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STATUTORY INSTRUMENTS

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**1996 No. 2446 (S.191)**

**SHERIFF COURT, SCOTLAND**

**Act of Sederunt (Proceeds of Crime Rules) 1996**

*Made - - - - 12th September 1996*

*Coming into force - - 7th October 1996*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(1), sections 31(5) and 48 of, and paragraph 11 of Schedule 1 to, the Proceeds of Crime (Scotland) Act 1995(2) and of all other powers enabling them in that behalf, having approved, with modifications, draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

**Citation, commencement and interpretation**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Proceeds of Crime Rules) 1996 and shall come into force on 7th October 1996.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

(3) In this Act of Sederunt—

“the Act of 1995” means the Proceeds of Crime (Scotland) Act 1995;

“administrator” means the person appointed under paragraph 1(1) of Schedule 1 to the Act of 1995.

**Applications for compensation**

2. An application to the sheriff under section 17(1) of the Act of 1995 (compensation) shall be made by summary application.

**Applications for restraint orders**

3.—(1) An application to the sheriff under section 28(1) of the Act of 1995 (application for restraint order) shall be made by summary application.

(2) Where the sheriff pronounces an interlocutor making a restraint order, the prosecutor shall serve a copy of that interlocutor on every person named in the interlocutor as restrained by the order.

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(1) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2).

(2) 1995 c. 43.

#### **Recall or variation of restraint orders**

4.—(1) An application to the sheriff under any of the following provisions of the Act of 1995 shall be made by note in the process containing the interlocutor making the restraint order to which the application relates:—

- (a) section 29(4) or (5) (recall of restraint orders in relation to realisable property);
- (b) section 30(3) or (4) (recall of restraint orders in relation to forfeitable property);
- (c) section 31(1) (variation or recall of restraint order).

(2) In respect of an application by note under paragraph (1)(c) above by a person having an interest for an order for variation or recall under section 31(1)(b) of the Act of 1995—

- (a) the note shall be lodged in process within 21 days after service of the restraint order on that person or within such other period as the sheriff thinks fit; and
- (b) the period of notice for lodging answers to the note shall be 14 days or such other period as the sheriff thinks fit.

#### **Applications for interdict**

5.—(1) An application to the sheriff under section 28(8) of the Act of 1995 (interdict) may be made—

- (a) in the summary application under section 28(1) of the Act of 1995; or
- (b) if made after a restraint order has been made, by note in the process of the application for that order.

(2) An application under section 28(8) of the Act of 1995 by note under paragraph (1)(b) above shall not be intimated, served or advertised before that application is granted.

#### **Applications in relation to arrestment**

6.—(1) An application to the sheriff under section 33(1) of the Act of 1995 (arrestment of property affected by restraint order) by the prosecutor for warrant for arrestment may be made—

- (a) in the summary application under section 28(1) of the Act of 1995; or
- (b) if made after a restraint order has been applied for, by note in the process of the application for that order.

(2) An application to the sheriff under section 33(2) of the Act of 1995, to loose, restrict or recall an arrestment shall be made by note in the process of the application for the restraint order.

(3) An application to the sheriff under section 33(4) of the Act of 1995 (recall or restriction of arrestment) shall be made by note in the process containing the interlocutor making the restraint order to which the application relates.

#### **Appeals to the Court of Session**

7.—(1) This rule applies to appeals against an interlocutor of the sheriff refusing, varying or recalling or refusing to vary or recall a restraint order.

(2) An appeal to which this rule applies shall be marked within 14 days after the date of the interlocutor concerned.

(3) An appeal to which this rule applies shall be marked by writing a note of appeal on the interlocutor sheet, or other written record containing the interlocutor appealed against, or on a separate sheet lodged with the sheriff clerk, in the following terms:— “The applicant appeals to the Court of Session.”.

- (4) A note of appeal to which this rule applies shall –
  - (a) be signed by the appellant;
  - (b) bear the date on which it is signed; and
  - (c) where the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal.
- (5) The sheriff clerk shall transmit the process within 4 days after the appeal is marked to the Deputy Principal Clerk of Session.
- (6) Within the period specified in paragraph (5) above, the sheriff clerk shall–
  - (a) send written notice of the appeal to every other party; and
  - (b) certify on the interlocutor sheet that he has done so.
- (7) Failure of the sheriff clerk to comply with paragraph (6) above shall not invalidate the appeal.

