

2021 No. 75

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session 1994 and Sheriff
Court Rules Amendment) (Miscellaneous) 2021**

Made - - - - - *16th February 2021*

Laid before the Scottish Parliament *17th February 2021*

Coming into force - - - *1st March 2021*

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 sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

Citation and commencement etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2021.

(2) It comes into force on 1st March 2021.

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

Amendment of the Rules of the Court of Session 1994

2.—(1) The Rules of the Court of Session 1994(c) are amended in accordance with this paragraph.

(2) For rule 49.91(1) (action for declarator in relation to certain foreign decrees)(d), substitute—

“(1) This rule applies to an action for declarator of recognition, or non-recognition, of a decree of divorce, nullity or separation granted outwith the United Kingdom, the Channel Islands or the Isle of Man.”.

(3) In the appendix (forms)—

(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) 2014 asp 18.

(c) 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. 2021/22.

(d) Rule 49.91(1) was amended by S.S.I. 2014/302.

- (a) in Form 49.73-A (form of simplified divorce application under section 1(2)(d) of the Divorce (Scotland) Act 1976)(a)—
 - (i) in the Notes on Section 3, omit—
 - (aa) the definition of “the Council Regulation”;
 - (bb) the list of Contracting States;
 - (ii) in the Notes on Section 4, for “General Register Office (Scotland)” substitute “National Records of Scotland”;
 - (iii) in Part 1, for Section 3 (jurisdiction), substitute—

“ 3. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

- (i) I am domiciled in Scotland on the date I signed this application
- (ii) My spouse is domiciled in Scotland on the date I signed this application
- (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- (iv) My spouse was habitually resident in Scotland throughout the period of one year ending with the date I signed this application ”

- (b) in Form 49.73-B (form of simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976)(b)—
 - (i) in the Notes on Section 4—
 - (aa) for “GENERAL REGISTER OFFICE” substitute “NATIONAL RECORDS OF SCOTLAND”;
 - (bb) for “General Register Office” where it occurs and “General Register Office (Scotland)” substitute “National Records of Scotland”;
 - (ii) in the Notes on Section 5, omit—
 - (aa) the definition of “the Council Regulation”;
 - (bb) the list of Contracting States;
 - (iii) in Part 1, for Section 5 (jurisdiction), substitute—

“ 5. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

(a) Form 49.73-A was last amended by S.S.I. 2017/132.
 (b) Form 49.73-B was last amended by S.S.I. 2017/132.

- (i) I am domiciled in Scotland on the date I signed this application
 - (ii) My spouse is domiciled in Scotland on the date I signed this application
 - (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
 - (iv) My spouse was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- ”
- (c) in Form 49.73-C (form of simplified divorce application under section 1(1)(b) of the Divorce (Scotland) Act 1976)(a)—
- (i) in the direction for making application, in direction 3(i), for “General Register Office” substitute “National Records of Scotland”;
 - (ii) in the Notes on Section 4—
 - (aa) for “GENERAL REGISTER OFFICE” substitute “NATIONAL RECORDS OF SCOTLAND”;
 - (bb) for “General Register Office” where it occurs and “General Register Office (Scotland)” substitute “National Records of Scotland”;
 - (iii) in the Notes on Section 5, omit—
 - (aa) the definition of “the Council Regulation”;
 - (bb) the list of Contracting States;
 - (iv) in Part 1, for Section 5 (jurisdiction), substitute—

“ 5. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

- (i) I am domiciled in Scotland on the date I signed this application
 - (ii) My spouse is domiciled in Scotland on the date I signed this application
 - (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
 - (iv) My spouse was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- ”
- (d) in Form 49.80B-A (form of simplified dissolution of civil partnership application under section 117(3)(c) of the Civil Partnership Act 2004)(b)—
- (i) in the Notes on Section 4, for “General Register Office (Scotland)” substitute “National Records of Scotland”;
 - (ii) in Part 1, for Section 3 (jurisdiction), substitute—

(a) Form 49.73-C was inserted by S.S.I. 2005/632 and last amended by S.S.I. 2017/132.
 (b) Form 49.80B-A was inserted by S.S.I. 2005/632 and last amended by S.S.I. 2017/132.

