

## CHAPTER 76

### CAUSES IN RELATION TO CONFISCATION OF PROCEEDS OF CRIME

#### PART I

#### CAUSES UNDER THE PROCEEDS OF CRIME (SCOTLAND) ACT 1995

##### **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 and

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

##### **Interpretation of this Part**

**76.1.** In this Part-

"the Act of 1995" means the Proceeds of Crime (Scotland) Act 1995<sup>a</sup>;

"administrator" means the person appointed under paragraph 1(1) of Schedule 1 to the Act of 1995

"restraint order" has the meaning assigned in section 49(1) of the Act of 1995.

##### **Disapplication of certain rules to this Part**

**76.2.** The following rules shall not apply to a petition or note mentioned in this Part:-  
rule 14.5 (first order in petitions),  
rule 14.6(1) (period of notice for lodging answers),  
rule 14.7 (intimation and service of petitions),  
rule 14.9 (unopposed petitions).

##### **Applications for restraint orders**

**76.3.-** (1) An application under section 28(1) of the Act of 1995 (application for restraint order) shall be made by petition.

(2) Where the court pronounces an interlocutor making a restraint order, the Lord Advocate shall serve a certified copy of that interlocutor on every person named in the interlocutor as restrained by the order.

(3) Where the application is made under the said section as applied by article 4 of the Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999 (application in relation to certain external confiscation orders etc.) or by article 4 of the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1999 (application in relation to certain external forfeiture orders etc.), there shall be appended to the petition a certificate in conformity with paragraph (b) of subsection (3) of the section as so applied by the article in question; but that certificate, as so appended, shall not include a statement of information or belief with the sources and grounds thereof if the prayer includes an application for a direction under that paragraph.

(4) Where the court grants the prayer of the petition in an application such as is mentioned in paragraph (3) but declines to make such direction as is so mentioned, the petitioner shall forthwith lodge in process, as an addendum to the certificate which was appended to the petition, a statement of information or belief with the sources and grounds thereof.

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<sup>a</sup> 1995 c.43.

(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( ); 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.

### **Applications in relation to protective measures**

**76.4.**-(1) An application under any of the following provisions of the Act of 1995 shall be made by note in the process containing the interlocutor making the restraint order to which the application relates:-

- (a) section 29(4) or (5) (recall of restraint order in relation to realisable property);
- (b) section 30(3) or (4) (recall of restraint order in relation to forfeitable property);
- (c) section 31(1) (variation or recall of restraint order);
- (d) section 32(5) (recall or restriction of inhibition);
- (e) section 33(4) (recall or restriction of arrestment).

(2) In respect of an application by note under paragraph (1) by a person having an interest for an order under section 31(1)(b) of the Act of 1995-

- (a) the note shall be lodged in process within 21 days after service of the restraint order on that person; and
- (b) subject to rule 14.6(2) (application to shorten or extend the period of notice), the period of notice for lodging answers to the note shall be 14 days.

(3) An application under section 31(1)(a) of the Act of 1995 to extend a restraint order shall not be intimated, served or advertised before the application is granted.

(4) An application by the Lord Advocate under section 32(1) or 33(1) of the Act of 1995, by the Lord Advocate for warrant of arrestment or inhibition may be made –

- (a) in the prayer of the petition under section 28(1) of that Act; or
- (b) if made after the petition has been presented, by motion which shall not be intimated.

(5) An application under section 32(1)(a) (recall, loosing or restriction of inhibition), or section 33(2) (recall, loosing or restriction of arrestment), of the Act of 1995 to loose, restrict or recall an arrestment or to recall an inhibition shall be made by motion.

(6) An application under section 28(8) Act of 1995 (interdict) may be made-

- (a) in the prayer of the petition under section 28(1) of that Act; or
- (b) if made after the petition has been presented, by note in the process of that petition.

(7) An application by note under paragraph (6)(b) shall not be intimated, served or advertised before the application is granted.

(7A) Where the court, having pronounced an interlocutor making a restraint order, interdicts a person not subject to that order from dealing with property affected by it while it is in force, the Lord Advocate shall so intimate to that person.

(8) Where the court pronounces an interlocutor granting an application mentioned in paragraph (3) or (4), the Lord Advocate shall serve a certified copy of that interlocutor on the persons affected by it.

