
STATUTORY INSTRUMENTS

1999 No. 1220 (S.97)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of the Court of Session Amendment No. 3) (External Orders Affecting Proceeds of Crime) 1999

Made - - - - - *21st April 1999*
Coming into force - - - - - *1st May 1999*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988(1), and of all other powers enabling them in that behalf, do hereby enact and declare:—

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No.3) (External Orders Affecting Proceeds of Crime) 1999 and shall come into force on 1st May 1999.

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

Amendment of the Rules of the Court of Session

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

(2) In chapter 62 (recognition, registration and enforcement of foreign judgments etc.), the heading to Part VII shall be “RECIPROCAL ENFORCEMENT OF ORDERS IN RELATION TO CONFISCATION OF PROCEEDS OF CRIME AND TO FORFEITURE OF PROPERTY USED IN CRIME”.

(3) In rule 62.47 (interpretation of Part VII)—

(a) after the definition of “the Order of 1995” there shall be inserted the following definition—

““the Order of 1999” means the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1999;” and

(b) in the definition of “relevant enactment”, for the words “or the Order of 1995” there shall be substituted “, the Order of 1995 or the Order of 1999”.

(4) In rule 62.48 (applications for registration under the relevant enactment)—

(1) 1988 C.36; section 5 was amended by the Civil Evidence (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 45.
(2) S.I.1994/1443.

- (a) in sub-paragraph (d), after the words “forfeiture order” there shall be inserted “in relation to terrorism”; and
- (b) after sub-paragraph (e) there shall be added—
 - “(f) article 5(1) of the Order of 1999 (application for registration of external forfeiture order other than in relation to terrorism).”.
- (5) After rule 62.51 there shall be inserted—

“Further provision as respects warrant for registration

62.51A. Where an interlocutor granting warrant for the registration of an external confiscation order is pronounced and the order falls to be remitted for enforcement to the Sheriff of Lothian and Borders at Edinburgh, the Deputy Principal Clerk shall send a certified copy of the interlocutor, within four days after it is pronounced, to the sheriff clerk at Edinburgh.”.

- (6) In rule 76.3 (applications for restraint orders), at the end there shall be added—
 - “(3) Where the application is made under the said section as applied by article 4 of the Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999 (application in relation to certain external confiscation orders etc.) or by article 4 of the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1999 (application in relation to certain external forfeiture orders etc.), there shall be appended to the petition a certificate in conformity with paragraph (b) of subsection (3) of the section as so applied by the article in question; but that certificate, as so appended, shall not include a statement of information or belief with the sources and grounds thereof if the prayer includes an application for a direction under that paragraph.
 - (4) Where the court grants the prayer of the petition in an application such as is mentioned in paragraph (3) but declines to make such direction as is so mentioned, the petitioner shall forthwith lodge in process, as an addendum to the certificate which was appended to the petition, a statement of information or belief with the sources and grounds thereof.”.
- (7) In rule 76.4 (applications in relation to protective measures)—
 - (a) in paragraph (3), the words “under paragraph (1) by the prosecutor” shall be omitted;
 - (b) in paragraph (4), after the words “section 32(1)” there shall be inserted “or 33(1)”;
 - (c) in paragraph (6)(a), for the words “section 8(1)” there shall be substituted “section 28(1)”;
 - (d) after paragraph (7) there shall be inserted—
 - “(7A) Where the court, having pronounced an interlocutor making a restraint order, interdicts a person not subject to that order from dealing with property affected by it while it is in force, the Lord Advocate shall so intimate to that person.”; and
 - (e) at the end there shall be added—
 - “(9) At the time at which he complies with section 31(6) of the Act of 1995 (informing of persons interdicted in relation to a restraint order that the order is recalled), the clerk of court (or as the case may be the Deputy Principal Clerk) shall record in the process when and how the person in question was so informed.”.

Edinburgh,
21 April 1999.

Rodger of Earlsferry
Lord President I.P.D.

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

EXPLANATORY NOTE

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

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994. The amendments are mainly consequential upon Orders in Council under sections 40 and 43 of the Proceeds of Crime (Scotland) Act 1995, but paragraph 2(7)(b) and (c) corrects an omission and an error in rule 76.4; paragraph 2(7)(d) makes provision for intimation of an interlocutor making a restraint order to certain persons not affected by that order; and paragraph 2(7)(e) makes new provision both as part of the consequential amendments and in relation to rule 76.4 as it already applied.

The Orders in Council are the Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999 in relation to external confiscation orders of courts in designated countries or territories and the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1999 in relation to external forfeiture orders of such courts and in both cases, in relation to proceedings in those countries or territories which may result in such orders of such courts being made.