

2002 No. 514

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 2) (Applications under the Protection from Abuse
(Scotland) Act 2001) 2002**

Made

21st November 2002

Coming into force

1st December 2002

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 5 of the Court of Session Act 1988(a) and sections 2(1) and 5(a) and 3(1) of the Protection from Abuse (Scotland) Act 2001(b) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Applications under the Protection from Abuse (Scotland) Act 2001) 2002 and shall come into force on 1st December 2002.

(2) This Act of Sederunt shall 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(c) shall be amended in accordance with the following sub-paragraphs.

(2) After Chapter 84 (application under the Terrorism Act 2000), there shall be inserted—

“Chapter 85

APPLICATIONS UNDER THE PROTECTION FROM ABUSE (SCOTLAND) ACT 2001

Interpretation of this Chapter

85.1. In this Chapter—

“the Act of 2001” means the Protection from Abuse (Scotland) Act 2001;

“documents” includes documents in electronic form; and

“interdict” includes interim interdict.

(a) 1988 c.36; section 5 was amended by section 2(3) of the Civil Evidence (Scotland) Act 1988 (c.32) and by paragraph 45 of Schedule 4 to the Children (Scotland) Act 1995 (c.36).

(b) 2001 asp 14.

(c) S.I. 1994/1443, to which there are amendments not relevant to this Act of Sederunt.

Attachment of power of arrest to interdict

85.2.—(1) An application under section 1(1) of the 2001 Act (application for attachment of power of arrest to interdict)—

- (a) shall be made by a conclusion of the summons, the prayer of the petition, the defences, answers or counterclaim in which the interdict to which it relates is applied for, or, if made after the application for interdict, by motion in the process of the action in which the interdict was sought; and
- (b) shall be intimated to the person against whom the interdict is sought or obtained.

(2) Where the court attaches a power of arrest under section 1(2) of the Act of 2001 (order attaching power of arrest) the following documents shall be served along with the power of arrest in accordance with section 2(1) of the Act of 2001 (documents to be served along with power of arrest)—

- (a) a copy of the application for interdict;
- (b) a copy of the interlocutor granting interdict; and
- (c) where the application to attach a power of arrest was made after the interdict was granted, a copy of the certificate of service of the interdict.

(3) After the power of arrest has been served, the following documents shall be delivered by the person who obtained the power to the chief constable in accordance with section 3(1) of the Act of 2001 (notification to the police)—

- (a) a copy of the application for interdict;
- (b) a copy of the interlocutor granting interdict;
- (c) a copy of the certificate of service of the interdict; and
- (d) where the application to attach a power of arrest was made after the interdict was granted—
 - (i) a copy of the application for the power of arrest;
 - (ii) a copy of the interlocutor granting it; and
 - (iii) 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.

Extension or recall of power of arrest

85.3.—(1) An application under section 2(3) (extension of duration of power of arrest) or section 2(7) (recall of power of arrest) of the Act of 2001 shall be made by minute in the process of the action in which the power of arrest was attached.

(2) Where the court extends the duration of, or recalls, a power of arrest, the person who obtained the extension or recall must deliver a copy of the interlocutor granting the extension or recall in accordance with section 3(1) of the Act of 2001.

Documents to be delivered to chief constable in relation to recall or variation of interdict

85.4. Where an interdict to which a power of arrest has been attached under section 1(2) of the Act of 2001 is varied or recalled, the person who obtained the variation or recall must deliver a copy of the interlocutor varying or recalling the interdict in accordance with section 3(1) of that Act.

Certificate of delivery of documents to chief constable

85.5. Where a person is in any circumstances required to comply with section 3(1) of the Act of 2001, he shall, after such compliance, lodge in process a certificate of delivery in Form 85.5.”.

(3) In the Appendix, after Form 82.4 there shall be inserted Form 85.5 set out in the Schedule to this Act of Sederunt.

Edinburgh
21st November 2002

W. Douglas Cullen
Lord President,
I.P.D.

Rule 85.5

Form 85.5

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 *(insert name and address)* chief constable of *(insert name of constabulary)* *(insert details of the documents delivered)*. This I did by *(state method of delivery)*.

(Signed)

Solicitor/sheriff officer

(add designation and business address)

EXPLANATORY NOTE

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

This Act of Sederunt inserts a new Chapter (Chapter 85) into the Court of Session Rules 1994 (S.I. 1994/1443) to make provision for applications in the Court of Session in respect of a power of arrest under the Protection from Abuse (Scotland) Act 2001 (“the 2001 Act”). The new Chapter 85 provides as follows:–

an application for a power of arrest under section 1(1) of the 2001 Act is to be made by conclusion in the summons, prayer in the petition, defences, answers or counterclaim in which the interdict to which it relates is applied for or, if made after the application for interdict, by motion in the action to which the application relates;

rule 85.2(2) prescribes certain documents that are to be served along with the power of arrest in terms of section 2(1) of the 2001 Act;

rule 85.2(3) prescribes certain documents that are to be delivered to a chief constable in terms of section 3(1) of the 2001 Act;

an application to extend or recall a power of arrest (sections 2(3) and (7) respectively of the 2001 Act) is to be made by minute in the process of the action in which the power of arrest was attached. Where an extension or recall is granted a copy of the interlocutor granting the order is to be delivered to the chief constable in accordance with section 3(1) of the 2001 Act;

rule 85.4 provides that where the interdict to which the power of arrest is attached is varied or recalled a copy of the interlocutor varying or recalling the interdict is to be delivered to the chief constable in accordance with section 3(1) of the 2001 Act;

rule 85.5 provides that where a person is required to deliver documents to a chief constable where a power of arrest is served, extended or recalled, or the interdict is varied or recalled, he shall after compliance lodge a certificate of delivery in Form 85.5 in process.

Paragraph 2(3) and the Schedule insert a new Form 85.5 into the Appendix to the Court of Session Rules 1994.

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