(9) At the time at which he complies with section 31(6) of the Act of 1995 (informing of persons interdicted in relation to a restraint order that the order is recalled), the clerk of court (or as the case may be the Deputy Principal Clerk) shall record in the process when and how the person in question was so informed.

### **Applications for compensation**

**76.5.** An application under section 17 (compensation) of the Act of 1995 shall be made by petition.

### **Applications for disclosure of information by government departments**

**76.6.** An application under section 20 of the Act of 1995 (disclosure of information held by government departments) may be made-

- (a) by petition;
- (b) where there is a restraint order in force, by note in the process of the petition for that restraint order; or
- (c) where an administrator has been appointed, by note in the process of the petition to appoint him.

### **Applications for appointment of administrators**

**76.7.-(1)** An application under paragraph 1(1) of Schedule 1 to the Act of 1995 (appointment of administrators) shall be made-

- (a) where a restraint order has been made, by note in the process of the petition for that restraint order; or
- (b) in any other case, by petition.

(2) The notification to be made by the clerk of court under paragraph 1(3)(a) of Schedule 1 to the Act of 1995 shall be made by intimation of a certified copy of the interlocutor to the person required to give possession of property to an administrator.

### **Incidental applications in an administration**

**76.8.-(1)** An application under any of the following provisions of Schedule 1 to the Act of 1995 shall be made by note in the process of the petition for appointment of the administrator:-

- (a) paragraph 1(1) with respect to an application after appointment of an administrator to require a person to give property to him;
- (b) paragraph 1(4) (making or altering a requirement or removal of administrator);
- (c) paragraph 1(5) (appointment of new administrator on death, resignation or removal of administrator);
- (d) paragraph 2(1)(n) (directions as to functions of administrator); and
- (e) paragraph 4 (directions for application of proceeds).

(2) An application under any of the following provisions of the Schedule 1 to the Act of 1995 shall be made in the prayer of the petition for appointment of an administrator under paragraph 1 of that Schedule or, if made after the petition has been presented, by note in that process:-

- (a) paragraph 2(1)(o) (special powers of administrator);
- (b) paragraph 2(3) (vesting of property in administrator); and

(c) paragraph 12 (orders to facilitate the realisation of property).

### **Requirements where order to facilitate realisation of property considered**

**76.9.** Where the court considers making an order under paragraph 12(1) of Schedule 1 to the Act of 1995 (order to facilitate the realisation of property)-

- (a) the court shall fix a date for a hearing on the Motion Roll in the first instance; and
- (b) the petitioner or noter, as the case may be, shall serve a notice in Form 76.9 on any person who has an interest in the property.

### **Documents for Accountant of Court**

**76.10.-** (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 finding caution**

**76.11.-** (1) Rule 61.9 (finding caution in judicial factories), except paragraph (4), 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.

### **Administrator's title to act**

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

### **Duties of administrator**

**76.13.-** (1) The administrator shall, as soon as possible, but within 3 months after the date of his appointment, lodge with the Accountant of Court-

- (a) an inventory of the property in respect of which he has been appointed;
- (b) all vouchers, securities, and other documents which are in his possession; and
- (c) a statement of that property which he has in his possession or intends to realise.

(2) An administrator shall maintain accounts of his intromissions with the property in his charge and shall, subject to paragraph (3)-

- (a) within 6 months after the date of his appointment, and
- (b) at 6 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.

(3) 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.

### **State of funds and scheme of division**

**76.14.-** (1) The administrator shall-

- (a) where there are funds available for division, prepare a state of funds after application of sums in accordance with paragraph 4(2) of Schedule 1 to the Act of 1995 and a scheme of division amongst those who held property which has been realised under that Act and lodge them and all relevant documents with the Accountant of Court; or
- (b) where there are no funds available for division, prepare a state of funds only and lodge it with the Accountant of Court, and give to the Accountant of Court such explanations as he shall require.

(2) The Accountant of court shall-

- (a) make a written report on the state of funds and any scheme of division including such observations as he considers appropriate for consideration by the Lord Ordinary; and
- (b) return the state of funds and any scheme of division to the administrator with his report.

