

2015 No. 121

HIGH COURT OF JUSTICIARY

SHERIFF COURT

JUSTICE OF THE PEACE COURT

**Act of Adjournal (Criminal Procedure Rules Amendment No. 2)
(European Protection Orders) 2015**

Made - - - - - *18th March 2015*

Laid before the Scottish Parliament *19th March 2015*

Coming into force - - - *1st April 2015*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(a), and all other powers enabling them in that behalf, do hereby enact and declare:

Citation, commencement etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 2) (European Protection Orders) 2015.

(2) It comes into force on 1st April 2015.

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

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

2.—(1) The Criminal Procedure Rules 1996(b) are amended in accordance with this paragraph.

(2) After Chapter 60 (Regulatory Reform (Scotland) Act 2014)(c), insert—

(a) 1995 c.46.

(b) The Criminal Procedure Rules 1996 are contained in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2015/84).

(c) Chapter 60 was inserted by S.S.I. 2014/162.

“CHAPTER 61 EUROPEAN PROTECTION ORDERS

Interpretation

61.1. In this Chapter words and expressions have the same meaning as that given by section 254A or section 254B(7) of the Act of 1995(a).

Information about European Protection Orders

- 61.2.**—(1) Where a court makes a protection measure, it must—
- (a) where the protection measure is made before conviction, direct the prosecutor to inform the protected person under paragraph (2); or
 - (b) otherwise, direct the clerk of court to inform the protected person under paragraph (2).
- (2) A person is informed under this paragraph if—
- (a) informed of the possibility of applying for a European Protection Order if that person decides to reside or stay in another Member State of the European Union and of the basic conditions for making such a request; and
 - (b) advised that an application for a European Protection Order should be made before leaving the United Kingdom.

Application for a European Protection Order

- 61.3.**—(1) An application is to be made by minute in Form 61.3.
- (2) An application which relates to a protection measure issued by a court in Scotland must be made to the court which issued that protection measure.
- (3) The court must send to the competent authority of the issuing state an application which relates to a protection measure issued in the issuing state.
- (4) An application may be granted by the court in chambers.

Issuing of a European Protection Order

- 61.4.**—(1) A European Protection Order is to be issued in Form 61.4-A.
- (2) Where the court refuses an application, it must send that decision to the protected person in Form 61.4-B.
- (3) The court must arrange for the translation of a European Protection Order into the official language (or into one of the official languages) of the executing state.

Recognition of a European Protection Order

- 61.5.**—(1) Where the sheriff has to inform the competent authority of the issuing state of refusal and the grounds of refusal under section 254C(5) of the Act of 1995, it must be done in Form 61.5-A.
- (2) Where the sheriff has to inform the protected person of refusal and the grounds of refusal under section 254C(5) of the Act of 1995, it must be done in Form 61.5-B.

(a) Section 254A to 254E were inserted by S.S.I. 2015/107.

Implementation of a recognised European Protection Order

61.6.—(1) A non-harassment order made under section 245D of the Act of 1995 is to be made in Form 61.6-A.

(2) An order may be granted by the sheriff in chambers.

(3) Where the sheriff has to provide information under section 254D(6) of the Act of 1995, it must be done in Form 61.6-B.

(4) Where the court must notify the competent authority of the issuing state of a conviction under section 254D(8) of the Act of 1995, it must send that notification in Form 61.6-C.

(5) The court must arrange for the translation of a notification under paragraph (4) into the official language (or into one of the official languages) of the issuing state.

Modification and revocation of a non-harassment order

61.7.—(1) An application by an offender to modify or revoke a non-harassment order under section 254E (3) or (5) of the Act of 1995 is to be made in Form 61.7-A.

(2) Where the sheriff has to provide information under section 254E(6) of the Act of 1995, it must be done in Form 61.7-B.

Translation free of charge

61.8. Translation required under this Chapter must be provided free of charge.

Where competent authority not known

61.9.—(1) This rule applies where the court has to send information to the competent authority of an issuing state under rule 61.3(4), 61.5(1), 61.6(3) or (4) or 61.7(2), but that competent authority is not known to the court.

