

2003 No. 120

**HIGH COURT OF JUSTICIARY
SHERIFF COURT**

**Act of Adjournal (Criminal Procedure Rules Amendment)
(Proceeds of Crime Act 2002) 2003**

Made

20th February 2003

Coming into force in accordance with paragraph 1

The Lord Justice-General, the Lord Justice-Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred upon them by section 305 of the Criminal Procedure (Scotland) Act 1995^(a) and subsections (2) and (3)(a) of sections 386, 396, 403 and 408 of the Proceeds of Crime Act 2002^(b) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment) (Proceeds of Crime Act 2002) 2003 and shall come into force—

- (a) for proceedings under Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (Investigations: Scotland), on 24th February 2003; and
- (b) for proceedings under Part 3 of that Act (Confiscation: Scotland), on 24th March 2003.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure Rules

2.—(1) The Criminal Procedure Rules 1996^(c) shall be amended in accordance with the following sub-paragraph.

(2) For Chapter 37 (causes under the Proceeds of Crime (Scotland) Act 1995), there shall be inserted—

“Chapter 37AA

PROCEEDINGS UNDER THE PROCEEDS OF CRIME ACT 2002

Interpretation of this Chapter

37AA.1 In this Chapter “the Act of 2002” means the Proceeds of Crime Act 2002.

(a) 1995 c.46.

(b) 2002 c.29.

(c) S.I. 1996/513, to which there are amendments not relevant to this Act of Adjournal.

CONFISCATION

Confiscation orders

37AA.2—(1) A request by the prosecutor under subsection (3) of section 92 of the Act of 2002 (making of order) may be made orally at the bar.

(2) A person who wishes to make representations to the court under subsection (8) of section 92 of the Act of 2002 shall do so—

- (a) in writing to the Clerk of Court, unless the court otherwise directs; and
- (b) by such date as the court directs.

(3) An application under—

- (a) subsection (2) of section 111 (conviction or other disposal of accused); or
 - (b) subsection (2) of section 112 (accused neither convicted nor acquitted),
- of the Act of 2002 may be made—

- (i) orally at the bar; or
- (ii) by minute.

Disposal of family home

37AA.3 An application by an administrator under subsection (2) of section 98 of the Act of 2002 (disposal of family home) to dispose of a right or interest in a person's family home shall be—

- (a) by petition; and
- (b) served on—
 - (i) the person in respect of whose right or interest the application is made; and
 - (ii) any other person likely to be affected by the application.

Application for postponement

37AA.4 An application by the accused or the prosecutor for postponement or extension under subsection (7) of section 99 of the Act of 2002 (postponement)—

- (a) may be made either—
 - (i) orally at the bar; or
 - (ii) in writing by minute; and
- (b) may be determined by the court without a hearing.

Statement of information

37AA.5—(1) This rule applies where the court ordains the prosecutor to give a statement of information or further statement of information, as the case may be, under any of the following provisions of the Act of 2002:—

- (a) subsection (1) of section 101 (statement of information);
- (b) subsection (5) of that section; or
- (c) paragraph (b) of subsection (2) of section 110 (information).

(2) The prosecutor shall give a statement referred to in the foregoing paragraph within such period as the court determines.

(3) The prosecutor shall serve a copy of a statement given in terms of paragraph (1) on the accused.

(4) An accused who gives an indication under subsection (1) of section 102 of the Act of 2002 (accused's response to statement of information) shall do so in writing to the Clerk of Court.

Reconsideration of case, benefit or available amount

37AA.6—(1) This rule applies to an application by the prosecutor under any of the following provisions of the Act of 2002:—

- (a) to consider new evidence under—
 - (i) paragraph (c) of subsection (1) of section 104 (no order made: reconsideration of case);
 - (ii) paragraph (b) of subsection (3) of section 105 (no order made: reconsideration of benefit); or
 - (iii) paragraph (d) of subsection (1) of section 106 (order made: reconsideration of benefit); and
 - (b) to make a new calculation of the available amount under paragraph (c) of subsection (1) of section 107 (order made: reconsideration of available amount).
- (2) An application mentioned in the foregoing paragraph—
- (a) shall be made by minute; and
 - (b) shall be served by the prosecutor on the accused and any other person likely to be affected by it.

