
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 371

**COURT OF SESSION
SHERIFF COURT**

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

Made - - - - 17th December 2014
*Laid before the Scottish
Parliament* - - - - 19th December 2014
Coming into force - - 11th January 2015

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(1), section 5 of the Court of Session Act 1988(2), sections 2(1) and 3(1) of the Protection from Abuse (Scotland) Act 2001(3), and of all other powers enabling them in that behalf, having approved with such modifications as they think appropriate draft rules submitted by the Scottish Civil Justice Council in accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(4), 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 and Sheriff Court Rules Amendment No. 3) (Mutual Recognition of Protection Measures) 2014.

(2) It comes into force on 11th January 2015.

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- (1) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12; the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4); the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2); the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13; the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2); the Consumer Credit Act 2006 (c.14), section 16(4); the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3), section 33 and Schedule 5, paragraph 10 (in part); the Legal Services (Scotland) Act 2010 (asp 16), section 127(a); the Children's Hearings (Scotland) Act 2011 (asp 1), section 185; and the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), section 15(2).
- (2) 1988 c.36. Section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3); the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 46(3); and the Legal Services (Scotland) Act 2010 (asp 16), section 126(a).
- (3) 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.
- (4) 2013 asp 3.

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

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(5) are amended in accordance with the following subparagraphs.

- (2) In rule 4.2(3) (signature of documents)(6), 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)(7)—

- (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)(8), omit “in any circumstances”.

- (5) In rule 85A.1 (domestic abuse interdicts: interpretation and application)(9)—

- (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.”.

- (6) After Chapter 105 (land registration etc.)(10), insert—

“CHAPTER 106

MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Interpretation

106.1. In this Chapter—

(5) S.I. 1994/1443, last amended by S.S.I. 2014/302.
 (6) Rule 4.2(3) was last amended by S.I. 1997/3059.
 (7) Rule 85.1 was inserted by S.S.I. 2002/514.
 (8) Rule 85.5 was inserted by S.S.I. 2002/514.
 (9) Rule 85A.1 was inserted by S.S.I. 2011/288.
 (10) Chapter 105 was inserted by S.S.I. 2014/291.

“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⁽¹¹⁾;
“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⁽¹²⁾.

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—
 - (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;

⁽¹¹⁾ 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).

⁽¹²⁾ O.J. L181, 29.6.2013, p. 4.

- (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⁽¹³⁾ 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⁽¹⁴⁾ 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).

(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—

⁽¹³⁾ 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.

⁽¹⁴⁾ 2011 asp 13.

- (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)(15) 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
- (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

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

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)(**16**), insert the forms set out in Schedule 1 to this Act of Sederunt.

Amendment of the Ordinary Cause Rules

3.—(1) The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(**17**) are amended in accordance with the following subparagraphs.

(2) After Chapter 51 (land registration etc.)(**18**), 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;

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

(17) [1907 c. 51](#). Schedule 1 was substituted by [S.I. 1993/1956](#) and last amended by [S.S.I. 2014/302](#).

(18) Chapter 51 was inserted by [S.S.I. 2014/291](#).

“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⁽¹⁹⁾;
“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⁽²⁰⁾.

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—
- (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.

⁽¹⁹⁾ 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).

⁽²⁰⁾ O.J. L181, 29.6.2013, p. 4.

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)⁽²¹⁾, insert the forms set out in Schedule 2 to this Act of Sederunt.

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

Amendment of the Summary Application Rules

4.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999⁽²²⁾ is amended in accordance with the following subparagraphs.

(2) In Chapter 3, after Part XLIV (Gender Recognition Act 2004)⁽²³⁾, insert—

“PART XLV

MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Interpretation

3.45.1. In this Part—

“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;

“interim risk of sexual harm order” has the meaning given by section 5(2) of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005⁽²⁴⁾;

“interim sexual offences prevention order” has the meaning given by section 109(2) of the Sexual Offences Act 2003⁽²⁵⁾;

“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⁽²⁶⁾;

“risk of sexual harm order” has the meaning given by section 2(1) of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005⁽²⁷⁾;

“sexual offences prevention order” has the meaning given by section 106(1) of the Sexual Offences Act 2003⁽²⁸⁾;

“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⁽²⁹⁾.

