SCOTTISH STATUTORY INSTRUMENTS

2019 No. 139

SHERIFF APPEAL COURT

SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Labour Market Enforcement Orders) 2019

Made - - - -	*17th April 2019*
Laid before the Scottish Parliament	*18th April 2019*
Coming into force - -	*18th May 2019*

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by section 305 of the Criminal Procedure (Scotland) Act 1995(**a**) 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 Adjournal (Criminal Procedure Rules 1996 Amendment) (Labour Market Enforcement Orders) 2019.

(2) It comes into force on 18th May 2019.

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

Amendment of the Criminal Procedure Rules 1996

2.—(1) The Criminal Procedure Rules 1996(**b**) are amended in accordance with this paragraph.

(2) After Chapter 68 (Approval of Sentencing Guidelines)(**c**) insert—

"CHAPTER 69

LABOUR MARKET ENFORCEMENT ORDERS

Interpretation of this Chapter

69.1. In this Chapter—

(**a**) 1995 c.46. Section 305 was amended by section 111(1) of the Criminal Justice (Scotland) Act 2016 (asp 1) and S.S.I. 2015/338, and was extended by section 386(3)(a) of the Proceeds of Crime Act 2002 (c.29), section 36A(4) of the Serious Crime Act 2007 (c.27), and section 32(5) of the Psychoactive Substances Act 2016 (c.2).

(**b**) The Criminal Procedure Rules 1996 are in schedule 2 of the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2018/229).

(**c**) Chapter 68 was inserted by S.S.I. 2018/229.

"the 2016 Act" means the Immigration Act 2016(**a**);

"enforcing authority" has the meaning given by section 14 of the 2016 Act;

"labour market enforcement order" has the meaning given by section 18 of the 2016 Act;

"trigger offence" has the meaning given by section 14 of the 2016 Act.

Variation and discharge of a labour market enforcement order

69.2.—(1) An application under section 23 of the 2016 Act for variation or discharge of a labour market enforcement order made under section 20 of that Act is to be made in Form 69.2.

(2) When an application under section 23 of the 2016 Act is lodged, the court must—

(a) appoint a hearing on the application; and

(b) order intimation of the application—

(i) where the application is made by the respondent to the original order made under section 20 of the 2016 Act, on the enforcing authority whose officer conducted the investigation which resulted in the prosecution of the respondent for the trigger offence; or

(ii) where the application is made by the enforcing authority whose officer conducted the investigation which resulted in the prosecution of the respondent for the trigger offence, on the respondent to the original order made under section 20 of the 2016 Act.

(3) Where an application referred to in paragraph (1) is made in respect of a labour market enforcement order which was made by the High Court of Justiciary and which has not subsequently been varied in the sheriff court—

(a) the sheriff clerk with whom the application is lodged is to notify the Clerk of Justiciary; and

(b) the Clerk of Justiciary is,

(i) not later than 4 days after receipt of such notification, to send a certified copy of the indictment and of the labour market enforcement order to the sheriff clerk of the court in which the application is made; and

(ii) not later than 21 days after receipt of such notification, to obtain a report from the judge who made the labour market enforcement order in respect of which variation or discharge is sought and send that report to the sheriff clerk of the court in which the application is made.

(4) Where the judge's report as mentioned in paragraph (3)(b)(ii) above is not furnished within the period specified in that provision, the sheriff may hear and determine the application without the report.

Appeals

69.3.—(1) An appeal to the Sheriff Appeal Court under section 24(1)(b) of the 2016 Act against the making of, or refusal to make, an order under section 23 varying or discharging a labour market enforcement order made under section 20 is to be made by note of appeal in Form 69.3.

(2) The note of appeal is to be lodged no later than 7 days after the decision appealed against with the clerk of the court from which the appeal is to be taken.

(**a**) 2016 c.19.

(3) On receipt of the note of appeal the clerk of court must send a copy of the note to the respondent in the appeal or to the respondent's solicitor, and obtain a report from the sheriff who made the decision appealed against.