“ 3. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

PART A

- (i) I am domiciled in Scotland on the date I signed this application
- (ii) My civil partner is domiciled in Scotland on the date I signed this application
- (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- (iv) My civil partner was habitually resident in Scotland throughout the period of one year ending with the date I signed this application

If you have ticked one of the boxes in Part A, you do not have to complete Part B. You should complete Part B if you have not ticked any of the boxes in Part A.

PART B

- (i) My civil partner and I are registered as civil partners of each other in Scotland

AND

- (ii) No court has, or is recognised as having, jurisdiction

AND

- (iii) It is in the interests of justice for the Court of Session to assume jurisdiction in the case

(Please give reasons below)

”

- (e) in Form 49.80B-B (form of simplified dissolution of civil partnership application under section 117(3)(d) of the Civil Partnership Act 2004)(a)—
 - (i) in the directions for making application, in direction 3(i), for “General Register Office” substitute “National Records of Scotland”;
 - (ii) in the Notes on Section 4—
 - (aa) for “GENERAL REGISTER OFFICE” substitute “NATIONAL RECORDS OF SCOTLAND”;
 - (bb) for “General Register Office” where it occurs and “General Register Office (Scotland)” substitute “National Records of Scotland”;
 - (iii) in Part 1, for Section 5 (jurisdiction), substitute—

(a) Form 49.80B-B was inserted by S.S.I. 2005/632 and last amended by S.S.I. 2017/132.

“ 5. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

PART A

- (i) I am domiciled in Scotland on the date I signed this application
- (ii) My civil partner is domiciled in Scotland on the date I signed this application
- (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- (iv) My civil partner was habitually resident in Scotland throughout the period of one year ending with the date I signed this application

If you have ticked one of the boxes in Part A, you do not have to complete Part B. You should complete Part B if you have not ticked any of the boxes in Part A.

PART B

- (i) My civil partner and I are registered as civil partners of each other in Scotland

AND

- (ii) No court has, or is recognised as having, jurisdiction

AND

- (iii) It is in the interests of justice for the Court of Session to assume jurisdiction in the case

(Please give reasons below)

”

- (f) in Form 49.80B-C (form of simplified dissolution of civil partnership application under section 117(2)(b) of the Civil Partnership Act 2004)(a)—
 - (i) in the directions for making application, in direction 3(i), for “General Register Office” substitute “National Records of Scotland”;
 - (ii) in the Notes on Section 4—
 - (aa) for “GENERAL REGISTER OFFICE” substitute “National Records of Scotland”;
 - (bb) for “General Register Office” where it occurs and “General Register Office (Scotland)” substitute “National Records of Scotland”;
 - (iii) in Part 1, for Section 5 (jurisdiction), substitute—

(a) Form 49.80B-C was inserted by S.S.I. 2005/632 and last amended by S.S.I. 2017/132.

“ 5. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

PART A

- (i) I am domiciled in Scotland on the date I signed this application
- (ii) My civil partner is domiciled in Scotland on the date I signed this application
- (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- (iv) My civil partner was habitually resident in Scotland throughout the period of one year ending with the date I signed this application

If you have ticked one of the boxes in Part A, you do not have to complete Part B. You should complete Part B if you have not ticked any of the boxes in Part A.

PART B

- (i) My civil partner and I are registered as civil partners of each other in Scotland

AND

- (ii) No court has, or is recognised as having, jurisdiction

AND

- (iii) It is in the interests of justice for the Court of Session to assume jurisdiction in the case

(Please give reasons below)

”

Amendment of the Ordinary Cause Rules 1993

3.—(1) The Ordinary Cause Rules 1993(a) are amended in accordance with this paragraph.

(2) In rule 33.2(2)(b)(v) (averments in certain family actions about other proceedings)(b) omit “or Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 concerning the jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility(c)”.

(3) For rule 33.96(1) (action of declarator in relation to certain foreign decrees)(d), substitute—

(a) The Ordinary Cause Rules are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.I. 2020/942.

(b) Rule 33.2(2)(b)(v) was relevantly amended by S.S.I. 2006/207.

