
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 Summary Application Rules

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

(2) In Chapter 3, after Part XLIV (Gender Recognition Act 2004)⁽²⁾, 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⁽³⁾;

“interim sexual offences prevention order” has the meaning given by section 109(2) of the Sexual Offences Act 2003⁽⁴⁾;

“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⁽⁵⁾;

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

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

(3) 2005 asp 9; section 5 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 103(4).

(4) 2003 c. 42; section 109 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 100(2)(b).

(5) 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).

“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(6);

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

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—

- (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.

(6) 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).

(7) 2003 c. 42; there are amendments to section 106 which are not relevant to this Act of Sederunt.

(8) O.J. L181, 29.6.2013, p. 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⁽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 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.

⁽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.

(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.

(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)(**11**), insert the forms set out in Schedule 3 to this Act of Sederunt.

(11) Form 60 was inserted by [S.S.I. 2012/271](#) and amended by [S.S.I. 2013/135](#).