(2) The court must make all relevant inquiries to identify the competent authority, including via the contact points of the European Judicial Network referred to in the Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network(a), the National Member of Eurojust or the National System for the coordination of Eurojust of the United Kingdom.”.

(3) In the appendix, after Form 60.4, insert the Forms set out in the Schedule to this Act of Adjournal.

Brian Gill
Lord Justice General
I.P.D.

Edinburgh
18th March 2015

(a) O.J. L348, 24.12.2008, p. 130.

SCHEDULE

Paragraph 2(3)

Form 61.3

Rule 61.3(1)

FORM OF A MINUTE UNDER SECTION 254B OF THE CRIMINAL
PROCEDURE (SCOTLAND) ACT 1995 FOR A EUROPEAN PROTECTION
ORDER

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE
CLERK AND THE LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES IN JUSTICE OF THE PEACE COURT OF (*name of sheriffdom*) AT
(*place*)]
MINUTE

by

[A.B.] (*address*)

HUMBLY SHEWETH:

1. That the applicant is the subject of a protection measure issued on (*date*) by the High Court [*or* the Sheriff at (*place*)] [*or* the Justices at (*place*)].
2. That the applicant now resides [*or* stays] [*or* intends to reside [*or* stay]] at (*place*).
3. That the applicant will be residing [*or* staying] in (*insert European Union member state*) permanently [*or* for an indefinite period] [*or* for a period of (*specify*)].

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*or* THE COURT]:

to issue a European Protection Order in terms of section 254B of the Criminal Procedure (Scotland) Act 1995.

IN RESPECT WHEREOF

(Signed)

A.B. or [Authorised representative of A.B.]

(*Name, address, e-mail address and telephone number*)

(*Place and date*)

Form 61.4–A

Rule 61.4(1)

FORM OF EUROPEAN PROTECTION ORDER

issued under

**DIRECTIVE 2011/99/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF
13TH DECEMBER 2011 ON THE EUROPEAN PROTECTION ORDER**

The information contained in this form is to be treated with appropriate confidentiality

Issuing State:

Executing State:

(a) Information regarding the protected person:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

Has the protected person been granted free legal aid in the Issuing State (if information is available without further enquiry)?

Yes.

No.

Unknown.

Where the protected person is a minor or is legally incapacitated, information regarding the person's guardian or representative:

Surname:

Forename(s):

Maiden name or previous name, where applicable:

Sex:

Nationality:

Office/Address:

- (b) The protected person has decided to reside or already resides in the executing State, or has decided to stay or already stays in the executing State.

Date from which the protected person intends to reside or stay in the executing State (if known):

Period(s) of stay (if known):

- (c) Have any technical devices been provided to the protected person or to the person causing danger to enforce the protection measure:

Yes; please give a short summary of the devices used:

No.

- (d) Competent authority which issued the European protection order:

Official name:

Full address:

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

Details of the person(s) to be contacted:

Surname:

Forename(s):

Position (title/grade):

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

E-mail (if any):

Languages that may be used for communication:

- (e) Identification of the protection measure on the basis of which the European protection order has been issued:

The protection measure was adopted on (date: DD-MM-YYYY)

The protection measure became enforceable on (date: DD-MM-YYYY)

File reference of the protection measure (if available):

Authority that adopted the protection measure:

- (f) Summary of the facts and description of the circumstances — including, where applicable, the classification of the offence — which have led to the imposition of the protection measure mentioned under (e) above:

- (g) Indications regarding the prohibition(s) or restriction(s) that have been imposed by the protection measure on the person causing danger:

— Nature of the prohibition(s) or restriction(s): (more than one box may be ticked):

- a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
- if you ticked this box, please indicate precisely which localities, places or defined areas the person causing danger is prohibited from entering:

- a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;
- if you ticked this box, please provide any relevant details:

- a prohibition or regulation on approaching the protected person closer than a prescribed distance;
- if you ticked this box, please indicate precisely the distance which the person causing danger has to observe in respect of the protected person:

— Please indicate the length of time during which the abovementioned prohibition(s) or restriction(s) are imposed on the person causing danger:

— Indication of the penalty (if any) in the event of the breach of the prohibition or restriction:

- (h) Information regarding the person causing danger on whom the prohibition(s) or restriction(s) mentioned under (g) have been imposed:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

— Type and number of the identity document(s) of the person (ID card, passport):

Has the person causing danger been granted free legal aid in the Issuing State (if information is available without further enquiry)?