(c) O.J. No. L 38, 23.12.2003, p.1.

(d) Rule 33.96(1) was inserted by S.S.I. 2010/416 and amended by S.S.I. 2014/302.

“(1) This rule applies to an action for declarator of recognition, or non-recognition, of a decree of divorce, nullity or separation granted outwith the United Kingdom, the Channel Islands or the Isle of Man.”.

(4) In Appendix 1 (forms)—

- (a) in Form F31 (form of simplified divorce application under section 1(2)(d) of the Divorce (Scotland) Act 1976)(a), in Part 1, for paragraph 3 (jurisdiction), substitute—

“ 3. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

Please complete both Part A and Part B

PART A

- (i) I am domiciled in Scotland on the date I signed this application
- (ii) My spouse is domiciled in Scotland on the date I signed this application
- (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- (iv) My spouse was habitually resident in Scotland throughout the period of one year ending with the date I signed this application

PART B

- (i) I have lived at the address shown above for at least 40 days immediately before the date I signed this application
- (ii) My spouse has lived at the address shown above for at least 40 days immediately before the date I signed this application
- (iii) I lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and have no known residence in Scotland at that date
- (iv) My spouse lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and has no known residence in Scotland at that date

- (b) in Form F33 (form of simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976)(b)—

- (i) in the directions for making application, in direction 3(i), for “General Register Office” substitute “National Records of Scotland”;
- (ii) in Part 1, for paragraph 5 (jurisdiction), substitute—

(a) Form F31 was last amended by S.S.I. 2017/132.
(b) Form F33 was last amended by S.S.I. 2017/132.

“ 5. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

Please complete both Part A and Part B

PART A

- (i) I am domiciled in Scotland on the date I signed this application
- (ii) My spouse is domiciled in Scotland on the date I signed this application
- (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- (iv) My spouse was habitually resident in Scotland throughout the period of one year ending with the date I signed this application

PART B

- (i) I have lived at the address shown above for at least 40 days immediately before the date I signed this application
- (ii) My spouse has lived at the address shown above for at least 40 days immediately before the date I signed this application
- (iii) I lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and have no known residence in Scotland at that date
- (iv) My spouse lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and has no known residence in Scotland at that date

(c) in Form F33A (form of simplified divorce application under section 1(1)(b) of the Divorce (Scotland) Act 1976)(a)—

- (i) in the directions for making application, in direction 3(i), for “General Register Office” substitute “National Records of Scotland”;
- (ii) in Part 1, for paragraph 5 (jurisdiction), substitute—

“ 5. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

(a) Form F33A was inserted by S.S.I. 2006/207 and last amended by S.S.I. 2017/132.

Please complete both Part A and Part B

PART A

- (i) I am domiciled in Scotland on the date I signed this application
- (ii) My spouse is domiciled in Scotland on the date I signed this application
- (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- (iv) My spouse was habitually resident in Scotland throughout the period of one year ending with the date I signed this application

PART B

- (i) I have lived at the address shown above for at least 40 days immediately before the date I signed this application
- (ii) My spouse has lived at the address shown above for at least 40 days immediately before the date I signed this application
- (iii) I lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and have no known residence in Scotland at that date
- (iv) My spouse lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and has no known residence in Scotland at that date

(d) in Form CP29 (form of simplified dissolution of civil partnership application under section 117(3)(c) of the Civil Partnership Act 2004)(a), in Part 1, for paragraph 3 (jurisdiction), substitute—

“ 3. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

Please complete both Part A and Part B

PART A

- (i) I am domiciled in Scotland on the date I signed this application

(a) Form CP29 was inserted by S.S.I. 2005/638 and last amended by S.S.I. 2017/132.