(3) The administrator shall, on receiving the report of the Accountant of Court-

- (a) lodge in process the report, the state of funds and any scheme of division;
- (b) intimate a copy of it to the Lord Advocate; and
- (c) intimate to each person who held property which has been realised under the Act of 1995 a notice stating-
  - (i) that the state of funds and scheme of division or the state of funds only, as the case may be, and the report of the Accountant of Court, have been lodged in process;
  - (ii) the amount for which that person has been ranked, and whether he is to be paid in full, or by a dividend, and the amount of it, or that no funds are available for payment.

### **Objections to scheme of division**

**76.15.-** (1) A person wishing to be heard by the court in relation to the distribution of property under paragraph 4(3) of Schedule 1 to the Act of 1995 shall lodge a note of objection in the process to which the scheme of division relates within 21 days of the date of the notice intimated under rule 76.14(3)(c).

(2) After the period for lodging a note of objection has expired and no note of objection has been lodged, the administrator may apply by motion for approval of the scheme of division and state of funds, or the state of funds only, as the case may be.

(3) After the period for lodging a note of objection has expired and a note of objection has been lodged, the Lord Ordinary shall dispose of such objection after hearing any objector and the administrator and making such inquiry as he thinks fit.

(4) If any objection is sustained to any extent, the necessary alterations shall be made to the state of funds and any scheme of division and shall be approved by the Lord Ordinary.

### **Application for discharge of administrator**

**76.16.-**(1) Where the scheme of division is approved by the court and the administrator has paid, delivered or conveyed to the persons entitled the sums or receipts allocated to them in the scheme, the administrator may apply for his discharge.

(2) An application for discharge of the administrator shall be made by note in the process of the application under paragraph 1(1) of Schedule 1 to the Act of 1995.

### **Appeals against determination of outlays and remuneration**

**76.17.**-(1) An appeal under paragraph 6(2) of Schedule 1 to the Act of 1995 (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.

## PART II

### APPLICATIONS UNDER THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1989 OR THE ORDER OF 1995

#### **Application and interpretation of this Part**

**76.19.** In this Part-

"the Act of 1989" means the Prevention of Terrorism (Temporary Provisions) Act 1989<sup>b</sup>;  
"administrator" shall be construed in accordance with paragraph 11(1)(b) of Schedule 4 to the Act of 1989;  
"the Order of 1995" means the Prevention of Terrorism (Temporary Provisions) Act 1989 (Enforcement of External Orders) Order 1995<sup>c</sup>;  
"restraint order" means an order made under paragraph 13(1) of Schedule 4 to the Act of 1989.

#### **Disapplication of certain rules to this Part**

**76.20.** The following rules shall not apply to a petition or note mentioned in this Part:-

rule 14.5 (first order in petitions),  
rule 14.6 (1) (period of notice for lodging answers),  
rule 14.7 (intimation and service of petitions),  
rule 14.9 (unopposed petitions).

#### **Applications for restraint orders**

**76.21.**-(1) An application under paragraph 14(1) of Schedule 4 to the Act of 1989 (restraint order), shall be made by petition.

(2) Where the court pronounces an interlocutor making a restraint order, the Lord Advocate shall serve a certified copy of that interlocutor on every person named in the interlocutor as restrained by the order.

#### **Applications in relation to protective measures**

**76.22.**-(1) An application under any of the following provisions of Schedule 4 to the Act of 1989 shall be made by note in the process containing the interlocutor making the restraint order to which the application relates:-

- (a) paragraph 13(4) (discharge of a restraint order);
- (b) paragraph 14(2) (variation or recall of restraint order); and
- (c) paragraph 14(3) (recall of restraint order).

(2) Subject to rule 14.6(2) (application to shorten or extend the period of notice), the period of notice for lodging answers to a note under paragraph (1)(b) of this rule by any person affected by a restraint order shall be 14 days.

(3) An application under paragraph 16(1) of schedule 4 to the Act of 1989<sup>d</sup> (warrant for inhibition), or 16A(1)(b)<sup>e</sup> (warrant for arrestment), may be made-

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<sup>b</sup> 1989 c.4.

<sup>c</sup> S.I. 1995/760

<sup>d</sup> Paragraph 16 of Schedule 4 to the Prevention of Terrorism (Temporary Provisions) Act 1989 (c.4) ("the Act of 1989") was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 72(3)(a).