#### **Applications for appointment of administrators**

**8.**—(1) An application to the sheriff under paragraph 1 of Schedule 1 to the Act of 1995 (appointment of administrators) shall be made–

- (a) where made after a restraint order has been made, by note in the process of the application for that order; or
- (b) in any other case, by summary application.

(2) The notification to be made by the sheriff clerk under paragraph 1(3)(a) of Schedule 1 to the Act of 1995 shall be made by intimation of a copy of the interlocutor to the person required to give possession of property to an administrator.

#### **Incidental applications in an administration**

**9.**—(1) An application to the sheriff under any of the following provisions of Schedule 1 to the Act of 1995 shall be made by note in the process of the application for appointment of the administrator:–

- (a) paragraph 1(1) with respect to an application after appointment of an administrator to require a person to give property to him;
- (b) paragraph 1(4) (making or altering a requirement or removal of administrator);
- (c) paragraph 1(5) (appointment of new administrator on death, resignation or removal of administrator);
- (d) paragraph 2(1)(n) (directions as to functions of administrator);
- (e) paragraph 4 (directions for application of proceeds).

(2) An application to the sheriff under any of the following provisions of Schedule 1 to the Act of 1995 shall be made in the application for appointment of an administrator under paragraph 1(1) of that Schedule or, if made after the application has been made, by note in that process:–

- (a) paragraph 2(1)(o) (special powers of administrator);
- (b) paragraph 2(3) (vesting of property in administrator);
- (c) paragraph 12 (order to facilitate the realisation of property).

#### **Requirements where order to facilitate realisation of property considered**

**10.** Where the sheriff considers making an order under paragraph 12 of Schedule 1 to the Act of 1995 (order to facilitate the realisation of property)–

- (a) the sheriff shall fix a date for a hearing in the first instance; and
- (b) the applicant or noter, as the case may be, shall serve a notice in the Form set out in the Schedule to this Act of Sederunt (or in a form substantially to the same effect) on any person who has an interest in the property.

### **Documents for Accountant of Court**

**11.—**(1) A person who has lodged any document in the process of an application for the appointment of an administrator shall forthwith send a copy of that document to the Accountant of Court.

(2) The sheriff clerk shall transmit to the Accountant of Court any part of the process as the Accountant of Court may request in relation to an administration which is in dependence before the sheriff unless such part of the process is, at the time of request, required by the sheriff.

### **Procedure for fixing and finding caution**

**12.** Rules 9 to 12 of the Act of Sederunt (Judicial Factors Rules) 1992<sup>(3)</sup> (fixing and finding caution in judicial factories) shall, with the necessary modifications, apply to the fixing and finding of caution by an administrator under these Rules as they apply to the fixing and finding of caution by a judicial factor.

### **Administrator's title to act**

**13.** An administrator appointed under these Rules shall not be entitled to act until he has obtained a copy of the interlocutor appointing him.

### **Duties of administrator**

**14.—**(1) The administrator shall, as soon as possible, but within three months after the date of his appointment, lodge with the Accountant of Court—

- (a) an inventory of the property in respect of which he has been appointed;
- (b) all vouchers, securities, and other documents which are in his possession; and
- (c) a statement of that property which he has in his possession or intends to realise.

(2) An administrator shall maintain accounts of his intromissions with the property in his charge and shall, subject to paragraph (3) below—

- (a) within six months after the date of his appointment, and
- (b) at six monthly intervals after the first account during the subsistence of his appointment,

lodge with the Accountant of Court an account of his intromissions in such form, with such supporting vouchers and other documents, as the Accountant of Court may require.

(3) The Accountant of Court may waive the lodging of an account where the administrator certifies that there have been no intromissions during a particular accounting period.

### **State of funds and scheme of division**

**15.—**(1) The administrator shall—

- (a) where there are funds available for division, prepare a state of funds after application of sums in accordance with paragraph 4(2) of Schedule 1 to the Act of 1995, and a scheme of

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(3) S.I.1992/272.

- division amongst those who held property which has been realised under the Act of 1995 and lodge them and all relevant documents with the Accountant of Court; or
- (b) where there are no funds available for division, prepare a state of funds only and lodge it with the Accountant of Court, and give to the Accountant of Court such explanations as he shall require.
- (2) The Accountant of Court shall—
- (a) make a written report on the state of funds and any scheme of division including such observations as he considers appropriate for consideration by the sheriff; and
- (b) return the state of funds and any scheme of division to the administrator with his report.
- (3) The administrator shall, on receiving the report of the Accountant of Court—
- (a) lodge in process the report, the state of funds and any scheme of division;
- (b) intimate a copy of it to the prosecutor; and
- (c) intimate to each person who held property which has been realised under the Act of 1995 a notice stating—
- (i) that the state of funds and scheme of division or the state of funds only, as the case may be, and the report of the Accountant of Court, have been lodged in process; and
- (ii) the amount for which that person has been ranked, and whether he is to be paid in full, or by a dividend, and the amount of it, or that no funds are available for payment.

