SCOTTISH STATUTORY INSTRUMENTS

2003 No. 98

SHERIFF COURT

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (No. 6) (Proceeds of Crime Act 2002) 2003

Made - - - - 20th February 2003
Coming into force in accordance with paragraph 1(1)(b)

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(**1**) and sections 155(1)(b) and (c), 386(3)(b), 396(3)(b) and 403(3)(b) of the Proceeds of Crime Act 2002(**2**) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt–

(a) may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (No. 6) (Proceeds of Crime Act 2002) 2003;

(b) shall come into force–

(i) in respect of rules 3.19.1 to 3.19.20 of the principal Rules, on 24th March 2003; and

(ii) in respect of rules 3.19.21 to 3.19.24 of the principal Rules, on 24th February 2003; and

(c) shall be inserted in the Books of Sederunt.

(2) In this Act of Sederunt "the principal Rules" means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(**3**).

(**1**) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 13, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c. 48).
(**2**) 2002 c. 29.
(**3**) S.I.1999/929 as amended by S.S.I. 2000/148, 2000/387, 2001/142, 2002/7, 2002/129, 2002/130, 2002/146 and 2002/563.

Amendment of the principal Rules

2.—(1) In the principal Rules, Chapter 3 (rules on applications under specific statutes) is amended in accordance with the following paragraphs.

(2) In Part XIX (Proceeds of Crime Act 2002)–

(a) for rule 3.19.1 substitute(**4**)–

"**3.19.1.**—(1) In this Part–

"the Act" 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; 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.

(2) This Part applies to applications to the sheriff under Parts 3, 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 civil recovery investigation."; and

(b) after rule 3.19.5 insert–

"Restraint and administration orders

Service of restraint orders

3.19.6. The intimation to be made by the prosecutor under section 121(3) shall be made by serving a copy of the interlocutor granting a restraint order on every person named in the interlocutor as restrained by the order.

Recall or variation of restraint orders

3.19.7. An application to the sheriff under section 121(5) (variation or recall of restraint order) shall be made by minute in the process of the application for the restraint order.

Appeals to the Court of Session

3.19.8.—(1) An appeal against an interlocutor of the sheriff refusing, varying or recalling or refusing to vary or recall a restraint order shall be marked within 14 days after the date of the interlocutor concerned.

(2) Such an appeal shall be marked by writing a note of appeal on the interlocutor sheet, or other written record containing the interlocutor appealed against, or on a separate sheet lodged with the sheriff clerk, in the following terms:–

"The applicant appeals to the Court of Session.".

(3) The note of appeal shall–

(a) be signed by the appellant;

(b) bear the date on which it is signed; and

(**4**) Rule 3.19.1 was inserted by S.S.I. 2002/563.

(c) where the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal.

(4) The sheriff clerk will transmit the process within 4 days after the appeal is marked to the Deputy Principal Clerk of Session.

(5) Within the period specified in paragraph (4), the sheriff clerk shall–

(a) send written notice of the appeal to every other party; and

(b) certify on the interlocutor sheet that he has done so.

(6) Failure of the sheriff clerk to comply with paragraph (5) shall not invalidate the appeal.

Applications in relation to arrestment

3.19.9.—(1) An application to the sheriff under section 124(1) (arrestment of property affected by restraint order) by the prosecutor for warrant for arrestment may be made–

(a) in the application made under section 121(2) (application for restraint order); or

(b) if made after a restraint order has been applied for, by minute in the process of the application for that order.

(2) An application to the sheriff under section 124(3) (recalling, loosing or restricting arrestment) or under section 124(6) (recall or restriction of arrestment) shall be made by minute in the process of the application for the restraint order.

Applications for appointment of administrators

3.19.10.—(1) An application to the sheriff under section 125(1) (appointment of management administrator) shall be made by minute in the process of the application for the restraint order.

(2) An application to the sheriff under section 128(2) (appointment of enforcement administrator) shall be made–

(a) where made after a restraint order has been made, by minute in the process of the application for that order; or

(b) in any other case, by summary application.

(3) The notification to be made by the sheriff clerk under section 125(3) or 128(8) (as the case may be) shall be made by intimation of a copy of the interlocutor to the accused and the persons subject to the order.

Incidental applications in relation to an administration

3.19.11. An application to the sheriff subsequent to the appointment of an administrator relating to any matter incidental to that appointment shall be made by minute in the process of the application in which the administrator was appointed.

Documents for Accountant of Court

3.19.12.—(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.