



Anonymous Registration

This document seeks views on proposed additions to the list of court orders and injunctions prescribed as evidence for the purposes of an anonymous registration application.

Background

The Government is committed to ensuring that all those who are eligible to register on the electoral register are able to do so in safety. By introducing a scheme for anonymous registration in Great Britain, the Government recognised that there are people who feel that they would be unable to register to vote if their name and address was included in the electoral register for fear that the register, a public document, might be used to trace their whereabouts. Accordingly, under the anonymous registration scheme, if the registration officer is satisfied that the safety of an applicant for registration, or that of any other person of the same household, would be at risk if the register contained the name or address of the applicant, the registration officer may grant an anonymous registration. The only details which appear on the register are the applicant's electoral number and the letter "N" which has been prescribed in regulations.

Legislative Background

Sections 9B and 9C of the Representation of the People Act 1983

Section 10 of the Electoral Administration Act 2006 inserted new sections 9B and 9C into the Representation of the People Act 1983. Section 9B sets out the requirements and procedures for anonymous registration, and provides for the making of regulations relating to entitlement to anonymous registration. Section 9C provides for the removal of an anonymous registration entry after 12 months – although a further application for anonymous registration may be made if the individual concerned considers that their safety is still at risk.

Representation of the People (England and Wales) Regulations 2001 (SI 2001/341)

Representation of the People (Scotland) Regulations 2001 (SI 2001/497)

Regulations 31G to 31J of the Representation of the People (England and Wales) Regulations 2001¹ set out the procedure for applying for anonymous registration in

¹ Regulations 31G to 31J of the Representation of the People (England and Wales) Regulations 2001 were inserted by Regulation 12 of the Representation of the People (England and Wales) (Amendment) (No 2) Regulations 2006 (2006/2910).

England and Wales. Equivalent provision is made in Regulations 31G to 31J of the Representation of the People (Scotland) Regulations 2001² in relation to applications for anonymous registration in Scotland. Regulation 31G(3) provides that the application for anonymous registration must be accompanied by evidence of the nature prescribed in Regulation 31I or 31J.

Regulation 31I deals with evidence consisting of a **court order or injunction**. The order or injunction must be one of those listed below, and must be in force and for the protection or benefit of the applicant or a person in the applicant's household:

- an injunction for the purpose of restraining a person from pursuing any conduct which amounts to harassment granted in proceedings under section 3 of the Protection from Harassment Act 1997;
- an injunction granted under section 3A(2) of the Protection from Harassment Act 1997;
- a restraining order made under section 5(1) of the Protection from Harassment Act 1997;
- a restraining order on acquittal made under section 5A(1) of the Protection from Harassment Act 1997;
- a non-harassment order made under section 8(5)(b)(ii) of the Protection from Harassment Act 1997;
- a non-harassment order made under section 234A(2) of the Criminal Procedure (Scotland) Act 1995;
- a non-molestation order made under section 42(2) of the Family Law Act 1996;
- an injunction for the purpose of restraining a person from pursuing any conduct which amounts to harassment granted in proceedings under article 5 of the Protection from Harassment (Northern Ireland) Order 1997;
- a restraining order made under article 7 of the Protection from Harassment (Northern Ireland) Order 1997;
- a restraining order on acquittal made under article 7A(1) of the Protection from Harassment (Northern Ireland) Order 1997;
- a non-molestation order made under article 20(2) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998.

Regulation 31J deals with evidence by **attestation**. The attestation must be signed by a "qualifying officer" and certify that the safety of the applicant, or a person in the applicant's household, would be at risk if the register included the applicant's name and address. A "qualifying officer" includes a police officer of or above the rank of superintendent and directors of children's services and social services.

² Regulations 31G to 31J of the Representation of the People (Scotland) Regulations 2001 were inserted by Regulation 12 of the Representation of the People (Scotland) (Amendment) Regulations 2007 (SI 2007/925).

