

2016 No. 319

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session 1994 and
Summary Application Rules 1999 Amendment) (Serious Crime
Prevention Orders etc.) 2016**

Made - - - - - *19th October 2016*
Laid before the Scottish Parliament *21st October 2016*
Coming into force - - - *12th December 2016*

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 sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b) 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 Application Rules 1999 Amendment) (Serious Crime Prevention Orders etc.) 2016.

(2) It comes into force on 12th December 2016.

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

Amendment of Chapter 76 of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994(c) are amended in accordance with this paragraph.

(2) Before rule 76.1 (interpretation of this Part) insert—

(a) 2013 asp 3. Section 4 was amended by the Court Reform (Scotland) Act 2014 (asp 18) schedule 5, paragraph 31 and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).
(b) 2014 asp 18.
(c) 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. 2016/318.

“Interpretation of this Chapter

76.A1.—(1) In this Chapter—

“the 2014 Regulations” means the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014^(a) and

“domestic restraint order” and “specified information” have the meanings given by paragraph 1 of schedule 1 to the 2014 Regulations.”.

(3) In rule 76.3 (applications for restraint orders) after paragraph (4) insert—

“(5) An application by the prosecutor for a certificate under paragraph 2 of schedule 1 to the 2014 Regulations (domestic restraint orders: certification) must—

(a) contain the specified information; and

(b) set out why the prosecutor considers that the property to which the application relates has been used or is likely to be used for the purposes of an offence or is the proceeds of an offence.

(6) Where the court makes a certificate it must—

(a) do so in the form annexed to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence^(b); and

(b) provide in the domestic restraint order for notice to be given in accordance with paragraph 2(4) of schedule 1 to the 2014 Regulations.”

(4) In rule 76.28 (restraint and administration orders)—

(a) In paragraph (1)(h) omit “and”;

(b) after paragraph(1)(i) insert—

“(j) paragraph 4 of schedule 1 of the 2014 Regulations (sending overseas restraint orders to the court); and

(k) paragraph 9 of schedule 1 to the 2014 Regulations (sending overseas confiscation orders to the court).”

(c) in paragraph (2)(g) omit “.”;

(d) after paragraph (2)(g) insert—

“(h) paragraph 2 of schedule 1 of the 2014 Regulations (domestic restraint orders: certification);” and

(e) after paragraph (3)(i) insert—

“(j) paragraph 6(4) of schedule 1 of the 2014 Regulations (application to cancel registration of overseas restraint order or to vary the property to which it applies); and

(k) paragraph 11(4) of schedule 1 to the 2014 Regulations (application to cancel registration of overseas confiscation order or to vary the property to which it applies).”.

(5) In rule 76.36 (applications)—

(a) after paragraph (5)(d) (compensation) insert—

“(e) section 255G of the Proceeds of Crime Act 2002^(c) (receivers in connection with prohibitory property orders) if the application is made after the application for a prohibitory property order.”; and

(b) after paragraph (7)(b) (variation and recall of order) insert—

(a) S.I. 2014/3141, as amended by S.I. 2014/3191.

(b) OJ L196. 2.8.2003 p.45.

(c) 2002 c. 29 Section 255G was inserted by section 23(2) of the Serious Crime Act 2015 (c.9) (“the 2015 Act”).

“(c) section 255I of the Proceeds of Crime Act 2002(a) (supervision of PPO receiver and variations).”.

(6) After Chapter 76 (causes in relation to confiscation of proceeds of crime) insert—

“CHAPTER 76A SERIOUS CRIME PREVENTION ORDERS

Interpretation of this Chapter

76A.1. In this Chapter—

“the 2007 Act” means the Serious Crime Act 2007(b)

“person who is the subject of a serious crime prevention order” is to be construed in accordance with section 1(6) of the 2007 Act;

“serious crime prevention order” has the meaning given by section 1(5) of the 2007 Act(c); and

“subject” means the person who is the subject of a serious crime prevention order.

Serious Crime Prevention Orders: petitions

76A.2.—(1) An application under section 8(aa) of the 2007 Act(d) (limited class of applicants for making of orders) is to be made by petition.

