
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 319

**Act of Sederunt (Rules of the Court of Session 1994
and Summary Application Rules 1999 Amendment)
(Serious Crime Prevention Orders etc.) 2016**

Amendment of Chapter 76 of the Rules of the Court of Session

- 2.—(1) The Rules of the Court of Session 1994(1) are amended in accordance with this paragraph.
(2) Before rule 76.1 (interpretation of this Part) insert—

“Interpretation of this Chapter

76.A1.—(1) In this Chapter—

“the 2014 Regulations” means the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014(2) and

“domestic restraint order” and “specified information” have the meanings given by paragraph 1 of schedule 1 to the 2014 Regulations.”.

- (3) In rule 76.3 (applications for restraint orders) after paragraph (4) insert—

“(5) An application by the prosecutor for a certificate under paragraph 2 of schedule 1 to the 2014 Regulations (domestic restraint orders: certification) must—

- (a) contain the specified information; and
- (b) set out why the prosecutor considers that the property to which the application relates has been used or is likely to be used for the purposes of an offence or is the proceeds of an offence.

- (6) Where the court makes a certificate it must—

- (a) do so in the form annexed to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence(3); and
- (b) provide in the domestic restraint order for notice to be given in accordance with paragraph 2(4) of schedule 1 to the 2014 Regulations.”

- (4) In rule 76.28 (restraint and administration orders)—

- (a) In paragraph (1)(h) omit “and”;
- (b) after paragraph(1)(i) insert—

“(j) paragraph 4 of schedule 1 of the 2014 Regulations (sending overseas restraint orders to the court); and

(1) 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. 2016/318.
(2) S.I. 2014/3141, as amended by S.I. 2014/3191.
(3) OJ L196. 2.8.2003 p.45.

- (k) paragraph 9 of schedule 1 to the 2014 Regulations (sending overseas confiscation orders to the court).”
- (c) in paragraph (2)(g) omit “.”;
- (d) after paragraph (2)(g) insert—
 - “(h) paragraph 2 of schedule 1 of the 2014 Regulations (domestic restraint orders: certification);” and
- (e) after paragraph (3)(i) insert—
 - “(j) paragraph 6(4) of schedule 1 of the 2014 Regulations (application to cancel registration of overseas restraint order or to vary the property to which it applies); and
 - (k) paragraph 11(4) of schedule 1 to the 2014 Regulations (application to cancel registration of overseas confiscation order or to vary the property to which it applies).”.
- (5) In rule 76.36 (applications)—
 - (a) after paragraph (5)(d) (compensation) insert—
 - “(e) section 255G of the Proceeds of Crime Act 2002(4) (receivers in connection with prohibitory property orders) if the application is made after the application for a prohibitory property order.”; and
 - (b) after paragraph (7)(b) (variation and recall of order) insert—
 - “(c) section 255I of the Proceeds of Crime Act 2002(5) (supervision of PPO receiver and variations).”.
- (6) After Chapter 76 (causes in relation to confiscation of proceeds of crime) insert—

“CHAPTER 76A

SERIOUS CRIME PREVENTION ORDERS

Interpretation of this Chapter

76A.1. In this Chapter—

“the 2007 Act” means the Serious Crime Act 2007(6)

“person who is the subject of a serious crime prevention order” is to be construed in accordance with section 1(6) of the 2007 Act;

“serious crime prevention order” has the meaning given by section 1(5) of the 2007 Act(7); and

“subject” means the person who is the subject of a serious crime prevention order.

Serious Crime Prevention Orders: petitions

76A.2.—(1) An application under section 8(aa) of the 2007 Act(8) (limited class of applicants for making of orders) is to be made by petition.

(4) 2002 c. 29 Section 255G was inserted by section 23(2) of the Serious Crime Act 2015 (c.9) (“the 2015 Act”).

(5) Section 255I was inserted by section 23(2) of the 2015 Act.

(6) 2007 c.27.

(7) Section 1(5) was substituted by the 2015 Act, schedule 1, paragraph 2(4).

(8) Section 8(aa) was inserted by the 2015 Act, schedule 1, paragraph 9(6).

- (2) The following rules shall not apply to the petition—
- rule 14.5(2)(a) (dispensing with intimation, service or advertisement;
 - rule 14.6 (period of notice for lodging answers);
 - rule 14.7 (intimation and service of petitions);
 - rule 14.8 (procedure where answers lodged); and
 - rule 14.9 (unopposed petitions).
- (3) When a petition is lodged, the court must—
- (a) order service of the petition within 7 days on the person who is the proposed subject;
 - (b) specify a period not exceeding 21 days for lodging answers; and
 - (c) appoint a hearing on the petition.
- (4) The petition is to identify any person (other than the person who is the proposed subject) in respect of whom the order sought may be likely to have a significant adverse effect or (as the case may be) state that there is no such person known to the petitioner.
- (5) If the subject is not personally present or represented at the hearing at which a serious crime prevention order is made, the petitioner must serve a copy of the order on the subject.

Third party representations

76A.3.—(1) Paragraphs (2) and (3) of this rule apply where a person is identified under rule 76A.2(4).

(2) The court must order the petitioner to intimate the application to any such person within 7 days.

(3) An application by a person identified by the petitioner under rule 76A.2(4) to make representations under section 9 of the 2007 Act⁽⁹⁾ is made by motion within 14 days from the date of intimation under paragraph (2).

(4) The court may consider a motion by a person, whether identified by the petitioner under rule 76A.2(4) or otherwise, to make representations under section 9 of the 2007 Act without a hearing unless the third party requests a hearing or it seems to the court appropriate to fix a hearing.

(5) If the court grants an application to make representations under section 9 of the 2007 Act the court must—

- (a) specify the manner in which representations are to be made; and
- (b) intimate to the third party the date of any hearing fixed under rule 76A.2(3)(c).

Variation or discharge of a serious crime prevention order

76A.4.—(1) An application to vary or discharge a serious crime prevention order is to be made by minute in the process containing the interlocutor making the serious crime prevention order to which the application relates.

(2) An application under paragraph (1) is to identify any person (other than the person who is the proposed subject of the order) in respect of whom the variation or discharge may be likely to have a significant adverse effect or (as the case may be) state that there is no such person known to the applicant.

(9) Section 9 was amended by the 2015 Act, schedule 1, paragraphs 10 and 76.

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(3) If the subject is not personally present or represented at the hearing at which the order is varied or discharged, the applicant must serve a copy of the varied order or, as the case may be, the interlocutor discharging the order, on the subject.”