
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 405

Act of Sederunt (Rules of the Court of Session 1994 and Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Proceeds of Crime) (No. 2) 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 rule 32.8 (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)(2)—

(a) for the heading substitute “**Transfer of application for forfeiture of property from the sheriff: proceeds of crime**”;

(b) after paragraph (1)(b) insert—

“(c) article 213L(1) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(3) for the forfeiture of property which has been transferred to the court by the sheriff under article 213O(1) of that Order.”.

(3) In the title of Part III of Chapter 76 (applications under the Proceeds of Crime Act 2002, the Overseas Forfeiture Order of 2005 and the POCA Order of 2005)(4), for “AND THE POCA ORDER OF 2005” substitute “AND THE POCA ORDERS OF 2005 AND 2013”.

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

(a) in paragraph (1), after sub-paragraph (c) insert—

“(ca) “the POCA Order of 2013” means the Proceeds of Crime Act 2002 (External Investigations) Order 2013(6);”;

(b) in paragraph (2)—

(i) in sub-paragraph (d) after “Parts 3” insert “, 4B”;

(ii) after sub-paragraph (d) insert—

“(e) articles 46A (unexplained wealth orders) to 46R (compensation) of the POCA Order of 2013(7).”.

(5) In rule 76.36 (applications)(8)—

(a) in paragraph (5)(d) omit “and”;

(b) after paragraph (5)(e) insert—

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- (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. 2019/404).
- (2) Rule 32.8 was inserted by S.S.I. 2019/146.
- (3) S.I. 2005/3181. Articles 213L and 213O were inserted by S.I. 2018/1078.
- (4) The title of Part III was substituted by S.S.I. 2005/663.
- (5) Rule 76.27 was substituted by S.S.I. 2005/663 and last amended by S.S.I. 2019/146.
- (6) S.I. 2013/2605, last amended by S.I. 2018/1078.
- (7) Articles 46A to 46R were inserted by S.I. 2018/1078.
- (8) Rule 76.36 was substituted by S.S.I. 2005/663, last amended by S.S.I. 2019/146. Paragraph (5)(d) was last amended, and paragraphs (5)(e) and (7)(c) inserted, by S.S.I. 2016/319.

- “(f) article 141ZHA of the POCA Order of 2005 (receivers in connection with prohibition orders)(**9**) if the application is made after the application for a prohibition order under article 141ZC of that Order;
- (g) article 166A of the POCA Order of 2005 (receivers in connection with prohibitory property orders) if the application is made after the application for a prohibitory property order under article 161 of that Order.”;
- (c) after paragraph (7)(c) insert—
 - “(d) article 141ZHC of the POCA Order of 2005 (supervision of receiver and variations);
 - (e) article 166C of the POCA Order of 2005 (supervision of PPO receiver and variations).”.
- (6) Omit rule 76.36A (applications for a recovery order – heritable property)(**10**).
- (7) In rule 76.37B (unexplained wealth orders and interim freezing orders)(**11**)—
 - (a) after paragraph (1)(b) insert—
 - “(c) article 46A of the POCA Order of 2013 (unexplained wealth orders);
 - (d) article 46I of the POCA Order of 2013 (unexplained wealth order: application for interim freezing order) but only if the application is made at the same time as an application under article 46A of that Order.”;
 - (b) after paragraph (2)(d) insert—
 - “(e) article 46H of the POCA Order of 2013 (supplementary);
 - (f) article 46I of the POCA Order of 2013 but only if the application is made after the court has made an order under article 46A of that Order;
 - (g) article 46J of the POCA Order of 2013 (variation and discharge of interim freezing order);
 - (h) article 46R of the POCA Order of 2013 (compensation).”;
 - (c) in paragraph (3)(c) after “section 396R” insert “of the Act of 2002”;
 - (d) after paragraph (3)(c) insert—
 - “(d) article 46M of the POCA Order of 2013 (arrestment of property affected by interim freezing order);
 - (e) article 46N of the POCA Order of 2013 (inhibition of property affected by interim freezing order) but only if the application is made after the court has made an order under article 46I of that Order;
 - (f) article 46Q (supervision of article 46O receiver and variations).”;
 - (e) after paragraph (4) insert—
 - “(4A) An application under the following provisions may be made by petition, if made at the same time as an application for an order under article 46I of the POCA Order of 2013 or, if made at any time afterwards, by note in process—
 - (a) article 46P of the POCA Order of 2013 (powers of receivers appointed under article 46O);
 - (b) article 46O of the POCA Order of 2013 (receivers in connection with interim freezing orders).”.

(9) Articles 141ZHA, 141ZHC, 166A and 166C were inserted by [S.I. 2018/1078](#).

(10) Rule 76.36A was inserted by [S.S.I. 2019/146](#).

(11) Rule 76.37B was inserted by [S.S.I. 2019/146](#).

(8) In the Appendix (forms), omit Form 76.36A (form of citation of unnamed occupier(s))(12).