

2005 No. 663

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 10) (Proceeds of Crime: External Requests and Orders etc.)
2005**

Made - - - - - *22nd December 2005*

Coming into force - - - - - *31st December 2005*

The Lords of Council and Session, under and by virtue of the powers conferred by section 5 of the Court of Session Act 1988(a) 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. 10) (Proceeds of Crime: External Requests and Orders etc.) 2005 and shall come into force on 31st December 2005.

(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(b) shall be amended in accordance with the following sub-paragraphs.

(2) In Part VII of Chapter 62 (reciprocal enforcement of orders in relation to confiscation of proceeds of crime and to forfeiture of property used in crime)(c)—

(a) in rule 62.47 (interpretation of Part VII)—

(i) after the definition of “the Order of 1999” there shall be inserted the following:—

“the Overseas Forfeiture Order of 2005” means the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 2005(d);

“the POCA Order of 2005” means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(e);

(ii) in the definition of “relevant enactment” for “or the Order of 1999” there shall be substituted “, the Order of 1999, the Overseas Forfeiture Order of 2005 or the POCA Order of 2005”;

(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3) and by the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45.

(b) S.I. 1994/1443, last amended by S.S.I. 2005/632.

(c) Part VII of Chapter 62 was last amended by S.S.I. 2005/521.

(d) S.S.I. 2005/581.

(e) S.I. 2005/3181.

- (b) in rule 62.48(2) (enactments under which applications for registration may be made), after sub-paragraph (g) there shall be inserted the following:–
- “(h) article 13(1) of the Overseas Forfeiture Order of 2005 (applications to give effect to external forfeiture orders);
 - (i) article 66(1) of the POCA Order of 2005 (applications to give effect to external orders).”;
- (c) at the end, there shall be inserted the following:–

“Cancellation of registration or variation of property under the Overseas Forfeiture Order of 2005 or the POCA Order of 2005

62.54A.—(1) An application under article 16(3) of the Overseas Forfeiture Order of 2005 (application for cancellation of registration or variation of property) or article 69(3) of the POCA Order of 2005 (application for cancellation of registration or variation of property) shall be made–

- (a) by the Lord Advocate, by motion; or
- (b) by any other interested party, by note.

(2) There shall be produced with an application under paragraph (1), a certified copy of any order which modifies or revokes the registered order or which causes the registered order to cease to have effect.

(3) The court shall, on pronouncing an interlocutor granting an application under paragraph (1), grant warrant for the registration of a certified copy of the interlocutor in the register of judgments of the Books of Council and Session.

(4) Where the court pronounces an interlocutor granting an application under paragraph (1), the Deputy Principal Clerk shall cancel or, as the case may be, vary the registration in the register kept under rule 62.50(1) in accordance with that interlocutor.

Registration under the POCA Order in Council of 2005: further provision

62.54B.—(1) Rule 62.2 (certificate of currency conversion) shall not apply to an application under article 66(1) of the POCA Order of 2005 (application to give effect to external orders).

(2) An application under article 72(4) (payment within a specified period) or article 72(6) (extension of specified period) of the POCA Order of 2005 shall be made by motion in the process relating to the granting of the application under article 66(1) of the POCA Order of 2005.

(3) The Deputy Principal Clerk shall send to the sheriff clerk appointed under article 69(1)(c) of the POCA Order of 2005 a certified copy of the interlocutor granting warrant for registration under rule 62.49 and of any subsequent interlocutor granting an application under–

- (a) rule 62.54A(1) (application for cancellation of registration or variation of property);
- (b) paragraph (3) of this rule (payment within specified period and extension of specified period);
- (c) rule 76.28(1)(i) (enforcement administrators); or
- (d) rule 76.28(3)(i) (recall and variation of order appointing administrator),

in respect of the registered order.”.

(3) In Part 1 of Chapter 76 (causes under the Proceeds of Crime (Scotland) Act 1995), sub-paragraph (a) of rule 76.4(2) (application for variation or recall of restraint order) shall be omitted.

(4) In Part III of Chapter 76 (applications under the Proceeds of Crime Act 2002)(a) for rule 76.27 (interpretation of Part III) and rule 76.28 (applications) there shall be substituted the following:–

“PART III

APPLICATIONS UNDER THE PROCEEDS OF CRIME ACT 2002, THE OVERSEAS FORFEITURE ORDER OF 2005 AND THE POCA ORDER OF 2005

Interpretation and application of this Part

76.27.—(1) In this Part–

- (a) “the Act of 2002” means the Proceeds of Crime Act 2002(b);
- (b) “the Overseas Forfeiture Order of 2005” means the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005(c);
- (c) “the POCA Order of 2005” means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(d);
- (d) “external order” has the meaning given in section 447(2) of the Act of 2002;
- (e) references to an administrator are to an administrator appointed under section 125(1) or 128(3) of the Act of 2002, article 10(1) or 18(2) of the Overseas Forfeiture Order of 2005 or article 63(1) or 73(2) of the POCA Order of 2005.

