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Pàrlamaid na h-Alba

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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Subordinate legislation considered by the Delegated Powers and Law Reform Committee on 7 May 2019**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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# Committee Membership



**Convener**  
**Graham Simpson**  
Scottish Conservative  
and Unionist Party



**Deputy Convener**  
**Stuart McMillan**  
Scottish National Party



**Tom Arthur**  
Scottish National Party



**Mary Fee**  
Scottish Labour



**Alison Harris**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 7 May 2019, the Committee agreed to draw the following instrument to the attention of the Parliament-  
  
Act of Sederunt (Rules of the Court of Session 1994 and Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Proceeds of Crime) 2019 (SSI 2019/146)
2. The Committee's recommendations and conclusions in relation to this instrument are set out in the following section of this report.
3. The Committee determined that it did not need to draw the Parliament's attention to the instruments set out by the relevant lead committee at the end of this report.

# Points raised: instruments not subject to any parliamentary procedure

## Act of Sederunt (Rules of the Court of Session 1994 and Summary Applications, Statutory Applications and Appeals etc Rules 1999 Amendment) (Proceeds of Crime) 2019 (SSI 2019/146) (Justice)

### Purpose

4. The instrument amends the Act of Sederunt (Rules of the Court of Session 1994) 1994 and the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 as a consequence of amendments to the Anti-terrorism, Crime and Security Act 2001 and the Proceeds of Crime Act 2002 made by the Criminal Finances Act 2017.
5. The instrument is laid but not subject to any parliamentary procedure in terms of section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. It comes into force on 1 June 2019.

### Committee consideration

6. The Committee noted that the instrument contained two errors in paragraph 3(3)(a), substituting rule 3.19.1(2) of the Summary Application Rules 1999.
7. Firstly, the substituted provision makes reference to Part 3A of the Proceeds of Crime Act 2002, which does not exist.
8. The second error appears to be more significant. The drafting appears to be defective insofar as sub-paragraph (e) of the substituted provision refers to a “seized property investigation”, which is not defined in the 2002 Act.
9. These issues were raised with the Lord President's Private Office and the correspondence is reproduced in Annex A. The Lord President's Private Office has undertaken to rectify these errors at the first available opportunity.

### Recommendations

10. **The Committee draws the instrument to the attention of the Parliament under the following reporting grounds in respect of the errors in paragraph 3(3)(a) of the instrument, substituting rule 3.19.1(2) of the Summary Application Rules 1999:**
  1. **on the general reporting ground, insofar as the substituted provision makes reference to Part 3A of the Proceeds of Crime Act 2002, which does not exist, and**

- 2. on reporting ground (i) (drafting appears to be defective), insofar as sub-paragraph (e) of the substituted provision refers to a “seized property investigation”, which is not defined in the 2002 Act.**
- 11. The Committee calls on the Lord President's Private Office to lay an amending instrument to rectify these errors at the earliest opportunity.**

# No points raised

## Health and Sport

National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2019 (SSI 2019/145)

## Justice

International Joint Investigation Teams (International Agreements) (EU Exit) (Scotland) Order 2019 (SSI 2019/149)

Act of Sederunt (Rules of the Court of Session 1994 and Child Care and Maintenance Rules 1997 Amendment) (Parental Orders) 2019 (SSI 2019/147)

# Annex A

## **Act of Sederunt (Rules of the Court of Session 1994 and Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Proceeds of Crime) 2019 (SSI 2019/146)**

**On 1 May 2019 the Lord President's Private Office wrote to the Committee's legal adviser as follows:**

Thank you for your call yesterday regarding Act of Sederunt (Rules of the Court of Session 1994 and Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Proceeds of Crime) 2019 (SSI 2019/146).

You raised two points:

- The instrument makes reference in paragraph 3 (3) (a) to “ *applications to the sheriff under Parts 3, 3A, 5 and 8 of the Act*”. However, the Proceeds of Crime Act 2002(c.29) does not have a Part 3A.

We have considered this point and we agree that an error has been made. The Criminal Finances Act 2017 ( c.22) amends Part 5 of the 2002 Act by inserting a new Chapter 3A ( Recovery of Listed Assets in Summary Proceedings). It seems we have in error inserted a reference to Part 3A. We undertake to remedy this at the first available opportunity.

- The instrument makes reference in paragraph 3 (3) (a) to

*"(a) civil recovery investigation;*

*(b) detained cash investigation;*

*(c) detained property investigation;*

*(d) frozen funds investigation;*

*(e) seized property investigation."*

However, while the types of investigations listed at (a) to (d) are described in section 341 of the 2002 Act, the investigation at (e) is not so described. We agree that there is no definition in the instrument. We will consider how best to remedy this error, with a view to remedying it at the first available opportunity.

