
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 Summary Application Rules 1999

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

(2) In Chapter 3 (rules on applications under specific statutes), Part XVII (Anti-terrorism, Crime and Security Act 2001)⁽²⁾—

(a) in rule 3.17.2 (applications for extended detention of cash)—

(i) in the cross-heading, after “**cash**” insert “**or seized property**”;

(ii) in paragraph (1), after “cash)” insert “or paragraph 10D(1) (further detention of seized property)⁽³⁾”;

(iii) in paragraph (2), after “paragraph 3(2)” insert “or seized property under paragraph 10D(1)”;

(iv) in paragraph (3)(b), before “order” insert “except where paragraph (4) below applies,”;

(v) after paragraph (3) insert—

“(4) This paragraph applies where the sheriff determines under paragraph 3(3A)⁽⁴⁾ or 10D(4) that the application is to be made and heard without notice.”;

(b) in rule 3.17.3 (applications for release of detained cash)—

(i) in the cross-heading, after “**cash**” insert “**or detained property**”;

(ii) for paragraph (1) substitute—

“(1) An application to the sheriff under—

(a) paragraph 5(2) (application for release of detained cash) or paragraph 9(1) (application by person who claims that cash belongs to that person) must be made—

(i) in the course of proceedings for an order under paragraph 3(2)⁽⁵⁾; or

(ii) where an order has been made under paragraph 3(2), by minute in the process of the application for that order;

(b) paragraph 10F (release of detained property)⁽⁶⁾ must be made—

⁽¹⁾ S.I. 1999/929, last amended by S.S.I. 2019/140.

⁽²⁾ Part XVII was inserted by S.S.I. 2002/129.

⁽³⁾ Paragraph 10D of schedule 1 of the Anti-terrorism, Crime and Security Act 2001 (“the 2001 Act”) was inserted by the 2017 Act, schedule 3, paragraph 2.

⁽⁴⁾ Paragraph 3(3A) of schedule 1 of the 2001 Act was inserted by the Terrorism Act 2006 (c.11), section 35(1).

⁽⁵⁾ Paragraph 3(2) of schedule 1 of the 2001 Act was amended by the 2017 Act, section 38(3)(a).

⁽⁶⁾ Paragraphs 10F, 10G and 10O of schedule 1 of the 2001 Act were inserted by the 2017 Act, schedule 3, paragraph 2.

- (i) in the course of proceedings for an order under paragraph 10D(1); or
- (ii) where an order has been made under paragraph 10D(1), by minute in the process of the application for that order;
- (c) paragraph 10O (victims) must be made—
 - (i) in the course of proceedings for an order under paragraph 10D(1) or 10G(2) (forfeiture); or
 - (ii) where an order under paragraph 10D(1) or 10G(2) has been made, by minute in the process of the application for that order.”;
- (c) in rule 3.17.4 (applications for forfeiture of detained cash)—
 - (i) in the cross-heading, after “**cash**” insert “**or detained property**”; and
 - (ii) for paragraph (1) substitute—
 - “(1) An application to the sheriff for an order under—
 - (a) paragraph 6(1)(b) (application for forfeiture of detained cash), where the court has made an order under paragraph 3(2);
 - (b) paragraph 10G(1)(b) (forfeiture), where the court has made an order under paragraph 10D(1),
- must be made by minute in the process of the application for that order.”;
- (d) for rule 3.17.5(1) (applications for compensation) substitute—
 - “(1) An application to the sheriff for an order under—
 - (a) paragraph 10(1) (compensation)(7), where the court has made an order under paragraph 3(2);
 - (b) paragraph 10P(1) (compensation)(8), where the court has made an order under paragraph 10D(1);
 - (c) paragraph 10Z7(2) (compensation)(9), where the court has made an order under paragraph 10Q (application for account freezing order),
- must be made by minute in the process of the application for that order.”;
- (e) after rule 3.17.5 insert—

“Variation and recall of account freezing orders and applications to set aside forfeiture

- 3.17.6.**—(1) An application to the sheriff for an order under paragraph 10T(1) (variation and setting aside of account freezing order) must be made by minute in the process of the application for that order.
- (2) An application to the sheriff for an order under paragraph 10Z (application to set aside forfeiture) must be made by summary application.
- (3) On the lodging of an application under paragraph (1) or (2) above the sheriff must—
- (a) fix a date for a hearing; and
 - (b) order service of the application together with notice of such hearing on any person whom the sheriff considers may be affected by the granting of such an application.

(7) Paragraph 10(1) of schedule 1 of the 2001 Act was amended by the 2017 Act, schedule 5, paragraph 16(13).

(8) Paragraph 10P of schedule 1 of the 2001 Act was inserted by the 2017 Act, schedule 3, paragraph 2.

(9) Paragraphs 10Q to 10Z7 of schedule 1 of the 2001 Act were inserted by the 2017 Act, schedule 4, paragraph 2.

Applications for forfeiture order

3.17.7.—(1) An application to the sheriff for an order under paragraph 10Z2(2)(b) (forfeiture order) must be made by minute in the process of the application for the associated account freezing order.

- (2) On the lodging of such an application the sheriff must—
- (a) fix a date for a hearing; and
 - (b) order service of the application together with notice of such hearing on any person whom the sheriff considers may be affected by the granting of such an application.

Associated and joint property: transfer to Court of Session

3.17.8.—(1) This rule applies where the sheriff makes a transfer to the Court of Session under paragraph 10J (associated and joint property: default of agreement) of an application made under paragraph 10G(1)(b).

