

**2009 No. 244**

**HIGH COURT OF JUSTICIARY**

**SHERIFF COURT**

**Act of Adjournal (Criminal Procedure Rules Amendment No. 3)  
(Confiscation Proceedings) 2009**

*Made* - - - - *10th June 2009*

*Coming into force* - - *5th August 2009*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(a), and of all other powers enabling them in that behalf do hereby enact and declare:

**Citation, commencement, interpretation and transitional provisions**

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Confiscation Proceedings) 2009 and comes into force on 5th August 2009.

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

(3) In this Act of Adjournal, “the Rules” means the Criminal Procedure Rules 1996(b).

(4) Chapter 37AA of the Rules as it applied immediately before 5th August 2009 continues to have effect where the High Court is proceeding under section 92 in a case where the statement of information is given by the prosecutor under section 101(1) or 110(2)(b) of the Proceeds of Crime Act 2002(c) before that date.

**Amendment of Chapter 37AA: Proceedings under the Proceeds of Crime Act 2002**

2.—(1) After paragraph (2) in rule 37AA.2 of the Rules (confiscation orders)(d) insert—

“(2A) In the High Court, where written representations are made under paragraph (2) after the second procedural hearing fixed under rule 37AA.5B(4)(i) has taken place—

(a) a hearing shall be fixed for a date no later than 4 weeks after the date of lodging of the written representations; and

(b) the Clerk of Justiciary shall intimate the date of that hearing and a copy of the written representations to the parties.”.

(2) In rule 37AA.5 of the Rules (statement of information)(e)—

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(a) 1995 c.46.

(b) The Criminal Procedure Rules 1996 are contained in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules 1996) (S.I. 1996/513, last amended by S.S.I. 2009/243).

(c) 2002 c.29.

(d) Rule 37AA.2 was inserted by S.S.I. 2003/120.

(e) Rule 37AA.5 was inserted by S.S.I. 2003/120.

- (a) for paragraph (3) substitute—
    - “(3) At the same time as giving a statement under paragraph (2) the prosecutor shall—
      - (a) serve a copy on the accused; and
      - (b) make arrangements, where applicable, for the accused to view, and copy if required, any documents that the prosecutor intends to rely upon.”;
  - (b) in paragraph (4) after “(accused’s response to statement of information)” insert “(called the “response”)
  - (c) after paragraph (4) insert—
    - “(5) At the same time as giving a response under paragraph (4), the accused shall serve a copy on the prosecutor.”.
- (3) After rule 37AA.5 of the Rules insert—

**“Initial period of adjustment**

**37AA.5A.** In the High Court, parties may adjust their respective statements during the 6 week period following the expiry of the period ordered by the court under section 102(1) of the Act of 2002 for the lodging of the response.

**First procedural hearing**

**37AA.5B.**—(1) Where the High Court is proceeding under section 92 of the Act of 2002, a procedural hearing called “the first procedural hearing” shall take place on the first Monday after the period for adjustment mentioned in rule 37AA.5A has expired.

(2) At the first procedural hearing the High Court shall ascertain the state of readiness of the parties to conduct a hearing to dispose of the matter.

(3) The High Court may—

- (a) set a date for the lodging of any forensic report by the accused;
- (b) make an order for exchange of documents between parties;
- (c) make an order for the production of documents;
- (d) provide for further adjustment of the respective statements of the parties;
- (e) make any further order it considers necessary.

(4) The High Court shall either—

- (a) order that there shall be a further procedural hearing (called “the second procedural hearing”) and fix a date for that hearing; or
- (b) order a hearing to dispose of the matter (called “the determination hearing”) and the Clerk of Justiciary shall fix a date for that hearing.

(5) Where the High Court orders a determination hearing, it shall ascertain from the parties their estimates of the likely length of that hearing.

**Second procedural hearing**

**37AA.5C.**—(1) At the second procedural hearing, the High Court shall—

- (a) ascertain the state of readiness of the parties to conduct a determination hearing;
- (b) make such further orders as the High Court thinks fit for the purpose of reaching a position where the parties are so ready; and
- (c) either—
  - (i) continue the hearing for a period of not longer than 4 weeks; or
  - (ii) order a determination hearing and the Clerk of Justiciary shall fix a date for that hearing.

(2) Where the High Court orders a determination hearing, it shall ascertain from the parties their estimates of the likely length of that hearing.