### **Objections to scheme of division**

**16.**—(1) A person wishing to be heard by the sheriff in relation to the distribution of property under paragraph 4(3) of Schedule 1 to the Act of 1995 shall lodge a note of objection in the process to which the scheme of division relates within 21 days of the date of the notice intimated under rule 15(3)(c) above.

(2) After the period for lodging a note of objection has expired and no note of objection has been lodged, the administrator may apply by motion for approval of the scheme of division and state of funds, or the state of funds only, as the case may be.

(3) After the period for lodging a note of objection has expired and a note of objection has been lodged, the sheriff shall dispose of such objection after hearing any objector and the administrator and making such inquiry as he thinks fit.

(4) If any objection is sustained to any extent, the necessary alterations shall be made to the state of funds and any scheme of division and shall be approved by the sheriff.

### **Application for discharge of administrator**

**17.**—(1) Where the scheme of division is approved by the sheriff and the administrator has paid, delivered or conveyed to the persons entitled the sums or receipts allocated to them in the scheme, the administrator may apply for his discharge.

(2) An application to the sheriff for discharge of the administrator shall be made by note in the process of the application under paragraph 1(1) of Schedule 1 to the Act of 1995.

### **Appeals against determination of outlays and remuneration**

**18.** An appeal to the sheriff under paragraph 6(2) of Schedule 1 to the Act of 1995 (appeal against a determination by the Accountant of Court) shall be made by note in the process of the application in which the administrator was appointed.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Edinburgh,  
12th September 1996

*Hope of Craighead*  
Lord President, I.P.D.

SCHEDULE

Rule 10(b)

**Form of notice to person with interest in property subject to an application for an order under paragraph 12 of Schedule 1 to the Proceeds of Crime (Scotland) Act 1995**

*(Cause reference number)*

IN THE SHERIFF COURT

in the

PETITION [*or* NOTE]

of

[A.B.] *(name and address)*

for an order under paragraph 12 of Schedule 1

to the Proceeds of Crime (Scotland) Act 1995

in respect of the estates of [C.D.] *(address)*

Date: *(date of posting or other method of service)*

To: *(name and address of person on whom notice is to be served)*

This Notice—

- (a) gives you warning that an application has been made to the sheriff court for an order which may affect your interest in property; and
- (b) informs you that you have an opportunity to appear and make representations to the court before the application is determined.

TAKE NOTICE

1. That on *(date)* in the sheriff court at *(place)* a confiscation order was made under section 1 of the Proceeds of Crime (Scotland) Act 1995 in respect of [C.D.] *(address)*.

2. That on *(date)* the administrator appointed under paragraph 1(1)(a) of Schedule 1 to the Proceeds of Crime (Scotland) Act 1995 on *(date)* was empowered to realise property belonging to [C.D.].

or

2. That on *(date)* the administrator was appointed under paragraph 1(1)(b) of Schedule 1 to the Proceeds of Crime (Scotland) Act 1995 on *(date)* to realise property belonging to [C.D.].

3. That application has been made by petition [*or* note] for an order under paragraph 12 of Schedule 1 to the Proceeds of Crime (Scotland) Act 1995 *(here set out briefly the nature of the order sought)*. A copy of the petition [*or* note] is attached.

4. That you have the right to appear before the court in person or by counsel or other person having a right of audience and make such representations as you may have in respect of the order applied for. The court has fixed *(insert day and date fixed for hearing the application)*, at *(insert time and place fixed for hearing)* as the time when you should appear to do this.

5. That if you do not appear or are not represented on the above date, the order applied for may be made in your absence.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a Solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.**

*(Signed)*

Sheriff Officer

[*or* Solicitor [*or* Agent] for petitioner [*or* noter]]

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(Address)

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### **EXPLANATORY NOTE**

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

Part III of the Proceeds of Crime (Scotland) Act 1995 extends the jurisdiction of the sheriff to deal with applications for restraint orders (section 28) and the appointment of administrators (section 34 and Schedule 1). This Act of Sederunt makes provision for the procedure to be followed in the sheriff court in cases under that Part.