(2) The following rules shall not apply to the petition—

rule 14.5(2)(a) (dispensing with intimation, service or advertisement;

rule 14.6 (period of notice for lodging answers);

rule 14.7 (intimation and service of petitions);

rule 14.8 (procedure where answers lodged); and

rule 14.9 (unopposed petitions).

(3) When a petition is lodged, the court must—

(a) order service of the petition within 7 days on the person who is the proposed subject;

(b) specify a period not exceeding 21 days for lodging answers; and

(c) appoint a hearing on the petition.

(4) The petition is to identify any person (other than the person who is the proposed subject) in respect of whom the order sought may be likely to have a significant adverse effect or (as the case may be) state that there is no such person known to the petitioner.

(5) If the subject is not personally present or represented at the hearing at which a serious crime prevention order is made, the petitioner must serve a copy of the order on the subject.

Third party representations

76A.3.—(1) Paragraphs (2) and (3) of this rule apply where a person is identified under rule 76A.2(4).

(2) The court must order the petitioner to intimate the application to any such person within 7 days.

(a) Section 255I was inserted by section 23(2) of the 2015 Act.

(b) 2007 c.27.

(c) Section 1(5) was substituted by the 2015 Act, schedule 1, paragraph 2(4).

(d) Section 8(aa) was inserted by the 2015 Act, schedule 1, paragraph 9(6).

(3) An application by a person identified by the petitioner under rule 76A.2(4) to make representations under section 9 of the 2007 Act^(a) is made by motion within 14 days from the date of intimation under paragraph (2).

(4) The court may consider a motion by a person, whether identified by the petitioner under rule 76A.2(4) or otherwise, to make representations under section 9 of the 2007 Act without a hearing unless the third party requests a hearing or it seems to the court appropriate to fix a hearing.

(5) If the court grants an application to make representations under section 9 of the 2007 Act the court must—

- (a) specify the manner in which representations are to be made; and
- (b) intimate to the third party the date of any hearing fixed under rule 76A.2(3)(c).

Variation or discharge of a serious crime prevention order

76A.4.—(1) An application to vary or discharge a serious crime prevention order is to be made by minute in the process containing the interlocutor making the serious crime prevention order to which the application relates.

(2) An application under paragraph (1) is to identify any person (other than the person who is the proposed subject of the order) in respect of whom the variation or discharge may be likely to have a significant adverse effect or (as the case may be) state that there is no such person known to the applicant.

(3) If the subject is not personally present or represented at the hearing at which the order is varied or discharged, the applicant must serve a copy of the varied order or, as the case may be, the interlocutor discharging the order, on the subject.”.

Amendment of the Summary Application Rules 1999

3.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) 1999^(b) are amended in accordance with this paragraph and paragraph 4.

(2) After rule 3.19.7 (recall or variation of restraint orders) insert—

“Application for certification of domestic restraint order

3.19.7A.—(1) In this rule—

- (a) “the 2014 Regulations” means the Criminal Justice and Data Protection Protocol No. 36 Regulations 2014^(c) and
- (b) “domestic restraint order” and “specified information” have the meanings given by paragraph 1 of schedule 1 of the 2014 Regulations.

(2) An application by the prosecutor for a certificate under paragraph 2 of schedule 1 of the 2014 Regulations (domestic restraint orders: certification) is made by minute and must—

- (a) contain the specified information; and
- (b) set out why the prosecutor considers that the property to which the application relates has been used or is likely to be used for the purposes of an offence or is the proceeds of an offence.

(3) Where the court makes a certificate it must—

(a) Section 9 was amended by the 2015 Act, schedule 1, paragraphs 10 and 76.
(b) S.I. 1999/929, last amended by S.S.I. 2016/102.
(c) S.I. 2014/3141, as amended by S.I. 2014/3191.

- (a) do so in the form annexed to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence^(a); and
 - (b) provide in the domestic restraint order for notice to be given in accordance with paragraph 2(4) of schedule 1 to the 2014 Regulations.”
- (3) After Part XLVI: (Counter-Terrorism and Security Act 2015) of Chapter 3^(b) (rules on applications under specific statutes) insert—

“PART XLVII SERIOUS CRIME PREVENTION ORDERS

Interpretation

3.47.1. In this part—

“the 2007 Act” means the Serious Crime Act 2007^(c);

“person who is the subject of a serious crime prevention order” is to be construed in accordance with section 1(6) of the 2007 Act;

“serious crime prevention order” has the meaning given by section 1(5) of the 2007 Act^(d); and

“subject” means the person who is the subject of a serious crime prevention order.

