SCOTTISH STATUTORY INSTRUMENTS

2003 No. 222

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Proceeds of Crime Act 2002) 2003

Made - - - -	*27th March 2003*
Coming into force - -	*28th March 2003*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 5 of the Court of Session Act 1988(**1**) and sections 155, 396(2) and (3)(b) and 446 of the Proceeds of Crime Act 2002(**2**) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Proceeds of Crime Act 2002) 2003 and shall come into force on 28th March 2003.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994(**3**) shall be amended in accordance with the following paragraphs.

(2) After Chapter 76 (causes under the Proceeds of Crime (Scotland) Act 1995), there shall be inserted–

(**1**) 1988 c. 36; section 5 was amended by section 2(3) of the Civil Evidence (Scotland) Act 1988 (c. 32) and by paragraph 45 of Schedule 4 to the Children (Scotland) Act 1995 (c. 36).
(**2**) 2002 c. 29.
(**3**) S.I. 1994/1443, to which there are amendments not relevant to this Act of Sederunt.

"PART IA

APPLICATIONS UNDER THE PROCEEDS OF CRIME ACT 2002

Interpretation of this part

76A.1.—(1) In this part–

"the Act of 2002" means the Proceeds of Crime Act 2002;

references to an administrator are to an administrator appointed under section 125(1) or 128(3);

a reference to a specified section is a reference to the section bearing that number in the Act of 2002; and any reference to a specified paragraph in a specified Schedule is a reference to the paragraph bearing that number in the Schedule of that number in the Act of 2002.

(2) This Part applies to applications under Parts 3, 5 and 8 of the Act of 2002; but it only applies to applications under Part 8 in relation to property that is the subject of a civil recovery investigation.

Restraint and administration orders

Applications

76A.2.—(1) An application under the following provisions shall be by petition:–

(a) section 121(1) (application, recall and variation);

(b) section 125(1) (management administrators);

(c) section 128(2) (enforcement administrators).

(2) An application under the following provisions shall be by note in process:–

(a) section 121(5) (application, recall and variation);

(b) section 134(2) (protection of persons affected);

(c) section 140(1)(b) (confiscation order varied or discharged).

(3) An application under the following provisions shall be made by motion:–

(a) section 123(1) and (7) (inhibition of property affected by order);

(b) section 124(1) and (6) (arrestment of property affected by order);

(c) section 135(1) (recall and variation of order).

(4) Before granting an application under the following provisions, the court may dispense with, postpone or order intimation to be made to such persons as it thinks fit:–

(a) section 121(1);

(b) section 123(1);

(c) section 124(1).

Documents for Accountant of Court

76A.3.—(1) A person who has lodged any document in the process of an application for the appointment of an administrator shall forthwith send a copy of that document to the Accountant of Court.

(2) The clerk of session in the Petition department shall transmit to the Accountant of Court any part of the process as the Accountant of Court may request in relation to an administration which is in dependence before the court unless such part of the process is, at the time of request, required by the court.

Procedure for fixing and finding caution

76A.4.—(1) Rule 61.9 (finding caution in judicial factories) shall, with the necessary modifications, apply to the finding of caution by an administrator under this Part as it applies to the finding of caution by a judicial factor.

(2) A certified copy of the interlocutor appointing an administrator shall not be issued by a clerk of session until the Accountant of Court has given written intimation to the Petition Department that caution has been found or other security given.

Time for finding caution

76A.5.—(1) Where the time within which caution is to be found is not stipulated in the interlocutor appointing the administrator, the time allowed for finding caution shall be, subject to paragraph (2) of this rule, limited to one calendar month from the date of the interlocutor.

(2) The court may, on application made before the expiry of the period for finding caution, and, on cause shown, allow further time for finding caution.

Administrator's title to act

76A.6. An administrator shall not be entitled to act until he has obtained a certified copy of the interlocutor appointing him.

Accounts

76A.7.—(1) An administrator shall maintain accounts of his intromissions with the property in his charge and shall, subject to paragraph (2)–

(a) within six months after the date of his appointment; and

(b) at six monthly intervals after the first account during the subsistence of his appointment,

lodge with the Accountant of Court an account of his intromissions in such form, with such supporting vouchers and other documents, as the Accountant of Court may require.

(2) The Accountant of Court may waive the lodging of an account where the administrator certifies that there have been no intromissions during a particular accounting period.

Application for discharge of administrator

76A.8. An application to the court for the discharge of an administrator shall be made by minute in the process of the application in which the administrator was appointed.

Appeals against determination of outlays and remuneration

76A.9.—(1) An appeal under paragraph 9(1) of Schedule 3 (appeal against a determination by the Accountant of Court), shall be made by note in the process in which the administrator was appointed.

(2) Where a note is lodged under paragraph (1), the Keeper of the Rolls shall put the cause out on the By Order Roll on the first available day for a hearing before the Lord Ordinary.