (ii) in sub-paragraph (b)—
 - (aa) after “the Act of 1982”, insert “, the Council Regulation”;
 - (bb) after “another Contracting State or, as the case may be,”, insert “Member State or”;
 - (c) in paragraph (2)—
 - (i) after “the Act of 1982 (appeal against refusal to grant warrant for registration)”, insert “, an appeal under Article 43 (appeals by either party) of the Council Regulation”;
 - (ii) in sub-paragraph (b), after “the Act of 1982”, insert “, the Council Regulation”.
- (9) In rule 62.35 (reclaiming under the Act of 1982 or the Lugano Convention)(e)—
 - (a) the cross-heading becomes “**Reclaiming under the Act of 1982, the Council Regulation or the Lugano Convention**”;
 - (b) in paragraph (1), after “the Act of 1982”, insert “, the Council Regulation”.
- (10) In rule 62.36 (recognition of judgments from another Contracting State or State bound by the Lugano Convention)(f)—
 - (a) the cross-heading becomes “**Recognition of judgments from another Contracting State, Member State or State bound by the Lugano Convention**”;
 - (b) in paragraph (1)—
 - (i) after “Schedule 1 to the Act of 1982”, insert “, Article 33 of the Council Regulation (recognition of judgment)”;
 - (ii) after “(warrant for registration under the Act of 1982”, insert “, the Council Regulation”;

(a) Rule 62.30 was substituted by S.S.I. 2004/52 and last amended by S.S.I. 2015/26.
 (b) Rule 62.32 was inserted by S.S.I. 2004/52 and last amended by S.S.I. 2015/26.
 (c) Rule 62.33 was substituted by S.S.I. 2004/52 and last amended by S.S.I. 2015/26.
 (d) Rule 62.34 was substituted by S.S.I. 2004/52 and last amended by S.S.I. 2015/26.
 (e) Rule 62.35 was substituted by S.S.I. 2004/52 and last amended by S.S.I. 2015/26.
 (f) Rule 62.36 was substituted by S.S.I. 2004/52 and then by S.S.I. 2009/450, and amended by S.S.I. 2015/26.

- (c) in paragraph (2), after “the Act of 1982 (application for recognition of a judgment)”, insert “, Article 33(2) of the Council Regulation (application for recognition of a judgment)”.

(11) In rule 62.39 (cancellation of registration under the Act of 1982 or the Lugano Convention)(a)—

- (a) the cross-heading becomes “**Cancellation of registration under the Act of 1982, the Council Regulation or the Lugano Convention**”;
- (b) in paragraph (a)—
 - (i) after “(warrant for registration under the Act of 1982”, insert “, the Council Regulation”;
 - (ii) after “(registration under the Act of 1982”, insert “, the Council Regulation”;
 - (iii) after “Schedule 1 to the Act of 1982”, insert “, an appeal under Article 43 of the Council Regulation”.

(12) In rule 62.40 (enforcement in another Contracting State or State bound by the Lugano Convention of Court of Session judgments etc.)(b)—

- (a) the cross-heading becomes “**Enforcement in another Contracting State or Member State of Court of Session judgments etc.**”;
- (b) after paragraph (1), insert—

“(2) Where a person seeks to apply under Chapter III of the Council Regulation for recognition or enforcement in another Member State of a judgment given by the court, the person must apply by letter to the Deputy Principal Clerk for—

 - (a) a certificate under Article 54 of the Council Regulation;
 - (b) a certified copy of the judgment; and
 - (c) if required, a certified copy of the opinion of the court.”;
- (c) in paragraph (3), after “paragraph (1)(a)”, insert “, (2)(a)”;
- (d) after paragraph (4), insert—

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

 - (a) a certificate under Article 57 or 58 of the Council Regulation; and
 - (b) an extract of the authentic instrument or court settlement.”;
- (e) in paragraph (6), after “paragraph (4)”, insert “, (5)”.

Revocation

3. Paragraph 2(2) to (12) of Act of Sederunt (Rules of the Court of Session Amendment) (Regulation (EU) No. 1215/2012) 2015(c) is revoked.

Form of applications

4. In the Appendix—

- (a) in 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)(d)—

(a) Rule 62.39 was substituted by S.S.I. 2004/52 and last amended by S.S.I. 2015/26.
(b) Rule 62.40 was substituted by S.S.I. 2004/52 and last amended by S.S.I. 2015/26.
(c) S.S.I. 2015/26.
(d) Form 62.28 was last substituted by S.S.I. 2015/26.

- (i) in the heading, after “or Article 58 of”, insert “the Council Regulation or”;
 - (ii) in the instance, for “Civil Jurisdiction and Judgments Act 1982 [or under the Lugano Convention”, substitute “Civil Jurisdiction and Judgments Act 1982 [or under Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil or commercial matters or under the Lugano Convention”;
 - (iii) in paragraph 7, for “Civil Jurisdiction and Judgments Act 1982 [or under Article 38”, substitute “Civil Jurisdiction and Judgments Act 1982 [or under Article 38 [or 57 or 58] of Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil or commercial matters [or under Article 38”;
- (b) in 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 Lugano Convention)(a)—
- (i) in the heading, after “Article 58 of”, insert “the Council Regulation or”;
 - (ii) in the preamble, for “[or under Article 38 [or 57 or 58] of the Lugano Convention”, substitute “[or under Article 38 [or 57 or 58] of Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil or commercial matters or the Lugano Convention”.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
11th March 2019

(a) Form 62.33 was last substituted by S.S.I. 2015/26.

EXPLANATORY NOTE

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

This Act of Sederunt amends Part V of Chapter 62 (recognition, registration and enforcement of foreign judgments etc.) of the Rules of the Court of Session 1994 (S.I. 1994/1443).

Part V of Chapter 62 of the Rules of the Court of Session was replaced by the Act of Sederunt (Rules of the Court of Session Amendment) (Miscellaneous) 2004 (S.S.I. 2004/54) and was subsequently amended by the Act of Sederunt (Rules of the Court of Session Amendment No. 9) (Miscellaneous) 2009 (S.S.I. 2009/450) and the Act of Sederunt (Rules of the Court of Session Amendment) (Regulation (EU) No. 1215/2012) 2015 (S.S.I. 2015/26).

Paragraph 2(2) to (12) of S.S.I. 2015/26 made textual amendments to Part V of Chapter 62 to remove references to Council Regulation (EC) 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”). This was in consequence of the coming into force of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (“the Brussels I (recast) Regulation”).

Article 66 of the Brussels I (recast) Regulation makes transitional provisions which, notwithstanding the repeal of the Brussels I Regulation by the Brussels I (recast) Regulation, save the operation of the Brussels I Regulation in certain specified cases. These transitional provisions were not included in the amendments made to Part V of Chapter 62 of the Rules of the Court of Session by S.S.I 2015/26.

This Act of Sederunt removes the amendments made to Part V of Chapter 62 of the Rules of the Court of Session by S.S.I 2015/26 and ensures that Part V continues to apply, in the cases saved by the operation of Article 66 of the Brussels I (recast) Regulation.

Paragraph 3 of this Act of Sederunt revokes paragraph 2(2) to (12) of S.S.I. 2015/26.

Paragraph 4 of this Act of Sederunt makes consequential amendments to Forms 62.28 and 62.33.

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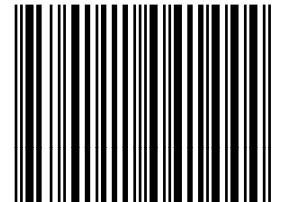
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