Application of rules 3.45.3 to 3.45.9

3.45.2. Rules 3.45.3 to 3.45.9 apply for the purpose of—

(22) S.I. 1999/929, last amended by S.S.I. 2014/302.

(23) Part XLIV was inserted by S.S.I. 2014/302.

(24) 2005 asp 9; section 5 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 103(4).

(25) 2003 c. 42; section 109 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 100(2)(b).

(26) 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).

(27) 2005 asp 9; section 2 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 103(2); and the Police and Fire Reform (Scotland) Act 2012 (asp 8), schedule 7, paragraph 26(2).

(28) 2003 c. 42; there are amendments to section 106 which are not relevant to this Act of Sederunt.

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

- (a) the issuing of an Article 5 certificate where the protection measure in respect of which the certificate is sought is—
 - (i) a sexual offences prevention order or an interim sexual offences prevention order; or
 - (ii) a risk of sexual harm order or an interim risk of sexual harm order;
- (b) the rectification or withdrawal of such a certificate; and
- (c) the issuing of an Article 14 certificate subsequent to the issue of such a certificate.

Form of application for Article 5 certificate

3.45.3. An application for the issue of an Article 5 certificate shall be made by lodging Form 61 in process.

Issue of Article 5 certificate

3.45.4. The sheriff 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 3.45.5 is satisfied; and
- (d) the second condition specified in rule 3.45.5 is satisfied, if the protection measure is an interim order.

Conditions for issue of Article 5 certificate

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

- (a) at the hearing when the order was granted, the person causing the risk was—
 - (i) personally present in court; or
 - (ii) represented by a solicitor or an advocate; or
- (b) the order has been—
 - (i) given or sent to the person causing the risk in accordance with section 112(3) of the Sexual Offences Act 2003; or
 - (ii) served on the person causing the risk in accordance with rule 3.29.4.

(2) The second condition is that either paragraph (3) or (4) applies.

(3) This paragraph applies where—

- (a) the writ containing the crave for the order was intimated on the person causing the risk before the interim order was granted;
- (b) the interim order was granted pursuant to an application intimated on the person causing the risk; and
- (c) the person causing the risk had a sufficient opportunity to oppose the application, 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 to have the interim order discharged.

(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

3.45.6.—(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 62;
- (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 63.

(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

3.45.7. 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 3.45.4(a) is to the order as so varied; and
- (b) the references to the interlocutor granting the protection measure in rule 3.45.6 include a reference to any interlocutor varying the order.

Application for rectification or withdrawal of Article 5 certificate

3.45.8.—(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 64 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

3.45.9.—(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.

Form of applications relating to incoming protection measures

3.45.10.—(1) The following applications shall be made by summary application—

- (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⁽³⁰⁾ 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⁽³¹⁾ 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 minute in that process.

Adjustment of incoming protection measure

3.45.11.—(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 sheriff considers that a hearing is required, the sheriff may—
 - (a) dispense with intimation of the application; and
 - (b) determine the application without a hearing.
- (3) Where necessary, the sheriff may grant decree in accordance with Scots law.
- (4) The sheriff clerk shall give the person causing the risk notice of the adjustment of the protection measure in accordance with paragraphs (5) to (7).
- (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 65;
 - (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 sheriff 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 66.
- (8) An appeal against an interlocutor adjusting the factual elements of an incoming protection measure shall be marked within 14 days after the date of the interlocutor concerned.
- (9) Where—
 - (a) the sheriff has dispensed with intimation of the application on the person causing the risk; and
 - (b) the person causing the risk has not appeared in the application,the time within which the person causing the risk may mark an appeal shall be reckoned from the date on which notice is given in accordance with paragraph (4).

Attachment of power of arrest to incoming protection measure

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

⁽³⁰⁾ 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.

⁽³¹⁾ 2011 asp 13.

(2) Where the sheriff attaches a power of arrest to a 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 attachment of 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
- (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 minute in the process of the application 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 sheriff 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 sheriff pronounces an interlocutor granting an application mentioned in rule 3.45.10(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 67.

Determination that incoming protection measure is a domestic abuse interdict

3.45.13.—(1) This rule applies where the sheriff makes a determination that an incoming protection measure is a domestic abuse interdict.

(2) A protected person who serves under 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 the same 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 making 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 68.”

