
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 371

**Act of Sederunt (Rules of the Court of Session
and Sheriff Court Rules Amendment No. 3)
(Mutual Recognition of Protection Measures) 2014**

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994 in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(1) are amended in accordance with the following subparagraphs.

(2) In rule 4.2(3) (signature of documents)(2), after subparagraph (e), insert—

“(f) an application in Form 106.2 or Form 106.7 may be signed by the applicant or an agent.”.

(3) In rule 85.1 (Protection from Abuse (Scotland) Act 2001: interpretation)(3)—

(a) after the definition of “interdict”, insert—

““incoming protection measure” has the meaning given by rule 106.1 (mutual recognition of protection measures: interpretation);”;

(b) the existing rule becomes paragraph (1);

(c) after paragraph (1), insert—

“(2) This Chapter does not apply to an application—

(a) under section 1(2) of the Act of 2001 to attach a power of arrest to an incoming protection measure; or

(b) under section 2(3) or 2(7) of the Act of 2001 relating to a power of arrest attached to an incoming protection measure.”;

(d) the heading of the rule becomes “Interpretation and application of this Chapter”.

(4) In rule 85.5 (Protection from Abuse (Scotland) Act 2001: certificate of delivery of documents to chief constable)(4), omit “in any circumstances”.

(5) In rule 85A.1 (domestic abuse interdicts: interpretation and application)(5)—

(a) in paragraph (1), after the definition of “the 2011 Act”, insert—

““incoming protection measure” has the meaning given by rule 106.1 (mutual recognition of protection measures: interpretation);”;

(b) after paragraph (2), insert—

“(3) This Chapter does not apply to an application for a determination under section 3(1) of the 2011 Act that an incoming protection measure is a domestic abuse interdict.”.

(1) [S.I. 1994/1443](#), last amended by [S.S.I. 2014/302](#).
(2) Rule 4.2(3) was last amended by [S.I. 1997/3059](#).
(3) Rule 85.1 was inserted by [S.S.I. 2002/514](#).
(4) Rule 85.5 was inserted by [S.S.I. 2002/514](#).
(5) Rule 85A.1 was inserted by [S.S.I. 2011/288](#).

(6) After Chapter 105 (land registration etc.)(6), insert—

“CHAPTER 106

MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Interpretation

106.1. In this Chapter—

“Article 5 certificate” means a certificate issued under Article 5 of the Regulation;

“Article 14 certificate” means a certificate issued under Article 14 of the Regulation;

“incoming protection measure” means a protection measure that has been ordered in a Member State other than the United Kingdom or Denmark;

“Member State” means a Member State of the European Union;

“person causing the risk” has the meaning given by Article 3(3) of the Regulation;

“protected person” has the meaning given by Article 3(2) of the Regulation;

“protection measure” has the meaning given by Article 3(1) of the Regulation;

“registered post service” has the meaning given by section 125(1) of the Postal Services Act 2000(7);

“the Regulation” means Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters(8).

Form of application for Article 5 certificate

106.2. An application for the issue of an Article 5 certificate shall be made by lodging Form 106.2 in process.

Issue of Article 5 certificate

106.3. The court shall issue an Article 5 certificate where—

- (a) the order in respect of which the certificate is sought is a protection measure;
- (b) the person applying for the certificate is a protected person in respect of the protection measure;
- (c) the first condition specified in rule 106.4 is satisfied; and
- (d) the second condition specified in rule 106.4 is satisfied, if the protection measure is an interim interdict.

Conditions for issue of Article 5 certificate

106.4.—(1) The first condition is that—

- (a) at the hearing when the interlocutor granting the protection measure was pronounced, the person causing the risk was—

(6) Chapter 105 was inserted by [S.S.I. 2014/291](#).

(7) [2000 c. 26](#). Section 125(1) was amended by the Postal Services Act [2011 \(c. 5\)](#), Schedule 12, paragraph 49; and [S.I. 2014/631](#), Schedule 1, paragraph 7(4).

(8) O.J. L181, 29.6.2013, p. 4.

