
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 146

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

Amendment of the Rules of the Court of Session 1994

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

(2) In Chapter 32 (transmission and remit of causes), after rule 32.7 (re-transmission to sheriff clerk)(2) insert—

“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

32.8.—(1) This rule applies to an application under—

- (a) paragraph 10G(1)(b) of schedule 1 of the Anti-terrorism, Crime and Security Act 2001(3) for the forfeiture of property which has been transferred to the court by the sheriff under paragraph 10J(1) of that schedule;
- (b) section 303O(1)(b) of the Proceeds of Crime Act 2002(4) for the forfeiture of property which has been transferred to the court by the sheriff under section 303R(1) of that Act.

(2) Within 14 days after the date of receipt by the Scottish Ministers of written notice of the transfer from the sheriff clerk, the Scottish Ministers must apply to the court by motion for an order for further procedure.

(3) The application is to proceed as if it had been an action initiated by petition.

(4) On applying for an order for further procedure under paragraph (2), the Scottish Ministers must make up and lodge in the General Department a process incorporating the sheriff court process.”.

(3) In rule 76.27 (interpretation and application of this Part)(5)—

(a) after paragraph (1)(d) insert—

“(da) “interim freezing order” has the meaning given in section 396J(3) of the Act of 2002(6);

(db) “unexplained wealth order” has the meaning given in section 396A(3) of the Act of 2002(7);”;

(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. 2019/123).

(2) Rule 32.7 was amended by S.S.I. 2015/227.

(3) 2001 c.24. Paragraphs 10G and 10J of schedule 1 were inserted by the 2017 Act, section 39 and schedule 3, paragraph 2.

(4) 2002 c.29. Sections 303O and 303R were inserted by the 2017 Act, section 15.

(5) Rule 76.27 was substituted by S.S.I. 2005/663.

(6) Section 396J was inserted by the 2017 Act, section 5.

(7) Section 396A was inserted by the 2017 Act, section 4.

- (b) in paragraph (2)(b), after “investigation” insert “or an interim freezing order or an unexplained wealth order”.
- (4) In rule 76.36 (applications)(8), after paragraph (9)(d) insert—
“(da) section 396I of the Act of 2002(9);”.
- (5) After rule 76.36 insert—

“Applications for a recovery order – heritable property

76.36A.—(1) Where the name of a person in occupation of the heritable property which is the subject of an application for a recovery order under either—

- (a) section 244(1) of the Proceeds of Crime Act 2002 (proceedings for recovery orders in Scotland); or
- (b) article 144(1) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(10),

is not known and cannot reasonably be ascertained, the petitioner must call that person as a respondent by naming the respondent as an “occupier”.

(2) Where the name of a person in occupation of the heritable property which is the subject of an application for a recovery order under paragraph (1) is not known and cannot reasonably be ascertained, the petition must be served (whether or not it is also served on a named person), unless the court otherwise directs, by a messenger-at-arms—

- (a) affixing a copy of the petition and a citation in Form 76.36A addressed to “the occupier” to the main door or other conspicuous part of the premises, and if practicable, depositing a copy of each of those documents in the premises; or
- (b) in the case of land only, inserting stakes in the ground at conspicuous parts of the occupied land to each of which is attached a sealed transparent envelope containing a copy of the petition and a citation in Form 76.36A addressed to “the occupier”.

(3) Paragraphs (1), (2), (4), (4A) and (5) of Rule 16.3 (service by messenger-at-arms)(11) apply to service of a petition under this rule.

(4) A person not named as a respondent in the petition who is in occupation of the heritable property may, within the period of notice, apply by minute to be sisted as a respondent to the action.”.

- (6) After rule 76.37A (evidence overseas)(12) insert—

“Unexplained wealth orders and interim freezing orders

76.37B.—(1) An application under the following provisions must be made by petition—

- (a) section 396A of the Act of 2002 (unexplained wealth orders)(13);
- (b) section 396J of the Act of 2002 (application for interim freezing order) but only if the application is made at the same time as an application for an unexplained wealth order.

(2) An application under the following provisions must be made by note in process—

- (a) section 396I of the Act of 2002 (supplementary);

(8) Rule 76.36 was substituted by [S.S.I. 2005/663](#) and last amended by [S.S.I. 2016/319](#).

(9) Section 396I was inserted by the 2017 Act, section 4.

(10) [S.I. 2005/3181](#).

(11) Rule 16.3 was last amended by [S.S.I. 2010/417](#).

(12) Rule 76.37A was inserted by [S.S.I. 2013/162](#) and amended by [S.S.I. 2013/294](#).

(13) Sections 396A to 396I and sections 396J to 396S were inserted by sections 4 and 5 respectively of the 2017 Act.

- (b) section 396J of the Act of 2002 (application for interim freezing order) but only if the application is made after the court has made an unexplained wealth order;
 - (c) section 396K of the Act of 2002 (variation and recall of interim freezing order);
 - (d) section 396S of the Act of 2002 (compensation).
- (3) An application under the following provisions must be made by motion—
- (a) section 396N of the Act of 2002 (arrestment of property affected by interim freezing order);
 - (b) section 396O of the Act of 2002 (inhibition of property affected by interim freezing order) but only if the application is made after the court has made an interim freezing order;
 - (c) section 396R (supervision of section 396P receiver and variations).
- (4) An application under the following provisions may be made by petition, if made at the same time as an application for an interim freezing order or, if made at any time afterwards, by note in process—
- (a) section 396Q of the Act of 2002 (powers of receivers appointed under section 396P);
 - (b) section 396P of the Act of 2002 (receivers in connection with interim freezing orders).
- (5) At the hearing of a motion under paragraph (3) the court may order that the application be made by note; and, in such a case, must make an order for the lodging of answers to the note in process within such period as the court thinks fit.”.
- (7) In the Appendix (forms), after Form 76.9 (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)(14) insert Form 76.36A set out in the schedule of this Act of Sederunt.

(14) Form 76.9 was amended by [S.I. 1996/2168](#).