(3) After Form 60 (Form of order under section 23A(2) of the Regulation of Investigatory Powers Act 2000)(**32**), insert the forms set out in Schedule 3 to this Act of Sederunt.

Edinburgh
17th December 2014

BRIAN GILL
Lord President
I.P.D.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 1

Paragraph 2(7)

Form 106.2

Rule 106.2

APPLICATION FOR A CERTIFICATE UNDER ARTICLE 5 OF REGULATION
(EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF
PROTECTION MEASURES IN CIVIL MATTERS

1. The applicant is the pursuer [*or defender*] in the action by [A.B.] (*name*) against [C.D.] (*name*).
2. The applicant's date of birth is (*insert date of birth*).
3. The applicant's place of birth is (*insert place of birth*).
4. The address of the applicant to be used for notification purposes is (*insert address – the address given, which may be disclosed to the person against whom the protection measures was granted, must be an address to which any notification to the applicant can be sent*).
5. The application relates to an order granted on (*insert date of order granting protection measure*) in which (*insert name of person against whom protection measure was granted*) was prohibited from (*insert short description of prohibitions imposed*).
6. The date of birth of the person against whom the order was granted is (*insert date of birth or "not known"*).
7. The place of birth of the person against whom the order was granted is (*insert place of birth or "not known"*).
8. The address of the person against whom the order was granted is (*insert address or "not known"*).
9. The applicant asks the court to issue a certificate pursuant to Article 5(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters in relation to the order referred to in paragraph 5.

Date (*insert date*)

(*Signed*)

[A.B. *or* C.D.]

[*or* Solicitor for Applicant]

(*add designation and business address*)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 106.5–A

Rule 106.5(2)(a)

NOTICE OF ISSUE OF CERTIFICATE UNDER ARTICLE 5 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Date: *(insert date of posting or other method of intimation)*

To: *(insert name and address of person causing the risk)*

TAKE NOTICE

A certificate has been issued to *(insert name of party to whom certificate was issued)* in accordance with Article 5(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters. The certificate relates to an order granted by the court on *(insert date of interlocutor containing protection measure)*. A copy of the certificate and a copy of the order accompany this notice.

As a result of the issue of the certificate, *(insert name of person to whom certificate was issued)* can invoke the order in other Member States of the European Union.

If you consider that the certificate was wrongly issued, or that the certificate does not accurately reflect the terms of the order, you can apply to have the certificate withdrawn, or for the issue of a rectified certificate, by lodging an application in Form 106.7 at the Office of Court, Court of Session, 11 Parliament Square, Edinburgh, EH1 1RQ.

(Signed)

Deputy Principal Clerk of Session

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 106.5–B

Rule 106.5(4)

NOTICE FOR WALLS OF COURT OF ISSUE OF CERTIFICATE UNDER ARTICLE 5 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Date: *(insert date)*

To: *(insert name of person causing the risk)*

TAKE NOTICE

A certificate has been issued to *(insert name of party to whom certificate was issued)* in accordance with Article 5(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters. The certificate relates to an order granted by the court on *(insert date of interlocutor containing protection measure)* against *(insert name of person causing the risk)*, whose last known address was *(insert last known address of person causing the risk)*.

As a result of the issue of the certificate, *(insert name of person to whom certificate was issued)* can invoke the order in other Member States of the European Union.

If *(insert name of person causing the risk)* wishes to obtain a copy of the certificate and the order, that person should immediately contact the Deputy Principal Clerk of Session at the Court of Session, 11 Parliament Square, Edinburgh, EH1 1RQ (telephone (0131) 225 2595).

If *(insert name of person causing the risk)* considers that the certificate was wrongly issued, or that the certificate does not accurately reflect the terms of the order, that person can apply to have the certificate withdrawn, or for the issue of a rectified certificate, by lodging an application in Form 106.7 at the Office of Court, Court of Session, 11 Parliament Square, Edinburgh, EH1 1RQ.

