

2019 No. 146

COURT OF SESSION

SHERIFF COURT

**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**

<i>Made</i> - - - -	<i>24th April 2019</i>
<i>Laid before the Scottish Parliament</i>	<i>26th April 2019</i>
<i>Coming into force</i> - -	<i>1st June 2019</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 396I(2) of the Proceeds of Crime Act 2002(b), sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(c) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the 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.

(2) It comes into force on 1st June 2019.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session 1994

2.—(1) The Rules of the Court of Session 1994(d) 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)(e) insert—

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).
(b) 2002 c.29. Section 396I was inserted by the Criminal Finances Act 2017 (c.22) (“the 2017 Act”), section 4.
(c) 2014 asp 18.
(d) 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).
(e) Rule 32.7 was amended by S.S.I. 2015/227.

“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(a) 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(b) 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)(c)—

(a) after paragraph (1)(d) insert—

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

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

(b) in paragraph (2)(b), after “investigation” insert “or an interim freezing order or an unexplained wealth order”.

(4) In rule 76.36 (applications)(f), after paragraph (9)(d) insert—

“(da) section 396I of the Act of 2002(g);”.

(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(h),

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) 2001 c.24. Paragraphs 10G and 10J of schedule 1 were inserted by the 2017 Act, section 39 and schedule 3, paragraph 2.
(b) 2002 c.29. Sections 303O and 303R were inserted by the 2017 Act, section 15.
(c) Rule 76.27 was substituted by S.S.I. 2005/663.
(d) Section 396J was inserted by the 2017 Act, section 5.
(e) Section 396A was inserted by the 2017 Act, section 4.
(f) Rule 76.36 was substituted by S.S.I. 2005/663 and last amended by S.S.I. 2016/319.
(g) Section 396I was inserted by the 2017 Act, section 4.
(h) S.I. 2005/3181.

- (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)(a) 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)(b) 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)(c);
 - (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);
 - (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.”.

(a) Rule 16.3 was last amended by S.S.I. 2010/417.

(b) Rule 76.37A was inserted by S.S.I. 2013/162 and amended by S.S.I. 2013/294.

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

(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)(a) insert Form 76.36A set out in the schedule of this Act of Sederunt.

Amendment of the Summary Application Rules 1999

3.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(b) 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)(c)—

- (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)(d)”;
 - (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)(e) 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)(f); 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)(g) must be made—
 - (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)—

(a) Form 76.9 was amended by S.I. 1996/2168.

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

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

(d) 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.

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

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

(g) 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 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)(a), where the court has made an order under paragraph 3(2);

(b) paragraph 10P(1) (compensation)(b), where the court has made an order under paragraph 10D(1);

(c) paragraph 10Z7(2) (compensation)(c), 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.

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.

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

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

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

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)(a)—

(a) for rule 3.19.1(2) (application)(b) 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)(c)”; and
- (iii) in paragraph (2)—
 - (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)(d); 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—

(a) Part XIX was inserted by S.S.I. 2002/563.

(b) Rule 3.19.1 was substituted by S.S.I. 2003/98.

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

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

- (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)(a) 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—

“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)(b) 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)(c), 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,

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

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

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

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.”.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
24th April 2019

SCHEDULE

Paragraph 2(7)

Rule 76.36A(2)

FORM 76.36A

Form of citation of unnamed occupier(s)

(Cause reference number)

IN THE COURT OF SESSION

in the cause

[A.B.] *(designation and address)*

Petitioner

against

The occupier[s] of *(address)*

Respondent

A petition has been presented in the Court of Session, Edinburgh, by [A.B.], petitioner, for a recovery order of the property at *(address)* under section 244(1) of the Proceeds of Crime Act 2002 (proceedings for recovery orders in Scotland) [*or* article 144(1) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (proceedings for a recovery order pursuant to the registration of an external order)].

[A.B.] calls as a respondent the occupier(s) of the property at *(address)*.

If the occupier[s] [*or* any of them] wishes [*wish*] to challenge the jurisdiction of the court or to answer the petition, he [*or* she [*or* it] [*or* they]] should contact the Deputy Principal Clerk of Session, Court of Session, Parliament Square, Edinburgh, EH1 1RQ (Telephone 0131 225 2595) immediately and in any event by *(date on which the period of notice expires)*.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a Solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

(Signed)

Solicitor [*or* Agent] for petitioner

(Address)

EXPLANATORY NOTE

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

This Act of Sederunt amends the Act of Sederunt (Rules of the Court of Session 1994) (“the 1994 Rules”) and the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (“the 1999 Rules”) as a consequence of amendments to the Anti-terrorism, Crime and Security Act 2001 (“the 2001 Act”) and the Proceeds of Crime Act 2002 (“the 2002 Act”) made by the Criminal Finances Act 2017.

Paragraph 2(2) inserts new rule 32.8 into Chapter 32 of the 1994 Rules making provision for the transfer from the sheriff court to the Court of Session of applications for forfeiture of property under the 2001 Act or the 2002 Act.

Paragraph 2(3) inserts definitions of “interim freezing order” and “unexplained wealth order” into rule 76.27 of the 1994 Rules.

Paragraph 2(4) inserts a new sub-paragraph into rule 76.36 of the 1994 Rules.

Paragraph 2(5) inserts new rule 76.36A into Chapter 76 of the 1994 Rules making provision for applications for a recovery order under the 2002 Act or the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 when the name of the person in occupation of heritable property is not known.

Paragraph 2(6) inserts new rule 76.37B into Chapter 76 of the 1994 Rules making provision for the procedure to be followed when applications are made for unexplained wealth orders or interim freezing orders.

Paragraph 2(7) and the schedule insert into the Appendix of the 1994 Rules the form (Form 76.36A) to be used when making an application under new rule 76.36A of those Rules.

Paragraph 3(2) makes various changes to rules 3.17.2, 3.17.3, 3.17.4 and 3.17.5 of the 1999 Rules to extend the application of these rules to applications for the release of seized property. It also inserts new rules 3.17.6 (Variation and recall of account freezing orders and applications to set aside forfeiture), 3.17.7 (Applications for forfeiture order) and 3.17.8 (Associated and joint property: transfer to Court of Session).

Paragraph 3(3) makes various changes to rules 3.19.1, 3.19.2, 3.19.3 and 3.19.4 of the 1999 Rules to extend the application of these rules to applications for the release of seized property. It substitutes a new rule 3.19.5(1). It also inserts new rules 3.19.4A (Variation and recall of account freezing orders and applications for forfeiture orders) and 3.19.5A (Associated and joint property: transfer to Court of Session).

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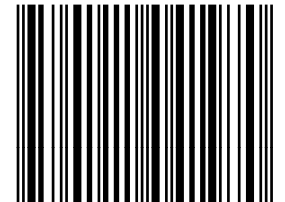
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