

2010 No. 417

COURT OF SESSION

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

Made - - - - *24th November 2010*

Coming into force - - *1st January 2011*

The Lords of Council and Session, under and by virtue of the powers conferred by section 5 of the Court of Session Act 1988(a) and all other powers enabling them in that behalf, do hereby enact and declare:

Citation, commencement etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Miscellaneous) 2010 and comes into force on 1st January 2011.

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

(3) In this Act of Sederunt, “the Rules” means the Rules of the Court of Session 1994(b).

Service of documents by messengers-at-arms

2.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In rule 16.3 (service by messenger-at-arms)(c), in paragraph (3) for “and the document served is left in the hands of a person other than the person on whom service is to be executed, that” substitute “the”.

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)(d), 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(e).”.

(a) 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 3), section 14(1); and the Judiciary and Courts (Scotland) Act 2008, (asp 6), section 46(3).

(b) S.I. 1994/1443, last amended by S.S.I. 2010/205

(c) Rule 16.3 was amended by S.S.I. 2001/305 and 2010/205.

(d) Rule 49.1 was substituted by S.S.I. 2005/632 and amended by S.S.I. 2006/206.

(e) 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) In rule 49.28 (evidence in certain undefended family actions)(a), 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)(b), 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—

- (a) the court, tribunal or other authority which granted the decree;
- (b) the date of the decree of divorce, annulment or separation to which the action relates;
- (c) the date and place of the marriage to which the decree of divorce, nullity or separation relates;
- (d) the basis on which the court has jurisdiction to entertain the action;
- (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).

(a) Rule 49.28 was amended by S.I. 1996/2587 and S.S.I. 2001/305 and 2005/632.

(b) Part XVA was inserted by S.S.I. 2006/206.

(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)(a), for paragraph (3)(b) substitute—

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

Building society insolvency procedure etc.

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

(2) In rule 5.1A (further restriction as to caveats)(b), for paragraph (2) substitute—

“(2) A caveat shall not be lodged against an order for intimation, service and advertisement of a petition for—

- (a) a bank insolvency order under rule 74.35;
- (b) a bank administration order under rule 74.45;
- (c) a building society special administration order under rule 74.51; or
- (d) a building society insolvency order under rule 74.52.”.

(3) In rule 33.9 (insolvency or death of cautioner or guarantor)(c), for paragraph (d)(i) substitute—

“(i) an administration order, bank administration order, building society special administration order, winding up order, bank insolvency order or building society insolvency order has been made, or a resolution for a voluntary winding up has been passed, with respect to it.”.

(4) In rule 74.47 (provisional bank administrator)(d), in paragraph (4)(b), omit “and to such other persons as are specified in rule 32 of the Bank Administration Rules (appointment of provisional bank administrator)”.

(5) In rule 74.51 (application of rules to building society special administration procedure)(e)—

- (a) in paragraph (3)(c) for “section 90C” substitute “sections 84 and 90C”; and
- (b) in paragraph (4), omit—

“rule 5.1A (further restriction as to caveats),
rule 33.9 (insolvency or death of cautioner or grantor),”.

(6) After Part IX of Chapter 74 (building society special administration procedure)(f), insert—

(a) Rule 62.76 was inserted by S.S.I. 2005/135.
(b) Rule 5.1A was inserted by S.S.I. 2001/92 and amended by S.S.I. 2009/63.
(c) Rule 33.9 was amended by S.S.I. 2009/63.
(d) Rule 74.47 was inserted by S.S.I. 2009/63.
(e) Rule 74.51 was inserted by S.S.I. 2009/135.
(f) Part IX of Chapter 74 was inserted by S.S.I. 2009/135.

“PART X

BUILDING SOCIETY INSOLVENCY PROCEDURE

Application of rules to building society insolvency

74.52.—(1) Subject to paragraph (3), Part VII of this Chapter applies to an application mentioned in paragraph (2) as it applies to an application for a bank insolvency order.