(Signed)

Deputy Principal Clerk of Session

Form 106.7

Rule 106.7(1)

APPLICATION FOR RECTIFICATION OR WITHDRAWAL OF A CERTIFICATE ISSUED UNDER ARTICLE 5 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

1. The applicant is the defender [*or* pursuer] in the action by [A.B.] (*design*) against [C.D.] (*design*).
 2. On the application of the pursuer [*or* defender] the Court has issued a certificate in accordance with Article 5(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters.
 3. The certificate relates to an order granted by the court on (*insert date of interlocutor containing protection measure*).
 4. The applicant considers that the certificate does not accurately reflect the terms of the order because: (*here specify nature of discrepancy*).
- [*or* 4. The applicant considers that the certificate was wrongly issued because: (*here specify the reason the certificate was wrongly issued*).]
5. The applicant asks the court to issue a rectified certificate [*or* to withdraw the certificate].

Date (*insert date*)

(*Signed*)

[A.B. *or* C.D.]

[*or* Solicitor for Applicant]

(*add designation and business address*)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 106.10–A

Rule 106.10(5)(a)

NOTICE OF ADJUSTMENT OF A PROTECTION MEASURE UNDER ARTICLE 11 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Date: *(date of posting or other method of intimation)*

To: *(name and designation of party to whom notice is to be given)*

TAKE NOTICE

This notice relates to a protection measure ordered by *(insert name of issuing authority in Member State of origin)* in respect of which *(insert name of protected person)* is the protected person and you are the person causing the risk.

You are hereby given notice that, in exercise of the power conferred by Article 11(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters, the Court of Session has adjusted the factual elements of the protection measure. A copy of the order adjusting the protection measure accompanies this notice.

As a result of the adjustment, the protection measure falls to be recognised and enforced in the United Kingdom subject to the adjustment.

If you consider that the order adjusting the protection measure was wrongly granted, you have the right to appeal. If you are considering appealing, you are advised to consult a solicitor who will be able to give advice.

(Signed)

Deputy Principal Clerk of Session

Form 106.10–B

Rule 106.10(7)

NOTICE FOR WALLS OF COURT OF A PROTECTION MEASURE UNDER ARTICLE 5 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Date: *(insert date)*

To: *(insert name of person causing the risk)*

TAKE NOTICE

This notice relates to a protection measure ordered by *(insert name of issuing authority in Member State of origin)* in respect of which *(insert name of protected person)* is the protected person and *(insert name of person causing the risk)* is the person causing the risk. That person's last known address is *(insert last known address of person causing the risk)*.

(Insert name of person causing the risk) is hereby given notice that, in exercise of the power conferred by Article 11(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters, the Court of Session has adjusted the factual elements of the protection measure.

As a result of the adjustment, the protection measure falls to be recognised and enforced in the United Kingdom subject to the adjustment.

If *(insert name of person causing the risk)* wishes to obtain a copy of the order adjusting the protection measure, that person should immediately contact the Deputy Principal Clerk of Session at the Court of Session, 11 Parliament Square, Edinburgh, EH1 1RQ (telephone (0131) 225 2595).

If *(insert name of person causing the risk)* considers that the order adjusting the protection measure was wrongly granted, that person has the right to appeal. If that person is considering appealing, that person is advised to consult a solicitor who will be able to give advice.

(Signed)

Deputy Principal Clerk of Session

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 106.11

Rule 106.11(7)

FORM OF CERTIFICATE OF DELIVERY OF DOCUMENTS TO CHIEF CONSTABLE

(insert place and date) I, _____ hereby certify that upon the
day of _____ I duly delivered to the chief constable of the Police Service of Scotland
(insert details of documents delivered). This I did by *(state method of delivery)*.

(Signed)

*(insert name and designation of person
delivering documents)*

Form 106.12

Rule 106.12(5)

FORM OF CERTIFICATE OF SENDING OF DOCUMENTS TO CHIEF CONSTABLE

(insert place and date) I, _____ hereby certify that upon the
day of _____ I duly sent to the chief constable of the Police Service of Scotland
(insert details of documents sent). This I did by *(state method of delivery)*.

(Signed)

*(insert name and designation of person sending
documents)*

SCHEDULE 2

Paragraph 3(3)

Form 52.2

Rule 52.2

APPLICATION FOR A CERTIFICATE UNDER ARTICLE 5 OF REGULATION
(EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF
PROTECTION MEASURES IN CIVIL MATTERS

Sheriff Court

Court Ref. No.