The Proposal

Scottish Women's Aid (SWA) has made representations to the Government seeking the addition of certain interdicts granted by the Scottish Courts to the list of court orders and injunctions prescribed by Regulation 31I as evidence to support an application for anonymous registration across Great Britain. The SWA contend that the current legislation is unfair to women in Scotland because the orders and injunctions currently listed which may be made under the law of England and Wales or Northern Ireland cover a wider range of situations than those currently listed which may be made under the law of Scotland. Therefore in some situations an individual who has obtained a protective order in their favour in the Scottish courts may be required to use evidence by attestation to obtain an anonymous registration, whereas a person with an order obtained from an English court in similar circumstances may be able to rely on that order alone to obtain an anonymous registration.

The interdicts which the SWA contend should be added to those currently listed in Regulation 31I are:

- **“Matrimonial interdicts” within the meaning of section 14 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981**

Section 14(2) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 provides that “matrimonial interdict” means an interdict or interim interdict which-

- (a) restrains or prohibits any conduct of one spouse towards the other spouse or a child of the family, or
- (b) ...prohibits a spouse from entering or remaining in-
 - (i) a matrimonial home;
 - (ii) any other residence occupied by the applicant spouse;
 - (iii) any place of work of the applicant spouse;
 - (iv) any school attended by a child in the permanent or temporary care of the applicant spouse.

- **“Domestic interdicts” within the meaning of section 18A of the Matrimonial Homes (Family Protection) (Scotland) Act 1981**

- Section 18(A) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 provides that “domestic interdict” means:
- (1)(a) an interdict (including an interim interdict) granted on the application of a person (“A”) who is (or was) living with another person (“B”) as if they were husband and wife against B for any of the purposes mentioned in subsection (2); or
- (1)(b) an interdict (including an interim interdict) granted on the application of a person (“C”) who is (or was) living with another person (“D”) as if they were civil partners against D for any other purposes mentioned in subsection (2).
- (2) Those purposes are -
- (a) restraining or prohibiting such conduct of the defender towards -

- (i) the pursuer; or
 - (ii) any child in the permanent or temporary care of the pursuer, as the court may specify;
 - (b) prohibiting the defender from entering or remaining in-
 - (i) a family home occupied by the pursuer and the defender;
 - (ii) any other residence occupied by the pursuer;
 - (iii) any place of work of the pursuer;
 - (iv) any school attended by a child in the permanent or temporary care of the pursuer.
- **“Relevant interdicts” within the meaning of section 113 of the Civil Partnership Act 2004**
 - Section 113 of the Civil Partnership Act 1981 provides that “relevant interdict” means an interdict, including an interim interdict, which-
 - (a) restrains or prohibits any conduct of one civil partner towards the other civil partner or a child of the family, or
 - (b) ... prohibits a civil partner from entering or remaining in –
 - (i) a family home,
 - (ii) any other residence occupied by the applicant civil partner,
 - (ii) any place of work of the applicant civil partner,
 - (iv) any school attended by a child in the permanent or temporary care of the applicant civil partner.
- **Common law Interdicts with a power of arrest attached under the Protection from Abuse (Scotland) Act 2001.**

Section 1 of the Protection from Abuse (Scotland) Act 2001 provides that a person who is applying for, or who has obtained, an interdict for the purpose of protection against abuse may apply to the court for a power of arrest to be attached to the interdict under this Act.

- **Interdicts granted under section 8(5)(b)(i) of the Protection from Harassment Act 1997**

Section 8(5)(b) of the Protection from Harassment Act 1997 provides that in an action of harassment the court may grant interdict or interim interdict.

- **“Domestic abuse interdicts” within the meaning of the Domestic Abuse (Scotland) Act 2011.**

Section 3(1) of the Domestic Abuse (Scotland) Act 2011 provides that a person who is applying for, or who has obtained, an interdict may apply to the court for a determination that the interdict is a domestic abuse interdict.