(4) Subject to paragraph (5), the clerk of court must no later than 14 days after the decision against which the appeal is taken—

(a) send to the Clerk of the Sheriff Appeal Court the note of appeal, together with the report mentioned in paragraph (3) above, the minute of proceedings and any other relevant documents; and

(b) send copies of that report to the appellant and respondent in the appeal or to their solicitors.

(5) The sheriff principal of the sheriffdom in which the judgment was pronounced may, on cause shown, extend the period of 14 days specified in paragraph (4) above for such period as the sheriff principal considers reasonable.

(6) Where the sheriff's report as mentioned in paragraph (3) above is not furnished within the period mentioned in paragraph (4) above, or such period as extended under paragraph (5) above, the Sheriff Appeal Court may extend such period, or, if it thinks fit, hear and determine the appeal without the report.

(7) For the purposes of hearing and determining any appeal under this rule three of the Appeal Sheriffs is a quorum of the Sheriff Appeal Court, and the determination of any question under this rule by the court is to be according to the votes of the majority of the members of the court sitting, including the presiding Appeal Sheriff, and each Appeal Sheriff so sitting is entitled to pronounce a separate opinion.

(8) Rule 19.14 (list of appeals) and rule 19.16 (intimation of determination of appeal) of Chapter 19 (Appeals from Summary Proceedings) apply to any appeal made under this Chapter.".

(3) In the appendix, after Form 68.2 (form of petition for approval of sentencing guidelines)(**a**) insert Form 69.2 and Form 69.3 set out in the schedule of this Act of Adjournal.

CJM SUTHERLAND
Lord Justice General
I.P.D.

Edinburgh
17th April 2019

(**a**) Form 68.2 was inserted by S.S.I. 2018/229.

SCHEDULE

Paragraph 2(3)

Form 69.2

Rule 69.2(1)

Form of application for variation or discharge of a labour market enforcement order

UNTO THE RIGHT HONOURABLE THE SHERIFF OF (*name of sheriffdom)*

AT (*place*)

APPLICATION

of

[xxxxx]

APPLICANT

under section 23 of the Immigration Act 2016

for

Variation or discharge of a labour market enforcement order made under section 20 of the Immigration Act 2016

HUMBLY SHEWETH, that:

1. There is annexed to this application a copy of the labour market enforcement order which was made [*or* varied] by the sheriff at (*place*) [*or* by the High Court sitting at (*place*)] on (*date*).

2. The applicant seeks to vary the labour market enforcement order as follows [*here state variation sought*] [*or* to discharge the labour market enforcement order] for the following reasons:- (*here state reasons*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP

(1) To appoint intimation of this application to be made to (*specify persons*);

(2) To appoint parties to be heard thereon;

(3) Thereafter, on being duly satisfied, to make an order varying the labour market enforcement order by (*here state the terms of the variation sought*) [*or* discharging the labour market enforcement order] or to do further and otherwise as to the court shall seem proper.

ACCORDING TO JUSTICE, etc.

(signed)

Applicant

[*or Solicitor for Applicant*]

(*Address and telephone number of solicitor*)

(Place and date)

Form 69.3

Rule 69.3(1)

Form of note of appeal against the making of, or refusal to make, an order under section 23 of the Immigration Act 2016

IN THE SHERIFF COURT AT (*place*)

NOTE OF APPEAL

Under section 24(1)(b) of the Immigration Act 2016 against the making of, or refusal to make, an order under section 23 of the 2016 Act

by

[A.B.] (*address*)

APPELLANT

1. The appellant appeals to the Sheriff Appeal Court against the making of [*or* refusal to make] on [*date*] an order under section 23 of the Immigration Act 2016.

2. The ground[*s*] of appeal is [*or* are]:—

(*set out ground*(*s*)).

ACCORDING TO JUSTICE, etc.

(signed)

Appellant

[*or Solicitor for Appellant*]

(*Address and telephone number of solicitor)*

(Place and date)

EXPLANATORY NOTE

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

This Act of Adjournal inserts a new Chapter 69 (Labour Market Enforcement Orders) into the Criminal Procedure Rules 1996 to make provision for the variation and discharge of labour market enforcement orders imposed by the criminal courts, and appeals from decisions about variation and discharge to the Sheriff Appeal Court, made under the Immigration Act 2016 (c.19).

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