(2) No later than 4 days after the sheriff has pronounced an interlocutor transferring the application to the Court of Session under paragraph 10J, the sheriff clerk must—

- (a) send written notice of the transfer to the parties;
- (b) certify on the interlocutor sheet that sub-paragraph (a) has been complied with; and
- (c) transmit the process to the Deputy Principal Clerk of Session.

(3) Failure by a sheriff clerk to comply with paragraph (2)(a) or (b) above does not affect the validity of the transfer.”.

(3) In Chapter 3, Part XIX (Proceeds of Crime Act 2002)(**10**)—

(a) for rule 3.19.1(2) (application)(**11**) substitute—

“(2) This Part applies to applications to the sheriff under Parts 3, 3A, 5 and 8 of the Act; but it only applies to applications under Part 8 in relation to property that is the subject of a—

- (a) civil recovery investigation;
- (b) detained cash investigation;
- (c) detained property investigation;
- (d) frozen funds investigation;
- (e) seized property investigation.”;

(b) in the italic heading immediately preceding rule 3.19.2 (applications for extended detention of cash), after “*cash*” insert “*or property*”;

(c) in rule 3.19.2—

- (i) in the cross-heading, after “**cash**” insert “**or further detention of seized property**”;
- (ii) in paragraph (1), after “cash” insert “or 303L(1)(b) (further detention of seized property)(**12**)”; and
- (iii) in paragraph (2)—

(10) Part XIX was inserted by [S.S.I. 2002/563](#).

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

(12) Section 303L of the Proceeds of Crime Act 2002 (“the 2002 Act”) was inserted by the 2017 Act, section 15.

- (aa) after “section 295(2)” insert “or seized property under section 303L(1)(b)”;
and
- (bb) after “cash” where it second occurs insert “or seizure of property”;
- (d) in rule 3.19.3 (applications for release of detained cash)—
 - (i) in the cross-heading, after “**cash**” insert “**or detained property**”;
 - (ii) for paragraph (1) substitute—
 - “(1) An application to the sheriff under—
 - (a) section 297(3) (application for release of detained cash) must be made—
 - (i) in the course of proceedings for an order under section 295(2)(**13**); or
 - (ii) where an order has been made under section 295(2), by minute in the process of the application for that order;
 - (b) section 301(1) (application by person who claims that cash belongs to that person) must be made—
 - (i) in the course of proceedings for an order under section 295(2) or 298 (forfeiture); or
 - (ii) where an order has been made under section 295(2) or 298, by minute in the process of the application for that order;
 - (c) section 303N (release of detained property)(**14**) must be made—
 - (i) in the course of proceedings for an order under section 303L(1)(b);
or
 - (ii) where an order has been made under section 303L(1)(b), by minute in the process of the application for that order;
 - (d) section 303V (victims and other owners) must be made—
 - (i) in the course of proceedings for an order under section 303L(1)(b) or 303O(3) (forfeiture); or
 - (ii) where an order has been made under section 303L(1)(b) or 303O(3), by minute in the process of the application for that order.”;
- (e) in rule 3.19.4 (applications for forfeiture of detained cash)—
 - (i) in the cross-heading, after “**cash**” insert “**or detained property**”;
 - (ii) for paragraph (1) substitute—
 - “(1) An application to the sheriff under—
 - (a) section 298(1)(b) (application by the Scottish Ministers for forfeiture of detained cash), where the court has made an order under section 295(2);
 - (b) section 303O(1)(b), where the court has made an order under section 303L(1)(b),

must be made by minute in the process of the application for that order.”;
- (f) after rule 3.19.4 insert—

(13) Section 295(2) of the 2002 Act was amended by the Policing and Crime Act 2009 (c.26), section 64(1).

(14) Sections 303N, 303O, 303V and 303W of the 2002 Act were inserted by the 2017 Act, section 15.

“Variation and recall of account freezing orders and applications for forfeiture orders

3.19.4A.—(1) An application to the sheriff for an order under section 303Z4(1) (variation and setting aside of account freezing order)**(15)** must be made by minute in the process of the application for that order.

(2) An application to the sheriff for an order under section 303Z14(2) (forfeiture order) must be made by summary application.

(3) On the lodging of an application under paragraph (1) or (2) above the sheriff must—

- (a) fix a date for a hearing;
- (b) order service of the application together with notice of such hearing on any person whom the sheriff considers may be affected by the granting of such an application.”;

(g) for rule 3.19.5(1) (applications for compensation) substitute—

“(1) An application to the sheriff under—

- (a) section 302(1A) (compensation)**(16)**, where the court has made an order under section 295(2);
- (b) section 303W(1) (compensation), where the court has made an order under section 303L(1)(b);
- (c) section 303Z18(2) (compensation), where the court has made an order under section 303Z3,

must be made by minute in the process of the application for that order, and in any other case must be made by summary application.”;

(h) after rule 3.19.5 insert—

“Associated and joint property: transfer to Court of Session

3.19.5A.—(1) This rule applies where the sheriff makes a transfer to the Court of Session under section 303R (associated and joint property: default of agreement) of an application for an order under section 303O(1)(b).

(2) No later than 4 days after the sheriff has pronounced an interlocutor transferring the application to the Court of Session under section 303R the sheriff clerk must—

- (a) send written notice of the transfer to the parties;
- (b) certify on the interlocutor sheet that sub-paragraph (a) has been complied with; and
- (c) transmit the process to the Deputy Principal Clerk of Session.

(3) Failure by a sheriff clerk to comply with paragraph (2)(a) or (b) above does not affect the validity of the transfer.”.

(15) Sections 303Z3 to 303Z18 of the 2002 Act were inserted by the 2017 Act, section 17.

(16) Section 302(1A) was substituted by the Policing and Crime Act 2009 (c.26), schedule 7, paragraph 109(2).