The Government is also considering whether it would be beneficial to include a **non-harassment order under section 8A of the Protection from Harassment Act**

1997. The effect of this section is to remove the requirement to show a course of conduct before a non-harassment order can be granted in cases where the conduct in question amounts to domestic abuse.

The Government is keen to ensure that anonymous registration is accessible to those who are at genuine risk of harm if their names or address were included on the electoral register and is considering what changes to the law might be appropriate. The Government agrees with the SWA that in some situations an order or injunction granted by a court in England and Wales may be used as prescribed evidence for an anonymous registration application where an interdict or order granted by a Scottish court in similar circumstances may not be so used. However the Government considers that there are practical difficulties arising in relation to the use of the Scottish injunctions and orders that do not arise in relation to the English and Welsh equivalents.

Practical Issues

The Government considers that it is important that only those facing a genuine threat to their safety should be able to register anonymously. This is the reason why section 9B of the Representation of the People Act 1983 requires that the registration officer must determine that the “safety test” is satisfied before he or she grants an anonymous registration. However it would be unduly burdensome to require registration officers to investigate the personal circumstances of every applicant for anonymous registration and make a qualitative assessment of the degree of risk they face. The 2001 Regulations therefore prescribe the evidence (either a court order/injunction or an attestation) that may be used to show that the safety test is met. Where the registration officer is satisfied that the evidence produced complies with the regulations, the registration officer *must* determine that the safety test is satisfied. There is no element of discretion. The Government considers that it is an important aspect of this policy that the court order or injunction should be readily identifiable on its face by the registration officer. The court orders and injunctions currently listed in Regulation 31I are all granted under statutory rather than common law powers, and the relevant statutory provision will be stated on the face of the court document. They are, therefore, easily identifiable.

In relation to four of the Scottish interdict/orders currently under consideration, the Government is of the view that in most cases it would be clear on the face of the interdict/order that it falls within one of the proposed categories. This is because the interdict/order would include a reference to the relevant statutory provision, and therefore the registration officer should not find it difficult to identify them. This applies to the following:

- domestic abuse interdicts (an example of which is attached as Annex A).
- interdicts with power of arrest attached (examples of which are attached at Annexes B & C).
- a non-harassment order under section 8A of the Protection from Harassment Act 1997.
- an interdict under section 8(5)(b)(i) of the Protection from Harassment Act 1997.

However, we think that the registration officer might find it difficult to satisfy him or herself that the document produced as evidence falls within one of the other proposed categories of interdict. This is because the definition of these interdicts turns on the relationship between the person to whom and against whom the interdict is granted and, in some cases, the type of place which it prohibits the defender from entering. These facts may not be clear on the face of the interdict, which may cite only the names of the parties and the relevant address. In some cases, there may not be any reference to the statutory definition. We consider that these identification difficulties apply in relation to:

- matrimonial interdicts
- domestic interdicts
- relevant interdicts

Attached at Annex D is an example which may fall into one of the above categories. However, because the relationship between the parties is not specified, we are not able to identify it. We are currently considering options to resolve this practical challenge without placing an undue burden on registration officers or the applicant for anonymous registration. One option would be to prescribe the three interdicts separately as evidence that the safety test is satisfied, and accept that the registration officer might in practice need to see further documentation in order to determine whether the interdict that is being presented to him or her is a particular one of these three types. We envisage that it should be relatively easy for the elector to produce any further evidence required. For example the court papers used in order to obtain the interdict are likely to give a background to the case, including the relationship between the parties. However, such documentation could be complex and interpreting it might impose an undue burden on the registration officer.