<sup>e</sup> Paragraph 16A of Schedule 4 to the Act of 1989 was inserted by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, Schedule 4, paragraph 72(3)(b)

- (a) in the prayer of the petition under paragraph 13(1) of Schedule 4 to the Act of 1989; or
- (b) if made after the petition has been presented, by motion which shall not be intimated.

(4) Any of the following applications under Schedule 4 to the Act of 1989 shall be made by motion:-

- (a) an application to recall, loose or restrict an inhibition under paragraph 16(2)(a);
- (b) an application under paragraph 16(6)(a) (recall or restriction of inhibition);
- (c) an application to recall, loose or restrict an arrestment under paragraph 16A(2); or
- (d) an application under paragraph 16A(4) (recall or restriction of arrestment).

### **Applications for compensation**

**76.23.** An application under paragraph 17(1) of Schedule 4 to the Act of 1989 (compensation) shall be made by petition.

### **Powers and duties of administrator**

**76.24.** Subject to any condition or exception specified by the court, an administrator appointed under paragraph 11(1)(b) of Schedule 4 to the Act of 1989-

- (a) may take possession of the property in respect of which he has been appointed and of any document which-
    - (i) is in the possession or control of the person in whom the property is vested; and
    - (ii) relates to the property;
  - (b) may have access to, and copy, any document relating to the property and not in such possession or control as is mentioned in sub-paragraph(a);
  - (c) may bring, defend or continue any legal proceedings relating to the property;
  - (d) may borrow money in so far as it is necessary to do so to safeguard the property and may for the purposes of such borrowing create a security over any part of the property;
  - (e) may, if the administrator considers that to do so would be beneficial for the management and the realisation of the property, enter into any contract, or execute any deed, with respect to the property;
  - (f) may effect or maintain insurance policies with respect to the property;
  - (g) may, where the person in whom the property is vested has not completed title to any of the property, complete title to it: provided that completion of title in the name of the person in whom the property is vested shall not validate by accretion any unperfected right in favour of any person other than the administrator;
  - (h) may sell (but not to himself or an associate of his) the property and redeem any obligation secured on that property;
  - (i) may discharge any of his functions through agents or employees: provided that the administrator shall be personally liable to meet the fees and expenses of any such agents or employees out of such remuneration as is payable to the administrator by virtue of paragraph 12(2) and (3) of Schedule 4 to the Act of 1989;
  - (j) may take such professional advice as he considers necessary for the proper discharge of his functions;
  - (k) may at any time apply to the court for directions with respect to the exercise of his powers and duties;
  - (l) may exercise any power conferred on him by the court whether such power was conferred at the time of his appointment or on his subsequent application to the court; and
  - (m) may do anything incidental to the above powers and duties.
- (2) Subject to the proviso to sub-paragraph (g) of paragraph (1)-
- (a) a person dealing with an administrator in good faith and for value shall not require to determine whether the administrator is acting within the powers mentioned in that sub-paragraph; and
  - (b) the validity of any title shall not be challengeable by reason only of the administrator having acted outwith those powers.



(3) The exercise of a power mentioned in any of sub-paragraphs (c) to (h) of paragraph (1) shall be in the name of the person in whom the property is vested.

#### **Duties of administrator in relation to accounts**

**76.25.**-(1) The administrator shall, as soon as possible, but within 3 months after the date of his appointment, lodge with the Accountant of Court-

- (a) an inventory of the property in respect of which he has been appointed;
- (b) all land certificates, title deeds, vouchers and other documents which relate to that property and are in his possession; and
- (c) a statement of the property which he has in his possession or intends to realise.

(2) An administrator shall maintain accounts of his intromissions with the property in his charge and shall-

- (a) lodge an account of his intromissions with the Accountant of Court in such form as the Accountant of Court may require-
  - (i) 6 months after the date of his appointment; and
  - (ii) at 6 monthly intervals after the first account during the subsistence of his appointment, unless the Accountant of Court agrees to waive the lodging of an account where the administrator certifies that there have been no intromissions during a particular accounting period; and
- (b) lodge, with the account of his intromissions, all such supporting vouchers and other documents as the Accountant of Court may require.

