

2022 No. 329

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session 1994 and Sheriff
Court Rules Amendment) (Civil Protection Measures (EU Exit))
2022**

<i>Made</i>	- - - -	<i>9th November 2022</i>
<i>Laid before the Scottish Parliament</i>		<i>10th November 2022</i>
<i>Coming into force</i>	- -	<i>1st December 2022</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 sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b), sections 2(1) and 3(1) of the Protection of Abuse (Scotland) Act 2001(c) 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) (Civil Protection Measures (EU Exit)) 2022.

(2) It comes into force on 1st December 2022.

(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(d) are amended in accordance with this paragraph.

(2) In rule 4.2 (signature of documents)(e), omit paragraph (3)(f).

(3) In rule 106.1 (interpretation)—

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- (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) 2001 asp 14. Section 3(1) was amended by the Police and Fire Reform (Scotland) Act 2012 (asp 8), schedule 7, paragraph 18. Section 7 contains a definition of “prescribed” relevant to the exercise of the statutory powers under which this Act of Sederunt is made.
- (d) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) (S.I. 1994/1443), last amended by S.S.I. 2022/277. Chapter 106 was inserted by S.S.I. 2014/371.
- (e) Rule 4.2 was last amended by S.S.I. 2020/208.

- (a) omit the definition of “Article 5 certificate”;
 - (b) omit the definition of “Article 14 certificate”;
 - (c) in the definition of “incoming protection measure”, for “Member State other than the United Kingdom or Denmark” substitute “participating Member State”;
 - (d) for the definition of “Member State”, substitute—
 - ““MRP Regulation” has the meaning given by Article 3(5A) of the Regulation(a);
 - “participating Member State” has the meaning given by Article 3(5) of the Regulation(b);”.
- (4) Omit rules 106.2 (form of application for Article 5 certificate) to 106.8 (issue of Article 14 certificate).
- (5) In rule 106.11 (attachment of power of arrest to incoming protection measure)—
- (a) in paragraph (2)(b), for “the Member State of origin” substitute “a participating Member State in accordance with Article 5 of the MRP Regulation”;
 - (b) in paragraph (3)(b), for “the Member State of origin” substitute “a participating Member State in accordance with Article 5 of the MRP Regulation”.
- (6) In the appendix (forms)(c)—
- (a) omit Forms 106.2 to 106.7;
 - (b) in Form 106.10-A—
 - (i) for “*Member State of origin*” substitute “*participating Member State*”;
 - (ii) for “the United Kingdom” substitute “Scotland”;
 - (c) in Form 106.10-B—
 - (i) for “*Member State of origin*” substitute “*participating Member State*”;
 - (ii) for “the United Kingdom” substitute “Scotland”.

Amendment of the Ordinary Cause Rules 1993

- 3.—**(1) The Ordinary Cause Rules 1993(d) are amended in accordance with this paragraph.
- (2) Omit Chapter 52 (mutual recognition of protection measures in civil measures)(e).
- (3) In appendix 1 (forms), omit Forms 52.2 to 52.7(f).

Amendment of the Summary Application Rules 1999

4.—(1) Part XLV (mutual recognition of protection measures in civil matters) of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(g) is amended in accordance with this paragraph.

- (2) In rule 3.45(1) (interpretation)—
- (a) omit—
 - (i) the definitions from “2015 Act” to “Article 14 certificate”;
 - (ii) the definitions from “interim risk of sexual harm order” to “interim trafficking and exploitation risk order”;
 - (iii) “risk of sexual harm order”;

(a) Article 3(5A) was inserted by S.S.I. 2022/249.
 (b) Article 3(5) was inserted by S.S.I. 2022/249.
 (c) Forms 106.2 to 106.7, 106.10-A and 106.10-B were inserted by S.S.I. 2014/371.
 (d) The Ordinary Cause Rules 1993 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.S.I. 2022/289.
 (e) Chapter 52 was inserted by S.S.I. 2014/371.
 (f) Forms 52.2 to 52.7 were inserted by S.S.I. 2014/371.
 (g) S.I. 1999/929 last amended by S.S.I. 2021/452. Part XLV was inserted by S.S.I. 2014/371.

- (iv) “sexual offences prevention order”;
 - (v) “trafficking and exploitation prevention order”;
 - (vi) “trafficking and exploitation risk order”.
- (b) in the definition of “incoming protection measure”, for “Member State other than the United Kingdom or Denmark” substitute “participating Member State”;
- (c) for the definition of “Member State” substitute—
- ““MRP Regulation” has the meaning given by Article 3(5A) of the Regulation(a);
 - “participating Member State” has the meaning given by Article 3(5) of the Regulation(b);”.
- (3) Omit rules 3.45.2 (application of rules 3.45 to 3.45.9) to 3.45.9 (issue of Article 14 certificate).
- (4) In rule 3.45.12 (attachment of power of arrest to incoming protection measure)—
- (a) in paragraph (2)(b), for “the Member State of origin” substitute “a participating Member State in accordance with Article 5 of the MRP Regulation”;
 - (b) in paragraph (3)(b), for “the Member State of origin” substitute “a participating Member State in accordance with Article 5 of the MRP Regulation”.
- (5) In schedule 1 (forms)(c)—
- (a) omit Forms 61 to 64;
 - (b) in Form 65—
 - (i) for “*Member State of origin*” substitute “*participating Member State*”;
 - (ii) for “the United Kingdom” substitute “Scotland”;
 - (c) in Form 66—
 - (i) for “*Member State of origin*” substitute “*participating Member State*”;
 - (ii) for “the United Kingdom” substitute “Scotland”.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
9th November 2022

(a) Article 3(5A) was inserted by S.S.I. 2022/249.
 (b) Article 3(5) was inserted by S.S.I. 2022/249.
 (c) Forms 61 to 66 were inserted by S.S.I. 2014/371.

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, the Ordinary Cause Rules 1993 and the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (“Summary Application Rules”), following upon the United Kingdom leaving the European Union on 31st December 2020, and in consequence of Part 1 and 2 of the Civil Protection Measures, European Protection Order and Victims’ Rights (EU Exit) (Scotland) (Amendment Etc.) Regulations 2022 (“the 2022 Regulations”).

The 2022 Regulations amend Regulation (EU) No. 606/2013 of the European Parliament and of the Council on mutual recognition of protection measures in civil matters as it has effect in Scotland (“EU Regulation”). The 2022 Regulations revoke those parts of the EU Regulation that would have previously enabled persons protected by protection measures granted in the Court of Session or the sheriff court to apply to have those measures applied and enforced in Member States. The parts of the EU Regulation concerned with the recognition and enforcement in Scotland of protection measures granted in Member States are retained.

Paragraph 2 amends rule 4.2, Chapter 106 and revokes Forms 106.2 to 106.7 in the appendix of the Rules of the Court of Session 1994 in consequence of amendments made to the EU Regulation by the 2022 Regulations.

Paragraph 3 revokes Chapter 52, and Forms 52.2 to 52.7 in the appendix, of the Ordinary Cause Rules 1993 in consequence of amendments made to the EU Regulation by the 2022 Regulations.

Paragraph 4 amends Part XLV, and revokes Forms 61 to 64 in schedule 1, of the Summary Application Rules in consequence of the amendments made to the EU Regulation by the 2022 Regulations.

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