- (i) personally present in court; or
 - (ii) represented by counsel or other person having a right of audience; or
- (b) the interlocutor granting the protection measure has been intimated to the person causing the risk.
- (2) The second condition is that either paragraph (3) or (4) applies.
- (3) This paragraph applies where—
 - (a) the writ seeking interdict was intimated to the person causing the risk before interim interdict was granted;
 - (b) interim interdict was granted pursuant to a motion intimated on the person causing the risk; and
 - (c) the person causing the risk had a sufficient opportunity to oppose the motion, whether or not he or she did so.
- (4) This paragraph applies where the court is satisfied that the person causing the risk has had a sufficient opportunity to apply for recall of the interim interdict.
- (5) Where the court requires to be satisfied that any writ, motion or interlocutor has been intimated for the purposes of this rule, it is for the person on whose behalf intimation has been given to lodge in process a certificate of intimation if such a certificate is not already in process.

Notice of issue of Article 5 certificate

106.5.—(1) Where the court issues an Article 5 certificate, the Deputy Principal Clerk shall—

- (a) send the protected person—
 - (i) the certificate, and
 - (ii) a certified copy of the interlocutor granting the protection measure; and
- (b) give the person causing the risk notice of the issue of the certificate in accordance with paragraphs (2) to (4).
- (2) Where the address of the person causing the risk is known, notice shall be given by sending that person—
 - (a) a notice in Form 106.5-A,
 - (b) a copy of the certificate; and
 - (c) a copy of the interlocutor granting the protection measure.
- (3) Where the address of the person causing the risk is outwith the United Kingdom, the Deputy Principal Clerk shall send the documents mentioned in paragraph (2) by a registered post service.
- (4) Where the address of the person causing the risk is not known, notice shall be given by displaying on the walls of court a notice in Form 106.5-B.
- (5) In this rule, “Article 5 certificate” includes a rectified Article 5 certificate issued under Article 9(1)(a) of the Regulation.

Effect of variation of order

106.6. Where the order in respect of which an Article 5 certificate is sought has been varied prior to the issue of a certificate—

- (a) the reference to the order in rule 106.3(a) is to the order as so varied; and

- (b) the references to the interlocutor in rule 106.5 include a reference to any interlocutor varying the order.

Application for rectification or withdrawal of Article 5 certificate

106.7.—(1) An application to the court under Article 9 of the Regulation for rectification or withdrawal of an Article 5 certificate shall be made by lodging Form 106.7 in process.

(2) The court may determine an application without a hearing unless it considers that a hearing is required.

Issue of Article 14 certificate

106.8.—(1) An application for the issue of an Article 14 certificate shall be made by letter addressed to the Deputy Principal Clerk.

(2) Where the court issues an Article 14 certificate, the Deputy Principal Clerk shall send the certificate to the party on whose application the certificate was issued.

Form of applications relating to incoming protection measures

106.9.—(1) The following applications shall be made by petition—

- (a) an application for the adjustment of the factual elements of an incoming protection measure under Article 11 of the Regulation;
- (b) an application to refuse the recognition and, where applicable, the enforcement of an incoming protection measure under Article 13 of the Regulation;
- (c) a submission under Article 14(2) of the Regulation to suspend or withdraw the effects of the recognition and, where applicable, the enforcement of an incoming protection measure;
- (d) an application under section 1(1) of the Protection from Abuse (Scotland) Act 2001⁽⁹⁾ for a power of arrest to be attached to an incoming protection measure;
- (e) an application under section 3(1) of the Domestic Abuse (Scotland) Act 2011⁽¹⁰⁾ for a determination that an incoming protection measure is a domestic abuse interdict.

(2) Where a process exists in relation to an incoming protection measure, an application mentioned in paragraph (1) shall be made by note in that process.

Adjustment of incoming protection measure

106.10.—(1) This rule applies for the purpose of an application under Article 11 of the Regulation to adjust the factual elements of an incoming protection measure.

(2) Unless the court considers that a hearing is required, the court may—

- (a) dispense with intimation of the application; and
- (b) determine the application without a hearing.

(3) Where necessary, the court may grant decree in accordance with Scots law.

(4) The Deputy Principal Clerk shall give the person causing the risk notice of the adjustment of the protection measure in accordance with paragraphs (5) to (7).

⁽⁹⁾ 2001 asp 14; amended by the Family Law (Scotland) Act 2006 (asp 2), section 32(3) and schedule 3, paragraph 1; and the Police and Fire Reform (Scotland) Act 2012 (asp 8), schedule 7, paragraph 18.

⁽¹⁰⁾ 2011 asp 13.

(5) Where the address of the person causing the risk is known, notice shall be given by sending that person—

- (a) a notice in Form 106.10-A;
- (b) a copy of the interlocutor adjusting the factual elements of the protection measure.