1. The applicant is the pursuer [*or* defender] in the action by [A.B.] (*design*) against [C.D.] (*design*).
2. The applicant's date of birth is (*insert date of birth*).
3. The applicant's place of birth is (*insert place of birth*).
4. The address of the applicant to be used for notification purposes is (*insert address – the address given, which may be disclosed to the person against whom the protection measures was granted, must be an address to which any notification to the applicant can be sent*).
5. The application relates to an order granted on (*insert date of order granting protection measure*) in which (*insert name of person against whom protection measure was granted*) was prohibited from (*insert short description of prohibitions imposed*).
6. The date of birth of the person against whom the order was granted is (*insert date of birth or "not known"*).
7. The place of birth of the person against whom the order was granted is (*insert place of birth or "not known"*).
8. The address of the person against whom the order was granted is (*insert address or "not known"*).
9. The applicant asks the court to issue a certificate pursuant to Article 5(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters in relation to the order referred to in paragraph 5.

Date (*insert date*)

(*Signed*)

[A.B. *or* C.D.]

[*or* Solicitor for Applicant]

(*add designation and business address*)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 52.5–A

Rule 52.5(2)(a)

NOTICE OF ISSUE OF CERTIFICATE UNDER ARTICLE 5 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Sheriff Court

Court Ref. No.

Date: *(insert date of posting or other method of intimation)*

To: *(insert name and address of person causing the risk)*

A certificate has been issued to *(insert name of party to whom certificate was issued)* in accordance with Article 5(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters. The certificate relates to an order granted by the sheriff on *(insert date of interlocutor containing protection measure)*. A copy of the certificate and a copy of the order accompany this notice.

As a result of the issue of the certificate, *(insert name of person to whom certificate was issued)* can invoke the order in other Member States of the European Union.

If you consider that the certificate was wrongly issued, or that the certificate does not accurately reflect the terms of the order, you can apply to have the certificate withdrawn, or for the issue of a rectified certificate, by lodging an application in Form 52.7 with the sheriff clerk at the address below.

(Signed)

Sheriff Clerk

(insert address and telephone number)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 52.5–B

Rule 52.5(4)

NOTICE FOR WALLS OF COURT OF ISSUE OF CERTIFICATE UNDER ARTICLE 5 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Sheriff Court

Court Ref. No.

Date: *(insert date)*

To: *(insert name and address of person causing the risk)*

A certificate has been issued to *(insert name of party to whom certificate was issued)* in accordance with Article 5(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters. The certificate relates to an order granted by the sheriff on *(insert date of interlocutor containing protection measure)* against *(insert name of person causing the risk)*, whose last known address was *(insert last known address of person causing the risk)*.

As a result of the issue of the certificate, *(insert name of person to whom certificate was issued)* can invoke the order in other Member States of the European Union.

If *(insert name of person causing the risk)* wishes to obtain a copy of the certificate and the order, that person should immediately contact the sheriff clerk at the address below.

If *(insert name of person causing the risk)* considers that the certificate was wrongly issued, or that the certificate does not accurately reflect the terms of the order, that person can apply to have the certificate withdrawn, or for the issue of a rectified certificate, by lodging an application in Form 52.7 with the sheriff clerk at the address below.

(Signed)

Sheriff Clerk

(insert address and telephone number)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 52.7

Rule 52.7(1)

APPLICATION FOR RECTIFICATION OR WITHDRAWAL OF A CERTIFICATE ISSUED UNDER ARTICLE 5 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Sheriff Court

Court Ref. No.

1. The applicant is the defender [*or* pursuer] in the action by [A.B.] (*design*) against [C.D.] (*design*).
2. On the application of the pursuer [*or* defender], the sheriff has issued a certificate in accordance with Article 5(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June on mutual recognition of protection measures in civil matters.
3. The certificate relates to an order granted by the sheriff on (*insert date of interlocutor containing protection measure*).
4. The applicant considers that the certificate does not accurately reflect the terms of the order because: (*here specify nature of discrepancy*).
- [*or* 4. The applicant considers that the certificate was wrongly issued because: (*here specify the reason the certificate was wrongly issued*).]
5. The applicant asks the court to issue a rectified certificate [*or* to withdraw the certificate].

Date (*insert date*)

(*Signed*)

[A.B. *or* C.D.]