An alternative approach would be to prescribe the three interdicts together as one defined group, so that it would be unnecessary for the registration officer to determine which one of the defined group is being produced to him or her. For example, a “household interdict” could be added to the list of relevant court orders and injunctions in Regulation 31I(3) and “household interdict” would be defined as “a matrimonial interdict as defined in section 14 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, or a domestic interdict as defined in section 18A of that Act, or a relevant interdict as defined in section 113 of the Civil Partnership Act 2004”. Provided that the registration officer was satisfied that the interdict was one of these three, even if he or she could not identify which one, the test would be satisfied. The advantage of this approach is that it would not require the registration officer to investigate matters, such as the exact nature of the relationship between the elector and defender, which are irrelevant to the question whether an anonymous registration is appropriate. This approach would not entirely solve the problem, because the registration officer would still have to be satisfied that there had been some sort of domestic relationship between the elector and the defender in order to be able to determine that the interdict fell within the group definition. However this might be relatively easy to do. For example, a bill addressed to both persons at the same address may be sufficient.

We would welcome views on these options and any further options for resolving these practical challenges and ensuring that an extra legal burden/risk of challenge is not unduly placed on registration officers, whilst at the same time enabling those at risk of

harm to obtain an anonymous registration without having to undergo a difficult or distressing disclosure process.

Questions

1. Do you have any concerns about the inclusion of the interdicts listed above?
2. Do you have any concerns about identifying these interdicts in practice?
3. If you do have concerns, how might these be alleviated?
4. Are there any other changes to the anonymous registration scheme which you believe would be beneficial?

Please send responses by **6 March** to Nnenna.orji@cabinet-office.gsi.gov.uk,cc Roddy.Angus@scotlandoffice.gsi.gov.uk

Cabinet Office
18 January 2013

ANNEX A

Act:

Alt:

The sheriff, on Pursuers motion; Grants interim interdict against the Defender from molesting the Pursuer by abusing her verbally, threatening her, approaching her dwelling house at or approaching her elsewhere within the jurisdiction of entering Road, communication with the Pursuer directly or by telephone, text message, e-mail or social networking, or otherwise putting the Pursuer into a state of fear or alarm or distress or using violence towards her and Attaches a Power of Arrest thereto; Declares that this case is a Domestic Abuse case in terms of Section 3(1) of the Domestic Abuse (Scotland) Act 2011.

SGD.

Sheriff

ANNEX B

EXTRACT DECREE

SHERIFF COURT

Court Ref. no:

Date of decree:

In Absence

PURSUER

Against

DEFENDER

The sheriff, Interdicted the defender from molesting the pursuer by abusing her verbally, threatening her or approaching her or her children born and or her dwelling house at or elsewhere within the jurisdiction of the court without her prior written consent.

Attached a Power of Arrest for a period of three years to the above interdict in terms of the Protection from Abuse (Scotland) Act 2001 as amended.

Finding the defender liable to the pursuer in expenses of the cause as taxed.

ANNEX C

Act:

Alt:

The sheriff, having heard the agent for the pursuer there being no appearance by or for the defender at today's hearing, Continues the Interim interdict previously granted on interdicting the Defender from molesting the pursuer by assaulting her, by threatening her, by putting her into a state of fear or alarm or distress, by abusing her verbally, approaching her dwellinghouse at or her elsewhere within the jurisdiction of the or otherwise communicating with the pursuer directly or by telephone and by using or threatening violence towards her; ad interim, Attaches a Power of Arrest to the said Interim interdict for a period of 3 years from this date in terms of the Protection from Abuse [Scotland] Act 2001.

Sheriff

ANNEX D

Court Ref. No

At on the 12 July 2011

Act::

The sheriff, Grants warrant to cite the defender, by serving upon him a copy of the writ and warrant on a period of notice of 21 days and Ordains him, if he intends to defend the action or make any claim, to lodge a notice of intention to defend with the sheriff clerk at Sheriff Court House, within the said period of notice after such service;

and as regards the interim orders craved, Appoints parties or their agents to be heard thereon within the Sheriff Court House, Sheriff Court House, on 20th July 2011 at 9:45 a.m. and Appoints the pursuer to intimate this diet to the defender forthwith by officer of Court;

meantime ad interim Interdicts the Defender from molesting the Pursuer by threatening her, abusing her verbally, attempting to contact her in any way and from entering the Pursuer's home or the street leading to it, until further orders of court.

Sheriff

sheriff

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