(6) Where the address of the person causing the risk is outwith the United Kingdom, the Deputy Principal Clerk shall send the documents mentioned in paragraph (5) by a registered post service.

(7) Where the address of the person causing the risk is not known, notice shall be given by displaying on the walls of court a notice in Form 106.10-B.

(8) Paragraph (9) applies where—

- (a) the court has dispensed with intimation to the person causing the risk of an application for the adjustment of the factual elements of an incoming protection measure under Article 11 of the Regulation; and
- (b) the person causing the risk reclaims against the interlocutor adjusting the incoming protection measure.

(9) Rule 38.2(1) (reclaiming days)(11) applies as if there was substituted for the reference to the date on which the interlocutor was pronounced, a reference to the date on which notice was given under paragraph (4).

Attachment of power of arrest to incoming protection measure

106.11.—(1) In this rule, “the Act of 2001” means the Protection from Abuse (Scotland) Act 2001.

(2) Where the court attaches a power of arrest to an incoming protection measure under section 1(2) of the Act of 2001, the following documents shall be served along with the power of arrest in accordance with section 2(1)—

- (a) a copy of the protection measure;
- (b) a copy of the Article 5 certificate issued by the issuing authority of the Member State of origin; and
- (c) a copy of any interlocutor adjusting the factual elements of the protection measure.

(3) After the power of arrest has been served, the following documents shall be delivered by the protected person to the chief constable of the Police Service of Scotland in accordance with section 3(1)—

- (a) a copy of the protection measure;
- (b) a copy of the Article 5 certificate issued by the issuing authority of the Member State of origin;
- (c) a copy of any interlocutor adjusting the factual elements of the protection measure;
- (d) a copy of the application for the power of arrest;
- (e) a copy of the interlocutor attaching the power of arrest;
- (f) a copy of the certificate of service of the power of arrest and the documents that required to be served along with it in accordance with section 2(1) of the Act of 2001; and

(11) Rule 38.2 was substituted by [S.S.I. 2010/30](#).

- (g) where a determination has previously been made in respect of the protection measure under section 3(1) of the Domestic Abuse (Scotland) Act 2011, a copy of the interlocutor making the determination.
- (4) An application under the following provisions of the Act of 2001 shall be made by note in the process of the petition in which the power of arrest was attached—
 - (a) section 2(3) (extension of power of arrest);
 - (b) section 2(7) (recall of power of arrest).
- (5) Where the court extends the duration of, or recalls a power of arrest, the person who obtained the extension, or the recall as the case may be, shall deliver a copy of the interlocutor granting the extension or the recall in accordance with section 3(1) of the Act of 2001.
- (6) Where the court pronounces an interlocutor granting an application mentioned in rule 106.9(1)(a) to (c) in respect of an incoming protection measure to which a power of arrest is attached, the applicant shall deliver a copy of that interlocutor to the chief constable of the Police Service of Scotland in accordance with section 3(1) of the Act of 2001.
- (7) Where a person is required to comply with section 3(1) of the Act of 2001, that person shall, after complying with that section, lodge in process a certificate of delivery in Form 106.11.

Determination that incoming protection measure is a domestic abuse interdict

- 106.12.**—(1) This rule applies where the court makes a determination that an incoming protection measure is a domestic abuse interdict.
- (2) A protected person who serves under section 3(4) of the Domestic Abuse (Scotland) Act 2011 a copy of an interlocutor containing a determination under section 3(1) shall lodge in process a certificate of service.
 - (3) Paragraph (4) applies where, in respect of an incoming protection measure—
 - (a) a power of arrest under section 1 of the Protection from Abuse (Scotland) Act 2001 is in effect; and
 - (b) a determination is made.
 - (4) Where such a determination is made, the person who obtained the determination shall send to the chief constable of the Police Service of Scotland a copy of the interlocutor containing the determination and the certificate of service.
 - (5) Where a person is required by virtue of this rule to send documents to the chief constable of the Police Service of Scotland, that person must, after such compliance, lodge in process a certificate of sending in Form 106.12.”.
 - (7) After Form 105.6 (form of order for rectification of a document to which section 8A of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 applies)(**12**), insert the forms set out in Schedule 1 to this Act of Sederunt.

(12) Form 105.6 was inserted by [S.S.I. 2014/291](#).