
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 Ordinary Cause Rules

3.—(1) The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907⁽¹⁾ are amended in accordance with the following subparagraphs.

(2) After Chapter 51 (land registration etc.)⁽²⁾, insert—

“CHAPTER 52

MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Interpretation

52.1. 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;

“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⁽³⁾;

“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⁽⁴⁾.

Form of application for Article 5 certificate

52.2. An application for the issue of an Article 5 certificate shall be made by lodging Form 52.2 in process.

Issue of Article 5 certificate

52.3. The sheriff shall issue an Article 5 certificate where—

(1) 1907 c. 51. Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2014/302.

(2) Chapter 51 was inserted by S.S.I. 2014/291.

(3) 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).

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

- (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 52.4 is satisfied; and
- (d) the second condition specified in rule 52.4 is satisfied, if the protection measure is an interim interdict.

Conditions for issue of Article 5 certificate

52.4.—(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—
 - (i) personally present in court; or
 - (ii) represented by a solicitor or an advocate; 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 sheriff is satisfied that the person causing the risk has had a sufficient opportunity to apply for recall of the interim interdict.

(5) Where the sheriff 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

52.5.—(1) Where the sheriff issues an Article 5 certificate, the sheriff clerk shall—

- (a) give 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 52.5-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 sheriff 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 52.5-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

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

- (a) the reference to the order in rule 52.3(a) is to the order as so varied; and
- (b) the references to the interlocutor in rule 52.5 include a reference to any interlocutor varying the order.

Application for rectification or withdrawal of Article 5 certificate

52.7.—(1) An application to the sheriff under Article 9 of the Regulation for rectification or withdrawal of an Article 5 certificate shall be made by lodging Form 52.7 in process.

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

Issue of Article 14 certificate

52.8.—(1) An application for the issue of an Article 14 certificate shall be made by letter addressed to the sheriff clerk.

(2) Where the sheriff issues an Article 14 certificate, the sheriff clerk shall send the certificate to the party on whose application the certificate was issued.”.

(3) In Appendix 1, after Form 51.5 (form of order for rectification of a document to which section 8A of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 applies)**(5)**, insert the forms set out in Schedule 2 to this Act of Sederunt.

(5) Form 51.5 was inserted by [S.S.I. 2014/291](#).