[*or* Solicitor for Applicant]

(*add designation and business address*)

SCHEDULE 3

Paragraph 4(3)

Form 61

Rule 3.45.3

APPLICATION FOR A CERTIFICATE UNDER ARTICLE 5 OF REGULATION
(EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF
PROTECTION MEASURES IN CIVIL MATTERS

Sheriff Court

Court Ref. No.

1. The applicant is (*design*).
2. The applicant's date of birth is (*insert date of birth*).
3. The applicant's place of birth (*insert place of birth*).
4. The address of the applicant to be used for notification purposes is (*insert address – the address given, which may be disclosed to the person against whom the protection measure was granted, must be an address to which any notification to the applicant can be sent*).
5. The application relates to a sexual offences prevention order (*or an interim sexual offences prevention order, or a risk of sexual harm order, or an interim risk of sexual harm order*) granted on (*insert date of order*) in respect of (*insert name of person against whom protection measure was granted*).
6. The date of birth of the person against whom the order was granted is (*insert date of birth or "not known"*).
7. The place of birth of the person against whom the order was granted is (*insert place of birth or "not known"*).
8. The address of the person against whom the order was granted is (*insert address or "not known"*).
9. The applicant asks the court to issue a certificate pursuant to Article 5(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Civil Council of 12th June 2013 on mutual recognition of protection measures in civil matters in relation to the order referred to in paragraph 5.

Date (*insert date*)

(*Signed*)

[A.B. *or* C.D.]

[*or* Solicitor for Applicant]

(*add designation and business address*)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 62

Rule 3.45.6(2)(a)

NOTICE OF ISSUE OF CERTIFICATE UNDER ARTICLE 5 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Sheriff Court

Court Ref No

Date: *(insert date of posting or other method of intimation)*

To: *(insert name and address of person causing the risk)*

A certificate has been issued to *(insert name of party to whom certificate was issued)* in accordance with Article 5(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters. The certificate relates to an order granted by the sheriff on *(insert date of interlocutor containing protection measure)*. A copy of the certificate and a copy of the order accompany this notice.

As a result of the issue of the certificate, *(insert name of person to whom certificate was issued)* can invoke the order in other Member States of the European Union.

If you consider that the certificate was wrongly issued, or that the certificate does not accurately reflect the terms of the order, you can apply to have the certificate withdrawn, or for the issue of a rectified certificate, by lodging an application in Form 64 with the sheriff clerk at the address below.

(Signed)

Sheriff Clerk

(insert address and telephone number)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 63

Rule 3.45.6(4)

NOTICE FOR WALLS OF COURT OF ISSUE OF CERTIFICATE UNDER ARTICLE 5 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Sheriff Court

Court Ref. No.

Date: *(insert date)*

To: *(insert name and address of person causing the risk)*

TAKE NOTICE

A certificate has been issued to *(insert name of party to whom certificate was issued)* in accordance with Article 5(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters. The certificate relates to an order granted by the sheriff on *(insert date of interlocutor containing protection measure)* against *(insert name of person causing the risk)*, whose last known address was *(insert last known address of person causing the risk)*.

As a result of the issue of the certificate, *(insert name of person to whom certificate was issued)* can invoke the order in other Member States of the European Union.

If *(insert name of person causing the risk)* wishes to obtain a copy of the certificate and the order, that person should immediately contact the sheriff clerk at the address below.

If *(insert name of person causing the risk)* considers that the certificate was wrongly issued, or that the certificate does not accurately reflect the terms of the order, that person can apply to have the certificate withdrawn, or for the issue of a rectified certificate, by lodging an application in Form 64 with the sheriff clerk at the address below.

(Signed)

Sheriff Clerk

(insert address and telephone number)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 64

Rule 3.45.8(1)

APPLICATION FOR RECTIFICATION OR WITHDRAWAL OF A CERTIFICATE ISSUED UNDER ARTICLE 5 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Sheriff Court

Court Ref No.

1. The applicant is (*design*).
2. On the application of (*insert name of person on whose application the certificate was issued*), the sheriff has issued a certificate in accordance with Article 5(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters.
3. The certificate relates to a sexual offences prevention order [*or an interim sexual offences protection order, or a risk of sexual harm order, or an interim risk of sexual harm order*] granted by the sheriff on (*insert date of order*).
4. The applicant considers that the certificate does not accurately reflect the terms of the order because: (*here specify nature of discrepancy*).
- [*or 4. The applicant considers that the certificate was wrongly issued because: (here specify the reason the certificate was wrongly issued).*]
5. The applicant asks the court to issue a rectified certificate [*or to withdraw the certificate*].