Serious Crime Prevention Orders

3.47.2.—(1) An application by the Lord Advocate under section 8(aa) of the 2007 Act^(e) (limited class of applicants for making of orders) is to be made by summary application.

(2) When a summary application is lodged, the court must—

- (a) fix a date for a hearing;
- (b) order intimation of the application within 7 days to the person who is the proposed subject of the order; and
- (c) order answers to be lodged within a period not exceeding 21 days.

(3) The application is to identify any person (other than the person who is the proposed subject of the order) in respect of whom the order sought may be likely to have a significant adverse effect or (as the case may be) state that there is no such person.

(4) A serious crime prevention order made under section 1 of the 2007 Act is to be made in Form 71.

(5) If the subject is not personally present or represented at the hearing at which the order is made, the applicant must serve a copy of the order on the subject.

Third party representations

3.47.3.—(1) Paragraphs (2) and (3) of this rule apply where a third party is identified by the applicant under rule 3.47.2(3).

(2) The court must order the applicant to intimate the application to any such third party within 7 days.

(a) OJ L 196 2.8 2003, p.45.

(b) Part XLVI was added by S.S.I. 2015/283.

(c) 2007 c .27. Part 1 was relevantly amended by the Serious Crime Act 2015 (c.9) sections 46 and 49 and schedule 1.

(d) Section 1(5) was substituted by the 2015 Act, schedule 1, paragraph 2(4).

(e) Section 8(aa) was inserted by the 2015 Act, schedule 1, paragraph 9(6).

(3) An application by a third party to make representations under section 9 of the 2007 Act is made by minute in the process within 14 days from the date of intimation.

(4) The court may consider a minute by a third party, whether identified in accordance with rule 3.47.2(3), rule 3.47.4(2) or otherwise, without a hearing unless the third party requests a hearing or it seems to the court appropriate to fix a hearing.

(5) If the court grants an application made in accordance paragraph (3) the court must—

- (a) specify the manner in which representations are to be made; and
- (b) intimate to the third party the date of any hearing fixed under rule 3.47.2(2)(a).

Variation or discharge of a serious crime prevention order

3.47.4.—(1) An application to vary or discharge a serious crime prevention order is made in Form 72.

(2) An application under paragraph (1) is to identify any person (other than the person who is the proposed subject of the order) in respect of whom the variation or discharge may be likely to have a significant adverse effect or (as the case may be) state that there is no such person known to the applicant.

(3) When an application under paragraph (1) is lodged, the court must—

- (a) fix a date for a hearing;
- (b) order intimation of the application within 7 days—
 - (i) where the applicant is the relevant applicant authority, to the person who is the subject of the order; or
 - (ii) where the applicant is the person who is the subject of the order, to relevant applicant authority; or
 - (iii) where the applicant is any other person, to both the relevant applicant authority and the person who is the subject of the order; and
 - (iv) where a person is identified by the applicant under paragraph (2), to that person; and
- (c) order answers to be lodged within a period not exceeding 21 days.

(4) If the subject is not personally present or represented at the hearing at which the order is varied or discharged, the applicant must serve a copy of the varied order or, as the case may be, the interlocutor discharging the order, on the subject.”.

4. In schedule 1, after Form 70 (Form of intimation of application for extension of the 14 day period under paragraph 8(1) of schedule 1 of the Counter-Terrorism and Security Act 2015) insert Form 71 and Form 72 as set out in the schedule of this Act of Sederunt.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
19th October 2016

SCHEDULE

Paragraph 4

Form 71

Rule 3.47.2(4)

Form of serious crime prevention order

SHERIFFDOM OF (insert name of sheriffdom)

AT (insert place of sheriff court)

SERIOUS CRIME PREVENTION ORDER

Under section 1 of the Serious Crime Act 2007

Court:

Date:

Person who is the subject of the order:

Address:

Date of birth (if known):

THE SHERIFF:

- (1) having considered the application made by the Lord Advocate for a serious crime prevention order in respect of the subject; and
- (2) having reasonable grounds to believe that making a serious crime prevention order would protect the public by preventing, restricting or disrupting involvement by the subject in serious crime in Scotland.