- (ii) My civil partner is domiciled in Scotland on the date I signed this application
- (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- (iv) My civil partner was habitually resident in Scotland throughout the period of one year ending with the date I signed this application

PART B

- (i) I have lived at the address shown above for at least 40 days immediately before the date I signed this application
- (ii) My civil partner has lived at the address shown above for at least 40 days immediately before the date I signed this application
- (iii) I lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and have no known residence in Scotland at that date
- (iv) My civil partner lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and has no known residence in Scotland at that date

- (e) in Form CP30 (form of simplified dissolution of civil partnership application under section 117(3)(d) of the Civil Partnership Act 2004)(a)—
 - (i) in the directions for making application, in direction 3(i), for “General Register Office” substitute “National Records of Scotland”;
 - (ii) in Part 1, for paragraph 5 (jurisdiction), substitute—

“ 5. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

Please complete both Part A and Part B

PART A

- (i) I am domiciled in Scotland on the date I signed this application
- (ii) My civil partner is domiciled in Scotland on the date I signed this application

(a) Form CP30 was inserted by S.S.I. 2005/638 and last amended by S.S.I. 2017/132.

- (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- (iv) My civil partner was habitually resident in Scotland throughout the period of one year ending with the date I signed this application

PART B

- (i) I have lived at the address shown above for at least 40 days immediately before the date I signed this application
- (ii) My civil partner has lived at the address shown above for at least 40 days immediately before the date I signed this application
- (iii) I lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and have no known residence in Scotland at that date
- (iv) My civil partner lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and has no known residence in Scotland at that date

- (f) in Form CP31 (form of simplified dissolution of a civil partnership application on grounds under section 117(2)(b) of the Civil Partnership Act 2004)(a)—
 - (i) in the directions for making application, in direction 3(i), for “General Register Office” substitute “National Records of Scotland”;
 - (ii) in Part 1, for paragraph 5 (jurisdiction), substitute—

“ 5. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

Please complete both Part A and Part B

PART A

- (i) I am domiciled in Scotland on the date I signed this application
- (ii) My civil partner is domiciled in Scotland on the date I signed this application
- (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- (iv) My civil partner was habitually resident in Scotland throughout the period of one year ending with the date I signed this application

(a) Form CP31 was inserted by S.S.I. 2005/638 and last amended by S.S.I. 2017/132.

PART B

- (i) I have lived at the address shown above for at least 40 days immediately before the date I signed this application
- (ii) My civil partner has lived at the address shown above for at least 40 days immediately before the date I signed this application
- (iii) I lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and have no known residence in Scotland at that date
- (iv) My civil partner lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and has no known residence in Scotland at that date ”

Saving and transitional provision

4. The amendment made by paragraph 3(2) does not apply in relation to proceedings to which rule 33.2 (averments in certain family actions about other proceedings)(a) of the Ordinary Cause Rules 1993(b) applies which are instituted before IP completion day.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
16th February 2021

(a) Rule 33.2 was last amended by S.S.I. 2011/192.
(b) The Ordinary Cause Rules are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.I. 2020/942.

EXPLANATORY NOTE

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

This Act of Sederunt amends various Forms in the appendices of the Rules of the Court of Session 1994 and the Ordinary Cause Rules 1993. The Forms, which are simplified divorce and dissolution of civil partnership applications, are amended in consequence of the United Kingdom's withdrawal from the European Union. Under the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104) the jurisdiction of the Court of Session and sheriff courts in these court actions has been brought back to the position before there was EU provision in this area. Necessary consequential amendments are made to the Forms by this Act of Sederunt.

This Act of Sederunt also amends rule 49.91 of the Rules of the Court of Session 1994 and rule 33.96 of the Ordinary Cause Rules 1993 to make minor provision in relation to actions for declarator of recognition, or non-recognition, of certain foreign decrees in consequence of European Union withdrawal. The rules, as amended, apply to such actions concerning decrees of divorce, nullity or separation in respect of an opposite sex marriage or a same sex marriage.

Paragraph 3(2) removes a reference to Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 concerning the jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility from rule 33.2 of the Ordinary Cause Rules. Saving and transitional provision is made by paragraph 4 of this Act of Sederunt in relation to that amendment.

Minor amendments, unconnected to European Union withdrawal, are made to the Forms to provide that references to "General Register Office" and "General Register Office (Scotland)" are substituted with "National Records of Scotland".

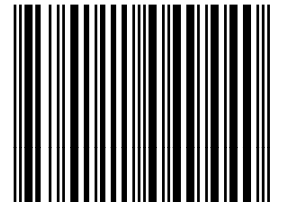
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