#### **Money received by administrator**

**76.26.**-(1) Subject to paragraph (2), any money received by an administrator in the exercise of his powers and duties shall be deposited by him in an appropriate bank or institution, in the name of the person in whom the property is vested.

(2) The administrator may, at any time, retain in his hands a sum of money not exceeding £200.

(3) In paragraph (1), "appropriate bank or institution" means the Bank of England, an institution authorised under the Banking Act 1987<sup>f</sup> or a person for the time being specified in Schedule 2 to that Act.

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<sup>f</sup> 1987 c.22.

## PART III

### APPLICATIONS UNDER THE PROCEEDS OF CRIME ACT 2002

#### Interpretation and application of this Part

##### 76.27.-(1) In this Part-

- (a) “the Act of 2002” means the Proceeds of Crime Act 2002<sup>g</sup>;
- (b) “the Overseas Forfeiture Order of 2005” means the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005<sup>h</sup>;
- (c) “the POCA Order of 2005” means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005<sup>i</sup>;
- (ca) “the POCA Order of 2013” means the Proceeds of Crime Act 2002 (External Investigations) Order 2013<sup>j</sup>;
- (d) “external order” has the meaning given in section 447(2) of the Act of 2002;
- (da) “interim freezing order” has the meaning given in section 396J(3) of the Act of 2002<sup>k</sup>;
- (db) “unexplained wealth order” has the meaning given in section 396A(3) of the Act of 2002<sup>l</sup>;
- (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 or an interim freezing order or an unexplained wealth order;
- (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, 4B 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).
- (e) articles 46A (unexplained wealth orders) to 46R (compensation) of the POCA Order of 2013<sup>m</sup>.

#### 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);
- (i) article 73(2) of the POCA Order of 2005 (enforcement administrators);
- (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).

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<sup>g</sup> 2002 c.29.

<sup>h</sup> S.S.I. 2005/581

<sup>i</sup> S.I. 2005/3181/

<sup>j</sup> S.I. 2013/2605, last amended by S.I. 2018/1078.

<sup>k</sup> Section 396J was inserted by the 2017 Act, section 5.

<sup>l</sup> Section 396A was inserted by the 2017 Act, section 4.

<sup>m</sup> Articles 46A to 46R were inserted by S.I. 2018/1078.

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

(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).
- (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).

(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).

#### **Documents for Accountant of Court**

**76.29.**-(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**

**76.30.**-(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**

**76.31.**-(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**

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

#### **Accounts**

**76.33.**-(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**

**76.34.** 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**

**76.35.**-(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 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.

(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.

*Civil recovery proceedings*

**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 167(1) of the POCA Order of 2005 or a prohibition order under article 141ZD(1)<sup>n</sup> 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);
- (d) article 141ZJ(2) or article 194(1) of the POCA Order of 2005 (compensation).
- (e) section 255G of the Proceeds of Crime Act 2002( ) (receivers in connection with prohibitory property orders) if the application is made after the application for a prohibitory property order.
- (f) article 141ZHA of the POCA Order of 2005 (receivers in connection with prohibition orders)<sup>o</sup> if the application is made after the application for a prohibition order under article 141ZC of that Order;
- (g) article 166A of the POCA Order of 2005 (receivers in connection with prohibitory property orders) if the application is made after the application for a prohibitory property order under article 161 of that Order.

(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 (inhibition of property affected by interim administration order);
- (e) article 165(1) and (6) of the POCA Order 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);

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<sup>n</sup> Article 141ZD(1) was inserted into S.I. 2005/3181 by S.I. 2013/2604

<sup>o</sup> Articles 141ZHA, 141ZHC, 166A and 166C were inserted by S.I. 2018/1078.

- (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).
- (i) article 141ZD(2) of the POCA Order of 2005 (variation and recall of prohibition order);
- (j) article 141ZH(1) and (6)(a) of the POCA Order of 2005 (inhibition of property affected by prohibition order);
- (k) article 141ZI(1) and (6) of the POCA Order of 2005 (arrestment of property affected by prohibition 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).
- (c) section 255I of the Proceeds of Crime Act 2002( ) (supervision of PPO receiver and variations).
- (d) article 141ZHC of the POCA Order of 2005 (supervision of receiver and variations);
- (e) article 166C of the POCA Order of 2005 (supervision of PPO receiver and variations).