ACCORDINGLY, ORDERS that:

(set out terms of the order)

This order comes into force on *(date)*. It ceases to be in force on *(date)*.

(where different provisions are to come into force, or to cease to be in force, on different dates, specify the dates in respect of each provision).

(Signed)

Sheriff

Form 72

Rule 3.47.4(1)

Form of application to vary or discharge a serious crime prevention order

THE SHERIFFDOM OF (*name of sheriffdom*)

AT (*place*)

APPLICATION

of

[INSERT APPLICANT'S DETAILS]

APPLICANT

1. A copy of the serious crime prevention order which was made by the sheriff at (*place*) [*or* by the High Court sitting at (*place*)] on (*date*) is annexed to this application.
- [2. The serious crime prevention order has been varied as follows:- (*specify details of any previous variation*).]
3. The applicant is [the relevant applicant authority] or [the person who is the subject of the order] or [*specify details of any other person*] (*delete as appropriate*).
4. The applicant seeks to vary [*or discharge*] the serious crime prevention order for the following reasons:- (*here specify reasons*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP:

thereafter, on being duly satisfied, to make an order varying [*or discharging*] the serious crime prevention order [by] (*here state the terms of the variation, if appropriate*) and to do further and otherwise as to your Lordship shall seem proper.

ACCORDING TO JUSTICE, etc.

(signed)

Solicitor for the applicant

EXPLANATORY NOTE

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

This Act of Sederunt amends Chapter 76 of the Rules of the Court of Session Rules 1994 (S.S.I. 1994/1443) last amended by S.S.I. 2016/242) and the Summary Application, Statutory Applications and Appeals etc. Rules 1999 (S.S.I. 1999/929, last amended by S.S.I. 2015/419) in consequence of the amendments made to the Proceeds of Crime Act 2002 (“the 2002 Act”) by the Serious Crime Act 2015. These amendments extend the availability of Serious Crime Prevention Orders so that they can be made in Scotland.

The Act of Sederunt also makes changes to the Rules of the Court of Session Rules 1994 and the Summary Application Rules 1999 in consequence of schedule 1 (apart from paragraph 7) of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141) (“the 2014 Regulations”).

Paragraph 2(2) inserts new subparagraphs 76.3.5(5) to 76.3.5(7) into the Court of Session Rules specifying the information which must be included in an application for a certificate under paragraph (2) of schedule 1 of the 2014 Regulations. Paragraph 76.3.5(6) specifies the form which the certificate must take and the meaning of “domestic restraint order” and “specified information”.

Paragraph 2(3) makes amendments to rule 76.28 to provide procedures for sending overseas restraint orders to the court, sending overseas confiscation orders to the court, an application for certification of domestic restraint order, an application to cancel registration of overseas restraint order or to vary the property to which it applies and an application to cancel registration of overseas confiscation order or to vary the property to which it applies.

Paragraph 2(4) amends rule 76.36 to make provision for the appointment of receivers in connection with prohibitory property orders if the application is made after an application for a prohibitory property order and to make provision for supervision of a prohibitory property receiver.

Paragraph 2(5) inserts a new Chapter 76A into the Court of Session Rules setting out the procedures which apply when the Lord Advocate seeks a serious crime prevention order. In addition it provides for the procedure by which a third party who may be significantly adversely affected by the order may apply to make representations. Provision is also made for variation and discharge of serious crime prevention orders.

The Act of Sederunt also makes changes to Summary Application Rules.

Paragraph 3(2) inserts a new rule 3.19.7A into the Summary Application Rules specifying the information which must be included in an application for a certificate under paragraph (2) of schedule 1 of the 2014 Regulations, specifies the form which a certificate must take and sets out the meaning of “domestic restraint order” and “specified” information.

Paragraph 3(3) inserts a new Part XLVII into Chapter 3 of the Summary Application Rules setting out the procedures which apply when the Lord Advocate seeks a serious crime prevention order. In addition, it provides for the procedure by which a third party who may be significantly adversely affected by the order may apply to make representations. Provision is also made for variation and discharge of serious crime prevention orders.

This Act of Sederunt also inserts a new Form 71 (form of serious crime prevention order) into the Summary Application Rules and a Form 72 for the application or discharge of a serious crime prevention order.

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