
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 405

**COURT OF SESSION
SHERIFF COURT**

Act of Sederunt (Rules of the Court of Session 1994 and Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Proceeds of Crime) (No. 2) 2019

Made - - - - 27th November 2019
*Laid before the Scottish
Parliament* - - - - 29th November 2019
Coming into force - - 28th December 2019

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013⁽¹⁾, the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014⁽²⁾ and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 and Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Proceeds of Crime) (No. 2) 2019.

(2) It comes into force on 28th December 2019.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session 1994

2.—(1) The Rules of the Court of Session 1994⁽³⁾ are amended in accordance with this paragraph.

(1) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(2) 2014 asp 18.

(3) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2019/404).

- (2) In rule 32.8 (transfer of application for forfeiture of property from the sheriff under the Anti-terrorism, Crime and Security Act 2001 or the Proceeds of Crime Act 2002)(4)—
- (a) for the heading substitute “**Transfer of application for forfeiture of property from the sheriff: proceeds of crime**”;
 - (b) after paragraph (1)(b) insert—
 - “(c) article 213L(1) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(5) for the forfeiture of property which has been transferred to the court by the sheriff under article 213O(1) of that Order.”.
- (3) In the title of Part III of Chapter 76 (applications under the Proceeds of Crime Act 2002, the Overseas Forfeiture Order of 2005 and the POCA Order of 2005)(6), for “AND THE POCA ORDER OF 2005” substitute “AND THE POCA ORDERS OF 2005 AND 2013”.
- (4) In rule 76.27 (interpretation and application of this Part)(7)—
- (a) in paragraph (1), after sub-paragraph (c) insert—
 - “(ca) “the POCA Order of 2013” means the Proceeds of Crime Act 2002 (External Investigations) Order 2013(8);”;
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (d) after “Parts 3” insert “, 4B”;
 - (ii) after sub-paragraph (d) insert—
 - “(e) articles 46A (unexplained wealth orders) to 46R (compensation) of the POCA Order of 2013(9).”.
- (5) In rule 76.36 (applications)(10)—
- (a) in paragraph (5)(d) omit “and”;
 - (b) after paragraph (5)(e) insert—
 - “(f) article 141ZHA of the POCA Order of 2005 (receivers in connection with prohibition orders)(11) if the application is made after the application for a prohibition order under article 141ZC of that Order;
 - (g) article 166A of the POCA Order of 2005 (receivers in connection with prohibitory property orders) if the application is made after the application for a prohibitory property order under article 161 of that Order.”;
 - (c) after paragraph (7)(c) insert—
 - “(d) article 141ZHC of the POCA Order of 2005 (supervision of receiver and variations);
 - (e) article 166C of the POCA Order of 2005 (supervision of PPO receiver and variations).”.
- (6) Omit rule 76.36A (applications for a recovery order – heritable property)(12).
- (7) In rule 76.37B (unexplained wealth orders and interim freezing orders)(13)—

(4) Rule 32.8 was inserted by [S.S.I. 2019/146](#).

(5) [S.I. 2005/3181](#). Articles 213L and 213O were inserted by [S.I. 2018/1078](#).

(6) The title of Part III was substituted by [S.S.I. 2005/663](#).

(7) Rule 76.27 was substituted by [S.S.I. 2005/663](#) and last amended by [S.S.I. 2019/146](#).

(8) [S.I. 2013/2605](#), last amended by [S.I. 2018/1078](#).

(9) Articles 46A to 46R were inserted by [S.I. 2018/1078](#).

(10) Rule 76.36 was substituted by [S.S.I. 2005/663](#), last amended by [S.S.I. 2019/146](#). Paragraph (5)(d) was last amended, and paragraphs (5)(e) and (7)(c) inserted, by [S.S.I. 2016/319](#).

(11) Articles 141ZHA, 141ZHC, 166A and 166C were inserted by [S.I. 2018/1078](#).

(12) Rule 76.36A was inserted by [S.S.I. 2019/146](#).

(13) Rule 76.37B was inserted by [S.S.I. 2019/146](#).

- (a) after paragraph (1)(b) insert—
 - “(c) article 46A of the POCA Order of 2013 (unexplained wealth orders);
 - (d) article 46I of the POCA Order of 2013 (unexplained wealth order: application for interim freezing order) but only if the application is made at the same time as an application under article 46A of that Order.”;
 - (b) after paragraph (2)(d) insert—
 - “(e) article 46H of the POCA Order of 2013 (supplementary);
 - (f) article 46I of the POCA Order of 2013 but only if the application is made after the court has made an order under article 46A of that Order;
 - (g) article 46J of the POCA Order of 2013 (variation and discharge of interim freezing order);
 - (h) article 46R of the POCA Order of 2013 (compensation).”;
 - (c) in paragraph (3)(c) after “section 396R” insert “of the Act of 2002”;
 - (d) after paragraph (3)(c) insert—
 - “(d) article 46M of the POCA Order of 2013 (arrestment of property affected by interim freezing order);
 - (e) article 46N of the POCA Order of 2013 (inhibition of property affected by interim freezing order) but only if the application is made after the court has made an order under article 46I of that Order;
 - (f) article 46Q (supervision of article 46O receiver and variations).”;
 - (e) after paragraph (4) insert—
 - “(4A) An application under the following provisions may be made by petition, if made at the same time as an application for an order under article 46I of the POCA Order of 2013 or, if made at any time afterwards, by note in process—
 - (a) article 46P of the POCA Order of 2013 (powers of receivers appointed under article 46O);
 - (b) article 46O of the POCA Order of 2013 (receivers in connection with interim freezing orders).”.
- (8) In the Appendix (forms), omit Form 76.36A (form of citation of unnamed occupier(s))(14).