Variation or discharge of confiscation order

37AA.7—(1) Any of the following applications made under any of the following provisions of the Act of 2002 shall be by minute:—

- (a) by the accused or the prosecutor under paragraph (b) of subsection (1) of section 108 (inadequacy of available amount: variation of order);
 - (b) by the prosecutor under paragraph (b) of subsection (1) of section 109 (inadequacy of available amount: discharge of order);
 - (c) by the accused under paragraph (e) of subsection (1) of section 113 (variation of order); or
 - (d) by the accused under—
 - (i) paragraph (c) of subsection (1); or
 - (ii) paragraph (d) of subsection (3), of section 114 (discharge of order).
- (2) A party who makes an application mentioned in the foregoing paragraph shall serve a copy on every person likely to be affected by it.

Time for payment

37AA.8—(1) An application by the accused under subsection (4) of section 116 of the Act of 2002 (time for payment) may be made—

- (a) by minute; or
 - (b) orally at the bar.
- (2) Where an accused makes an application by minute, he shall serve a copy on the prosecutor.

Hearings

37AA.9 Any request or application mentioned in the following rules shall be determined at a hearing, unless the court otherwise directs:

- (a) 37.2 (confiscation orders);
- (b) 37.3 (disposal of family home);
- (c) 37.6 (reconsideration of case, benefit or available amount);
- (d) 37.7 (variation or discharge of confiscation order),
- (e) 37.8 (time for payment);
- (f) 37.10 (application, discharge and variation).

INVESTIGATIONS

Application, discharge and variation

37AA.10—(1) The following applications shall be by petition:—

- (a) by the appropriate person to the Sheriff under any of the following provisions of the Act of 2002—
 - (i) subsection (1) of section 380 (production orders);
 - (ii) subsection (1) of section 387 (search warrants);
 - (iii) subsection (1) of section 397 (customer information orders);
 - (iv) subsection (1) of section 404 (account monitoring orders), in relation to a confiscation investigation or money laundering investigation; and
- (b) by the Lord Advocate, to the High Court of Justiciary under subsection (1) of section 391 of that Act (disclosure orders) for a disclosure order in relation to a confiscation investigation.

(2) An application under subsection (2) of section 382 of the Act of 2002 (order to grant entry)—

- (a) may be included in a petition in respect of an application under paragraph (1)(a)(i) of this rule; or
- (b) if made after the lodging of the petition, shall be by minute, and paragraph (3) of this rule shall apply to such an application.

(3) An application under any of the following provisions of the Act of 2002 shall be by minute and shall be intimated to any person affected by it:—

- (a) subsection (4) of section 386 (production orders: supplementary) to discharge or vary a production order or an order to grant entry;
- (b) subsection (4) of section 396 (disclosure orders: supplementary) to discharge or vary a disclosure order;
- (c) subsection (4) of section 403 (customer information orders: supplementary) to discharge or vary a customer information order;
- (d) subsection (4) of section 408 (account monitoring orders: supplementary) to discharge or vary an account monitoring order.”

Transitional provision

3. The rules inserted by paragraph 2 of this Act of Adjournal shall not apply to proceedings under the Proceeds of Crime (Scotland) Act 1995(a), whether instigated before or after the dates specified in paragraph 1.

W DOUGLAS CULLEN
Lord Justice-General
I.P.D.

Edinburgh
20th February 2003

EXPLANATORY NOTE

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

This Act of Adjournal inserts new rules into the Criminal Procedure Rules 1996 (S.I. 1996/513) to make provision for proceedings in the High Court of Justiciary and the Sheriff Court under various powers in the Proceeds of Crime Act 2002 (“the Act of 2002”).

In particular, the new rules make provision in relation to proceedings under Part 3 of the Act of 2002 (Confiscation: Scotland) and Chapter 3 of Part 8 (Investigations: Scotland). The Act of Adjournal has effect for proceedings under Chapter 3 of Part 8 of the Act of 2002 from 24th February and for proceedings under Part 3, from 24th March 2003.

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HIGH COURT OF JUSTICIARY

SHERIFF COURT

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