Yes.

No.

Unknown

(i) Other circumstances that could have an influence on the assessment of the danger that could affect the protected person (optional information):

(j) Other useful information (such as, where available and necessary, information on other States where protection measures have been previously adopted with respect to the same protected person):

(k) Please complete:

a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA has already been transmitted to another Member State

— if you ticked this box, please provide the contact details of the competent authority to whom the decision on supervision measures has been forwarded:

Signature of the authority issuing the European protection order and/or of its representative to confirm the accuracy of the content of the order:

Name:

Position (title/grade):

Date:

File reference (*if any*):

(Where appropriate) Official stamp:

Form 61.4–B

Rule 61.4(2)

INTIMATION TO PROTECTED PERSON OF REFUSAL TO ISSUE A
EUROPEAN PROTECTION ORDER

In the application of

[here insert name of protected person]

For a European Protection Order

[insert date]

To *[insert name and address of protected person]*

The High Court *[or the sheriff at (place)] [or the justices at (place)]* has *[or have]* REFUSED your request to issue a European protection order because

[here insert brief reasons].

These rules do not make provision for an appeal against this decision. If you wish to challenge this decision you are advised to take legal advice on any legal remedies which may be available to you.

Signed

Clerk of Court

Form 61.5–A

Rule 61.5(1)

**INTIMATION TO COMPETENT AUTHORITY OF REFUSAL TO RECOGNISE A
EUROPEAN PROTECTION ORDER**

In the application of

[here insert name of protected person]

For a European Protection Order

[insert date]

To *[insert name and address of competent authority including relevant reference number]*

The sheriff at (*place*) has REFUSED the request of *[insert name of protected person]* to recognise a European protection order because:

[here insert brief reasons].

Signed

Sheriff Clerk

Form 61.5–B

Rule 61.5(2)

INTIMATION TO PROTECTED PERSON OF REFUSAL TO RECOGNISE A
EUROPEAN PROTECTION ORDER

In the application of

[here insert name of protected person]

For a European Protection Order

[insert date]

To *[insert name and address of protected person]*

The sheriff at *[insert name of sheriff court]* has REFUSED your request to recognise a European protection order because:

[here insert brief reasons].

These rules do not make provision for an appeal against this decision. If you wish to challenge this decision you are advised to take legal advice on any legal remedies which may be available to you.

Signed

Sheriff Clerk

Form 61.6–A

Rule 61.6(1)

FORM OF NON-HARASSMENT ORDER MADE UNDER SECTION 254D OF
THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

NON-HARASSMENT ORDER

under section 254D of the Criminal Procedure (Scotland) Act 1995

COURT:

DATE:

OFFENDER:

Address:

Date of birth:

THE COURT, having recognised a European Protection Order under section 254C of the Criminal Procedure (Scotland) Act 1995 [*here insert reference number*];

ORDERS that [for a period of (*specify period*) from the date of this order] [until further order] the offender shall (*specify conduct from which offender is to refrain*).

(Signed)

Clerk of Court

Form 61.6–B

Rule 61.6(3)

FORM OF INFORMATION REGARDING A NON-HARASSMENT ORDER UNDER SECTION 254D OF THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

To: *(name and address of offender) [or (name and address of protected person) or (name and address of competent authority of issuing State)]*

Date:

TAKE NOTICE:

On *(date)* the sheriff at *(place)* made a non-harassment order under section 254D of the Criminal Procedure (Scotland) Act 1995.

Breach of this non-harassment order is an offence under section 234A(4) of the Criminal Procedure (Scotland) Act 1995.

Conviction of an offence under section 234A(4) of the Criminal Procedure (Scotland) Act 1995 as modified by section 254D(2) may attract the following penalties:

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both such imprisonment and such fine; and
- (b) on summary conviction, to imprisonment for a period not exceeding 3 months or to a fine not exceeding level 5 on the standard scale, or to both such imprisonment and such fine.