Amendment of the Summary Application Rules 1999

3.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(15) is amended in accordance with this paragraph.

- (2) In rule 3.19.1 (interpretation and application)(16)—
 - (a) in paragraph (1), after the definition of “the Act” insert—
 - ““the 2005 Order” means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(17);
 - “external order” has the meaning set out in section 447(2) of the Act;”;
 - (b) in paragraph (2) omit—
 - (i) “3A,”;

(14) Form 76.36A was inserted by [S.S.I. 2019/146](#).

(15) [S.I. 1999/929](#), last amended by [S.S.I. 2019/146](#). Part XIX was inserted by [S.S.I. 2002/563](#).

(16) Rule 3.19.1 was substituted by [S.S.I. 2003/98](#).

(17) [S.I. 2005/3181](#), last amended by [S.I. 2018/1078](#).

- (ii) sub-paragraph (e);
- (c) after paragraph (2) insert—
 - “(3) This Part applies to applications to the sheriff under Parts 5A and 5B(18) of the 2005 Order.”.
- (3) In rule 3.19.3(1) (applications for release of detained cash or detained property)(19), after sub-paragraph (d) insert—
 - “(e) article 213S of the 2005 Order (victims and other owners)(20) must be made—
 - (i) in the course of proceedings for an order under article 213L(1) (forfeiture); or
 - (ii) where an order has been made under article 213L(1), by minute in the process of the application for that order.”.
- (4) In rule 3.19.4 (applications for forfeiture of detained cash or detained property)(21)—
 - (a) after paragraph (1) insert—
 - “(1A) In an application to the sheriff under article 213L(1) of the 2005 Order, a certified copy of the external order to be registered must be produced with the application.”;
 - (b) after paragraph (2) insert—
 - “(3) Where the sheriff grants an application under article 213L(1) of the 2005 Order, the sheriff clerk must register the certified copy of the external order.”.
- (5) In rule 3.19.4A (variation and recall of account freezing orders and applications for forfeiture orders)(22)—
 - (a) in paragraph (1), after “section 303Z4(1)” insert “or article 213Z4 of the 2005 Order(23)”;.
 - (b) in paragraph (2), after “section 303Z14(2)” insert “or article 213Z7(3) of the 2005 Order”.
- (6) In rule 3.19.5(1) (applications for compensation)(24), after sub-paragraph (c) insert—
 - “(d) article 213Z11(2) of the 2005 Order (compensation), where the court has made an order under article 213Z3 of the 2005 Order (making of account freezing order),”.
- (7) In rule 3.19.5A (associated and joint property: transfer to Court of Session)(25)—
 - (a) after “section 303R” where it twice occurs insert “or article 213O(1) of the 2005 Order”;
 - (b) in paragraph (1), after “section 303O(1)(b)” insert “or article 213L(1) of the 2005 Order (forfeiture) respectively”.

Edinburgh
27th November 2019

CJM SUTHERLAND
Lord President
I.P.D.

(18) Parts 5A and 5B were inserted by [S.I. 2018/1078](#).
(19) Rule 3.19.3(1) was substituted by [S.S.I. 2019/146](#).
(20) Articles 213L, 213O and 213S were inserted by [S.I. 2018/1078](#).
(21) Rule 3.19.4 was amended by [S.S.I. 2019/146](#).
(22) Rule 3.19.4A was inserted by [S.S.I. 2019/146](#).
(23) Articles 213Z3 to 213Z11 were inserted by [S.I. 2018/1078](#).
(24) Rule 3.19.5(1) was substituted by [S.S.I. 2019/146](#).
(25) Rule 3.19.5A was inserted by [S.S.I. 2019/146](#).

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session 1994 (“the 1994 Rules”) and the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (“the 1999 Rules”) in consequence of the Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018.

That Order amends the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (“the 2005 Order”) and the Proceeds of Crime Act 2002 (External Investigations) Order 2013 (“the 2013 Order”) to insert provision equivalent to that which was inserted by the Criminal Finances Act 2017 (c.22) into the Proceeds of Crime Act 2002 (c.29). The majority of the amendments made by this Act of Sederunt accordingly make equivalent provision to those which were made in implement of the Criminal Finances Act 2017.

Paragraph 2(2) makes provision in respect of forfeiture of property cases transferred to the Court of Session from the sheriff under article 213O of the 2005 Order. Paragraph 2(4) inserts a new definition into rule 76.27 of the 1994 Rules and extends the application of that Part of Chapter 76 of the 1994 Rules so it applies to applications made under Part 4B of the 2005 Order and articles 46A to 46R of the 2013 Order. Paragraph 2(5) makes provision for new types of application which can be made under the 2005 Order. Paragraphs 2(6) and (8) omit rule and form 76.36A as the same result is instead achieved administratively by the petition containing a prayer seeking warrant for service on known but unidentified occupiers. The amendments made by paragraph 2(7) make provision for applications made under the 2013 Order in relation to unexplained wealth orders and interim freezing orders, and make corrective provision for a minor cross-reference error.

Paragraph 3(2)(a) inserts definitions for the purposes of Part XIX of Chapter 3 of the 1999 Rules. Paragraph 3(2)(b) corrects errors made by paragraph 3(3)(a) of the Act of Sederunt (Rules of the Court of Session 1994 and Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Proceeds of Crime) 2019 (S.S.I. 2019/146). Paragraph 3(2)(c) expands the application of the Part to include applications made under Parts 5A and 5B of the 2005 Order. Paragraph 3(3), (5) and (7) make provision for new types of application which can be made under the 2005 Order. Paragraph 3(4) makes provision for the registration of an external order requested under article 213L(1) of the 2005 Order.