(2) An application referred to in paragraph (1) is an application for a building society insolvency order under the Act of 2009, as that Act is applied and modified by section 90C of the Building Societies Act 1986(a) and the Building Societies (Insolvency and Special Administration) Order 2009(b).

(3) In the application of Part VII of this Chapter under paragraph (1)—

- (a) references to the Bank Insolvency Rules shall be read as references to the Building Society Insolvency (Scotland) Rules 2010(c);
- (b) references to a rule in the Bank Insolvency Rules shall be read as references to the corresponding rule in the Building Society Insolvency (Scotland) Rules 2010;
- (c) references to the Act of 2009 shall be read as references to the Act of 2009, as applied and modified by section 90C of the Building Societies Act 1986 and the Building Societies (Insolvency and Special Administration) Order 2009; and references to specific provisions in the Act of 2009 shall be read accordingly;
- (d) references to any Part or provision of the Act of 1986 that is not applied by Part 2 of the Act of 2009 shall be read as references to that Part or provision as applied and modified by section 90A of, and Schedule 15A to, the Building Societies Act 1986(d);
- (e) references to “bank” shall be read as references to “building society”;
- (f) references to “bank administration” shall be read as references to “building society special administration”;
- (g) references to “bank administrator” shall be read as references to “building society special administrator”;
- (h) references to “bank insolvency order” shall be read as references to “building society insolvency order”;
- (i) references to “bank liquidator” shall be read as references to “building society liquidator”;
- (j) rule 74.36(1)(a)(iv) (intimation, service and advertisement) shall be disregarded; and
- (k) in rule 74.36(1)(a)(vii), the reference to “section 120 of the Act of 2009” shall be read as a reference to “section 90D of the Building Societies Act 1986(e)”.

(a) 1986 c.53. Section 90C was inserted by S.I. 2009/805.

(b) S.I. 2009/805, as amended by S.I. 2010/1189.

(c) S.I. 2010/2584.

(d) Section 90A and Schedule 15A were inserted by the Building Societies Act 1997 c.32, section 39.

(e) Section 90D was inserted by S.I. 2009/805.

(4) The following rules shall, with the necessary modifications, apply in relation to building society insolvency procedure as they apply in relation to bank insolvency procedure:—

rule 74.1 (application and interpretation of Chapter 74),

rule 74.2 (proceedings before insolvency judge),

rule 74.3 (notices and reports etc. sent to the court).”.

A.C. HAMILTON
Lord President
I.P.D.

Edinburgh
24th November 2010

EXPLANATORY NOTE

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

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

Paragraph 2 amends the rule dealing with service of documents by messenger-at-arms, so as to add to the methods of service under which documents require to be placed in a sealed envelope.

Paragraph 3 makes amendments in relation to family actions.

Paragraph 3(4) inserts a new Part XVI and rule 49.91 into Chapter 49 of the Rules (family actions), relating to the procedure to be followed in actions for declarator of recognition, or non-recognition, of a decree of divorce, nullity or separation granted outwith a member state of the European Union. Paragraph 3(2) amends the definition of “family action” in rule 49.1 so as to include such actions.

Paragraph 3(3) amends rule 49.28 so that the actions referred to do not fall within the scope of the procedure set out in that rule in relation to the giving of evidence in undefended family actions.

Paragraph 3(5) amends rule 62.76 to the effect that rules 62.70 and 62.72, relating to the registration of foreign decrees, apply to applications for non-recognition of relevant foreign decrees.

Paragraph 4 makes amendments to the rules in consequence of the establishment of a procedure for building society insolvency under the Banking Act 2009. It inserts a new Part X and rule 74.52 into Chapter 74 of the Rules. Rule 74.52 applies Part VII of Chapter 74 (bank insolvency procedure), with modifications, to applications for building society insolvency orders. Other consequential amendments are also made.

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