A constable may arrest without warrant any person the constable reasonably believes is committing or has committed breach of a non-harassment order. This power is without prejudice to any other power of arrest conferred by law.

(signed)

Clerk of Court

Form 61.6–C

Rule 61.6(4)

NOTIFICATION OF A BREACH OF THE MEASURE TAKEN ON THE BASIS OF THE EUROPEAN PROTECTION ORDER

The information contained in this form is to be treated with appropriate confidentiality

(a) Details of the identity of the person causing danger:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the identity of the protected person:

Surname:

Forename(s):

Maiden name or previous name, where applicable:

Sex:

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

- (c) Details of the European protection order:

Order issued on:

File reference (if any):

Authority which issued the order:

Official name:

Address:

- (d) Details of the authority responsible for the execution of the protection measure, if any, which was taken in the executing State in line with the European protection order:

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

E-mail (if any):

Languages that may be used for communication;

- (e) Breach of the prohibition(s) or restriction(s) imposed by the competent authorities of the executing State following recognition of the European protection order and/or other findings which could result in taking any subsequent decision:

The breach concerns the following prohibition(s) or restriction(s) (more than one box may be ticked):

- a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
- a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;
- a prohibition or regulation on approaching the protected person closer than a prescribed distance;
- any other measure, corresponding to the protection measure at the basis of the European protection order, taken by the competent authorities of the executing State following recognition of the European protection order

Description of the breach(es) (place, date and specific circumstances):

In accordance with Article 11(2):

— measures taken in the executing State as a consequence of the breach:

— possible legal consequence of the breach in the executing State:

Other findings which could result in taking any subsequent decision

Description of the findings:

- (f) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

E-mail:

Languages that may be used for communication:

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

Form 61.7–A

Rule 61.7(1)

FORM OF APPLICATION UNDER SECTION 254E OF THE CRIMINAL
PROCEDURE (SCOTLAND) ACT 1995

UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*

AT *(place)*

Application

by

(name of offender) (address)

APPLICANT

HUMBLY SHEWETH:

1. That a non-harassment order, a copy of which is annexed to this application, was made in respect of *(name of offender)* on *(date)* in the sheriff court at *(insert place)*.

2. That the applicant applies to the court in terms of section 254E of the Criminal Procedure (Scotland) Act 1995 to modify *(or revoke)* the order for the following reasons:

(statement of reasons)

MAY IT THEREFORE PLEASE YOUR LORDSHIP:

(a) to revoke the non-harassment order;

or

[(b) To modify the non-harassment order as follows:

(insert details of proposed modification)];

(c) to do otherwise as to your Lordship shall seem proper.

IN RESPECT WHEREOF

(Signed)

Offender

[*or* Solicitor for offender]

(address and telephone number of the solicitor)

Form 61.7–B

Rule 61.7(2)

FORM OF INFORMATION REGARDING MODIFICATION OR REVOCATION
OF A NON-HARASSMENT ORDER UNDER SECTION 254D OF THE
CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

In the application of

[here insert name of protected person]

For a European Protection Order

To: *(name and address of offender) [or (name and address of protected person) or (name and address of competent authority of issuing State)].*

Date:

TAKE NOTICE:

The sheriff at *(place)* has REVOKED *[or MODIFIED]* the non-harassment order made on *(date)* by the sheriff at *(place)* under section 254D of the Criminal Procedure (Scotland) Act 1995.

(If modified, insert brief details)

Signed

Sheriff Clerk

EXPLANATORY NOTE

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

This Act of Adjournal inserts a new Chapter 61 (European Protection Orders) into the Criminal Procedure Rules 1996 to make provision in consequence of Directive 2011/99/EU of the European Parliament and of the Council of 18th December 2011 on the European Protection Order.

When an order granted in criminal proceedings in the High Court, the sheriff court or Justice of the Peace Court is a protection measure for the purposes of the Directive, the rules make provision for the protected person to be informed of the possibility of applying for a European Protection Order. The rules make provision for the form of such applications and for the intimation of any European Protection Order so issued to relevant parties.

The rules also make provision in respect of the recognition and implementation of a European Protection Order made in another member State.

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