

CHAPTER 106

MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Interpretation

106.1. In this Chapter –

- “incoming protection measure” means a protection measure that has been ordered in a participating Member State;
- “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);
- “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(c)
- “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(d).

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(e) 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(f) 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) Article 3(5A) was inserted by S.S.I. 2022/249.

(b) Article 3(5) was inserted by S.S.I. 2022/249.

(c) 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).

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

(e) 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.

(f) 2011 asp 13

- (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—

- (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)(c) 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 a participating Member State in accordance with Article 5 of the MRP Regulation; 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;

(c) Rule 38.2 was substituted by S.S.I 2010/30.

- (b) a copy of the Article 5 certificate issued by the issuing authority of the a participating Member State in accordance with Article 5 of the MRP Regulation;
- (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 provision 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 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.