(2) This Part applies to applications under–

- (a) Parts 3 and 5 of the Act of 2002;
- (b) Part 8 of the Act of 2002 in relation to property that is the subject of a civil recovery investigation;
- (c) the Overseas Forfeiture Order of 2005 except article 13 (application to give effect to external forfeiture orders) and article 16 (registration of external orders);
- (d) Parts 3 and 5 of the POCA Order of 2005 except article 66 (application to give effect to external orders) and article 69 (registration of external orders).

Restraint and administration orders

76.28.—(1) An application under the following provisions shall be made by petition:–

- (a) section 121(1) of the Act of 2002 (restraint orders);
- (b) section 125(1) of the Act of 2002 (management administrators);
- (c) section 128(2) of the Act of 2002 (enforcement administrators);
- (d) article 6(1) of the Overseas Forfeiture Order of 2005 (restraint orders);
- (e) article 10(1) of the Overseas Forfeiture Order of 2005 (management administrators);
- (f) article 18(2) of the Overseas Forfeiture Order of 2005 (enforcement administrators);
- (g) article 59(1) of the POCA Order of 2005 (restraint orders);
- (h) article 63(1) of the POCA Order of 2005 (management administrators); and
- (i) article 73(2) of the POCA Order of 2005 (enforcement administrators).

(a) Part IIA of the Rules of the Court of Session 1994 was renumbered Part III by S.S.I. 2004/331.

(b) 2002 c.29.

(c) S.S.I. 2005/581.

(d) S.I. 2005/3181.

- (2) An application under the following provisions shall be made by note in process:–
- (a) section 121(5) of the Act of 2002 (recall and variation of restraint orders);
 - (b) section 134(2) of the Act of 2002 (protection of persons affected);
 - (c) section 140(1)(b) of the Act of 2002 (variation or discharge of confiscation orders);
 - (d) article 6(4) of the Overseas Forfeiture Order of 2005 (recall or variation of restraint orders);
 - (e) article 22(2) of the Overseas Forfeiture Order of 2005 (protection of persons affected);
 - (f) article 59(4) (recall or variation of restraint orders) of the POCA Order of 2005;
 - (g) article 81(2) (protection of persons affected) of the POCA Order of 2005.
- (3) An application under the following provisions shall be made by motion:–
- (a) section 123(1) and (7) of the Act of 2002 (inhibition of property affected by restraint order);
 - (b) section 124(1) and (6) of the Act of 2002 (arrestment of property affected by restraint order);
 - (c) section 135(1) of the Act of 2002 (recall and variation of order appointing administrator);
 - (d) article 8(1) and (7) of the Overseas Forfeiture Order of 2005 (inhibition of property affected by restraint order);
 - (e) article 9(1) and (6) of the Overseas Forfeiture Order of 2005 (arrestment of property affected by restraint order);
 - (f) article 23(1) of the Overseas Forfeiture Order of 2005 (recall and variation of order appointing administrator);
 - (g) article 61(1) and (7) of the POCA Order of 2005 (inhibition of property affected by restraint order);
 - (h) article 62(1) and (6) of the POCA Order of 2005 (arrestment of property affected by restraint order); and
 - (i) article 82(1) of the POCA Order of 2005 (recall and variation of order appointing administrator).
- (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) of the Act of 2002 (restraint orders);
 - (b) section 123(1) of the Act of 2002 (inhibition of property affected by restraint order);
 - (c) section 124(1) of the Act of 2002 (arrestment of property affected by restraint order);
 - (d) article 6(1) of the Overseas Forfeiture Order in Council of 2005 (restraint orders);
 - (e) article 8(1) of the Overseas Forfeiture Order of 2005 (inhibition of property affected by restraint order);
 - (f) article 9(1) of the Overseas Forfeiture Order of 2005 (arrestment of property affected by restraint order);
 - (g) article 59(1) of the POCA Order of 2005 (restraint orders);
 - (h) article 61(1) of the POCA Order of 2005 (inhibition of property affected by restraint order); and
 - (i) article 62(1) of the POCA Order of 2005 (arrestment of property affected by restraint order).”.