(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;
- (da) section 396I of the Act of 2002<sup>P</sup>
- (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.
- (i) article 141ZH(1) and (6)(a) of the POCA Order of 2005;
- (j) article 141ZI(1) and (6) of the POCA Order of 2005.

### **Disclosure orders**

**76.37.**-(1) An application under section 391(1) of the Act of 2002 or article 50 of the Proceeds of Crime Act 2002 (External Investigations) Order 2013<sup>q</sup> (disclosure orders) shall be by petition.

(2) Before the court grants an application referred to in paragraph (1), the court may dispense with, postpone or order intimation to be made to such persons as it thinks fit.

(3) An application under section 396(4) of the Act of 2002 or article 55(2) of the Proceeds of Crime Act 2002 (External Investigations) Order 2013 (supplementary) shall be by motion. .

(4) Rule 4.11 (documents not to be borrowed) shall not apply to an application under section 391 of the Act of 2002.

<sup>P</sup> Section 396I was inserted by the 2017 Act, section 4.

<sup>q</sup> S.I. 2013/2605

(5) When an application is made under section 391 of the Act of 2002-

- (a) the process shall be marked “Restricted Access”;
- (b) only the petitioner may borrow or inspect documents lodged in process.

(6) The restriction referred to in paragraph (5) shall apply for a period of 5 years from the date of the application.

(7) The petitioner may apply to the court by motion for extension of that 5 year period.

(8) Any person affected by a disclosure order may apply to the court by motion to have the restrictions mentioned in paragraph (5) varied.

(9) A motion under paragraph (7) or (8) shall be granted only on cause shown.

### **Evidence overseas**

**76.37A.** An application under section 282D(4) of the Act of 2002 (evidence overseas: interim receiver or interim administrator) shall be made by note in process.

### **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)<sup>(f)</sup>;
- (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.
- (c) article 46A of the POCA Order of 2013 (unexplained wealth orders);
- (d) article 46I of the POCA Order of 2013 (unexplained wealth order: application for interim freezing order) but only if the application is made at the same time as an application under article 46A of that Order.

(2) An application under the following provisions must be made by note in process—

- (za) section 396DA of the Act of 2002 (extension of period for making determination where interim freezing order has been made<sup>(g)</sup>);
- (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).
- (e) article 46H of the POCA Order of 2013 (supplementary);
- (f) article 46I of the POCA Order of 2013 but only if the application is made after the court has made an order under article 46A of that Order;
- (g) article 46J of the POCA Order of 2013 (variation and discharge of interim freezing order);
- (h) article 46R of the POCA Order of 2013 (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;

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<sup>r</sup> Sections 396A to 396I and sections 396J to 396S were inserted by sections 4 and 5 respectively of the 2017 Act.

<sup>s</sup> Section 396DA was inserted by the Economic Crime (Transparency and Enforcement) Act 2022 (c.10), section 50(3).



- (c) section 396R of the Act of 2002 (supervision of section 396P receiver and variations).
- (d) article 46M of the POCA Order of 2013 (arrestment of property affected by interim freezing order);
- (e) article 46N of the POCA Order of 2013 (inhibition of property affected by interim freezing order) but only if the application is made after the court has made an order under article 46I of that Order;
- (f) article 46Q (supervision of article 46O 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).

(4A) An application under the following provisions may be made by petition, if made at the same time as an application for an order under article 46I of the POCA Order of 2013 or, if made at any time afterwards, by note in process—

- (a) article 46P of the POCA Order of 2013 (powers of receivers appointed under article 46O);
- (b) article 46O of the POCA Order of 2013 (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

#### *Co-operation*

#### **Co-operation**

**76.38.-**(1) In this rule “the Order of 2002” means the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002 <sup>t</sup>.

(2) An application for registration under paragraph 11 of the Order of 2002 shall be by petition.

(3) Before the court grants an application referred to in paragraph (2), the court may dispense with, postpone or order intimation to be made to such persons as it thinks fit.

(4) Where the court makes an order under paragraph 11 of the Order of 2002, the Deputy Principal Clerk of Session shall –

- (a) register the order; and
- (b) send a copy of the order to any person affected by it.

(5) An order referred to in the foregoing paragraph shall be final and shall not be subject to review.

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<sup>t</sup> S.I. 2002/3133