Date (*insert date*)

(*Signed*)

Applicant

[*or Solicitor for Applicant*]

(*add designation and business address*)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 65

Rule 3.45.11(5)(a)

NOTICE OF ADJUSTMENT OF A PROTECTION MEASURE UNDER ARTICLE 11 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Sheriff Court

Court Ref No.

Date: *(insert date of posting or other method of intimation)*

To: *(insert name and address of person causing the risk)*

This notice relates to a protection measure ordered by *(insert name of issuing authority in Member State of origin)* in respect of which *(insert name of protected person)* is the protected person and you are the person causing the risk.

You are hereby given notice that, in exercise of the power conferred by Article 11(1) of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters, the sheriff has adjusted the factual elements of the protection measure. A copy of the order adjusting the protection measure accompanies this notice.

As a result of the adjustment, the protection measure falls to be recognised and enforced in the United Kingdom subject to the adjustment.

If you consider that the order adjusting the protection measure was wrongly granted, you have the right to appeal. If you are considering appealing, you are advised to consult a solicitor who will be able to give advice.

(Signed)

Sheriff Clerk

(insert address and telephone number)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 66

Rule 3.45.11(7)

NOTICE FOR WALLS OF COURT OF ADJUSTMENT UNDER ARTICLE 11 OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12TH JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES

Sheriff Court

Court Ref. No.

Date: *(insert date)*

To: *(insert name of person causing the risk)*

This notice relates to a protection measure ordered by *(insert name of issuing authority in Member State of origin)* in respect of which *(insert name of protected person)* is the protected person and *(insert name of person causing the risk)* is the person causing the risk. That person's last known address is *(insert last known address of person causing the risk)*.

(Insert name of person causing the risk) is hereby given notice that, in exercise of the power conferred by Article 11 of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters, the sheriff has adjusted the factual elements of the protection measure.

As a result of the adjustment, the protection measure falls to be recognised and enforced in the United Kingdom subject to the adjustment.

If *(insert name of person causing the risk)* wishes to obtain a copy of the order adjusting the protection measure, that person should immediately contact the sheriff clerk at the address below.

If *(insert name of person causing the risk)* considers that the order adjusting the protection measure was wrongly granted, that person has the right to appeal. If that person is considering appealing, that person is advised to consult a solicitor who will be able to give advice.

(Signed)

Sheriff Clerk

(insert address and telephone number)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 67

Rule 3.45.12(7)

FORM OF CERTIFICATE OF DELIVERY OF DOCUMENTS TO CHIEF CONSTABLE

(insert place and date) I, _____ hereby certify that upon the
day of _____ I duly delivered to the chief constable of the Police Service of Scotland
(insert details of documents delivered). This I did by *(state method of delivery)*.

(Signed)

*(insert name and designation of person
delivering documents)*

Form 68

Rule 3.45.13(5)

FORM OF CERTIFICATE OF SENDING OF DOCUMENTS TO CHIEF CONSTABLE

(insert place and date) I, _____ hereby certify that upon the
day of _____ I duly sent to the chief constable of the Police Service of Scotland
(insert details of documents sent). This I did by *(state method of delivery)*.

(Signed)

*(insert name and designation of person sending
documents)*

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session, the Ordinary Cause Rules, and the Summary Application Rules to make provision for applications arising under Regulation (EU) No. 606/2013 of the European Union and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters (“the Regulation”).

When an order granted in civil proceedings in the Court of Session or the sheriff court is a protection measure for the purposes of the Regulation, the rules make provision for applications arising under Article 5, 9 and 14(1) of the Regulation in relation to that protection measure.

Where the United Kingdom is the Member State addressed in respect of a protection measure ordered in another Member State, the rules make provision for applications arising under Articles 11, 13 and 14(2) of the Regulation. The rules also make provision for applications under section 1(1) of the Protection from Abuse (Scotland) Act 2001, and under section 3(1) of the Domestic Abuse (Scotland) Act 2011 in relation to a protection measure ordered in another Member State.