(5) For rule 76.35(1) there shall be substituted the following:–

“(1) An appeal under–

- (a) paragraph 9(1) of Schedule 3 to the Act of 2002 (appeal against a determination by the Accountant of Court);
- (b) paragraph 9(1) of Schedule 1 to the Overseas Forfeiture Order of 2005 (appeal against a determination by the Accountant of Court); or
- (c) paragraph 9(1) of Schedule 1 to the POCA Order of 2005 (appeal against a determination by the Accountant of Court),

shall be made by note in the process in which the administrator was appointed.”.

(6) For rule 76.36 (civil recovery proceedings: applications) there shall be substituted the following:–

“Applications

76.36.—(1) An application for a recovery order under section 244(1) of the Act of 2002 (proceedings for recovery orders in Scotland) or article 144(1) of the POCA Order of 2005 (proceedings for a recovery order pursuant to the registration of an external order) shall be made by petition.

(2) There shall be produced with a petition in respect of an application under article 144 of the POCA Order of 2005 a copy of the external order which is sought to be registered.

(3) Where the court grants an application under article 144 of the POCA Order of 2005 the Deputy Principal Clerk shall enter the external order in the register of orders under the POCA Order of 2005.

(4) An application for a prohibitory property order under section 255A(1) of the Act of 2002 or article 161(1) of the POCA Order of 2005 or for an interim administration order under section 256(1) of the Act of 2002 or article 67(1) of the POCA Order of 2005 shall be made–

- (a) if the application is made before the enforcement authority has commenced proceedings for a recovery order, by petition; or
- (b) if it is made after the enforcement authority has commenced such proceedings, by note in process.

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

- (a) section 260(1) of the Act of 2002 (supervision of interim administrator);
- (b) section 283(1) of the Act of 2002 (compensation);
- (c) article 171(1) of the POCA Order of 2005 (supervision of interim administrator); and
- (d) article 194(1) of the POCA Order of 2005 (compensation).

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

- (a) section 255E(1) and (6) of the Act of 2002 (arrestment of property affected by prohibitory property order);
- (b) section 255F(1) and (6) of the Act of 2002 (inhibition of property affected by prohibitory property order);
- (c) section 258(1) and (7) of the Act of 2002 (inhibition of property affected by interim administration order);
- (d) section 265(1) and (7) of the Act of 2002 (arrestment of property affected by interim administration order);
- (e) article 165(1) and (6) of the POCA Order of 2005 (arrestment of property affected by prohibitory property order);
- (f) article 166(1) and (6) of the POCA Order of 2005 (inhibition of property affected by prohibitory property order);

(g) article 169(1) and (7) of the POCA Order of 2005 (inhibition of property affected by interim administration order); and

(h) article 176(1) and (7) of the POCA Order of 2005 (arrestment of property affected by interim administration order).

(7) An application under the following provisions shall be made by motion by any party having an interest:-

(a) sections 255B(1) and 260(3) of the Act of 2002 (variation and recall of order);

(b) articles 162(1) and 171(3) of the POCA Order of 2005 (variation and recall of order).

(8) At the hearing of a motion under paragraph (7) the court may order that the application be made by note; and, in such a case, shall make an order for the lodging of answers to the note in process within such period as the court thinks fit.

(9) 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 255E(1) and (6) of the Act of 2002;

(b) section 255F(1) and (6) of the Act of 2002;

(c) section 258(1) and (7) of the Act of 2002;

(d) section 265 (1) and (7) of the Act of 2002;

(e) article 165(1) and (6) of the POCA Order of 2005;

(f) article 166(1) and (6) of the POCA Order of 2005;

(g) article 169(1) and (7) of the POCA Order of 2005; and

(h) article 176(1) and (7) of the POCA Order of 2005.”.

A C HAMILTON
Lord President
I.P.D.

Edinburgh
22nd December 2005

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session 1994 (S.I. 1994/1443) (“the Rules”). The amendments are consequential upon the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders (Scotland) Order 2005, which makes provision for the enforcement of overseas orders for the forfeiture of property used in crime, and the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, which makes provision under section 444 of the Proceeds of Crime Act 2002 for giving effect to requests and orders from other countries regarding recovery of the proceeds of crime (“the Orders in Council”).

Paragraph 2(2) amends Part VII of Chapter 62 of the Rules by making provision for the registration of external orders for the confiscation of the proceeds of crime or for the forfeiture of property used in crime.

Paragraph 2(3) amends rule 76.4 with regard to applications for variation or recall of restraint orders under the Proceeds of Crime (Scotland) Act 1995.

Paragraph 2(4) to (6) amends Chapter 76 of the Rules to make provision for miscellaneous applications under the Orders in Council, including applications for the restraint of the proceeds of crime and the property used in crime and for the civil recovery of the proceeds of crime.

2005 No. 663

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment
No. 10) (Proceeds of Crime: External Requests and Orders etc.)
2005

£3.00

© Crown Copyright 2006