### **Preparation for determination hearing**

**37AA.5D.**—(1) Where the High Court fixes a determination hearing it shall—

- (a) direct the Clerk of Justiciary to issue a timetable specifying—
  - (i) that a pre-determination hearing meeting is to take place at least 8 weeks before the determination hearing;
  - (ii) the date for lodging of the minute in Form 37AA.5D-A of the above meeting, to be at least 5 weeks before the determination hearing;
  - (iii) the last date for lodging productions, to be at least 4 weeks before the determination hearing;
  - (iv) the last date for lodging witness lists, to be at least 4 weeks before the determination hearing.
- (b) make such further orders regarding preparation as it sees fit.

(2) The timetable issued under paragraph (1)(a) shall be in Form 37AA.5D-B and shall be treated for all purposes as an interlocutor of the High Court signed by a judge of that court.

(3) A party shall not be permitted to refer to any document that has not been lodged by the date required under paragraph (1)(a)(iii) except by leave of the High Court on cause shown.

(4) At the same time as lodging productions and witness lists, copies shall be intimated to the other parties.

### **Hearing to check preparation**

**37AA.5E.**—(1) A hearing shall take place on the last Monday which is at least 4 weeks before the determination hearing.

(2) At the hearing the High Court shall—

- (a) consider the minute in Form 37AA.5D-A;
- (b) ascertain the state of readiness of the parties to conduct the determination hearing; and
- (c) make such further orders as the High Court thinks fit for the purpose of ensuring that the parties are so ready.

### **General provision on adjustment**

**37AA.5F.**—(1) In the High Court, any adjustments to the statement of information or response must be intimated as soon as practicable to the other party.

(2) The statement of information and response, as adjusted, shall be lodged by the respective parties on the day after the adjustment period ends and at the same time a copy fully adjusted to date shall be intimated to the other party.

### **Public holidays**

**37AA.5G.** Where any hearing on a Monday set by virtue of rule 37AA.5B or 37AA.5E would otherwise fall on a public holiday, it shall take place on the next Monday following which is not a public holiday.”.

(4) After Form 37.5(a) in the appendix to the Rules insert the forms set out in the Schedule to this Act of Adjournal.

*A.C.HAMILTON*  
Lord Justice General  
I.P.D.

Edinburgh  
10th June 2009

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(a) Form 37.5 was inserted by S.I. 1997/2635.

SCHEDULE

Paragraph 2(4)

Form 37AA.5D-A

**Rule 37AA.5D(1)(a)(ii)**

Form of minute of pre-determination hearing meeting

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD  
JUSTICE CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

JOINT MINUTE

by

HER MAJESTY'S ADVOCATE

AND

[[A.B.] (address) [or Prisoner in the Prison of (place)]]

HUMBLY SHEWETH:

1. That a pre-hearing meeting was held in this case at *(place)* on *(date)*.
2. That the following persons were present:  
*(state names of parties present at meeting)*
3. That the following persons were available to provide instructions by telephone:  
*(state names and designations of persons available to provide instructions by telephone)*
4. That a hearing on the statement and response is [or is no longer] required.
5. That the following issues remain in dispute:  
*(here refer to the statement and response where appropriate)*
6. That the following matters are agreed and will be contained in a joint minute to be lodged by the parties:  
*(here refer to the statement and response where appropriate)*
7. *(here state whether the parties have identified the witnesses and productions that will be required and provide details)*
8. *(here state whether agreement has been reached as to which party is to lead at proof and provide details)*
9. That it is estimated that the hearing will last (specify number of days).

NB If the estimate is more or less than the number of days allocated this should be brought to the attention of Justiciary Office immediately.

IN RESPECT WHEREOF

*(signed)*

(Prosecutor)

[and Solicitor for [A.B.]]

*(address email and telephone number)*

Form 37AA.5D-B

Rule 37AA.5D(2)

Form of Timetable Order  
in  
HER MAJESTY'S ADVOCATE  
AND

[[A.B.] (*address*) [or Prisoner in the Prison of (*place*)]]

THE HIGH COURT OF JUSTICIARY sitting at [*place*]

DATE:

This order has effect as if it were an order of the court signed by the Lord Commissioner of Justiciary.

1. The pre-determination hearing meeting is to take place on (*date*).
2. The minute of the pre-determination hearing meeting is to be lodged by (*date*).
3. Not later than (*date*) parties shall lodge list of witnesses and productions.

(*Signed*)  
Clerk of Justiciary

## EXPLANATORY NOTE

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

This Act of Adjournal amends Chapter 37AA of the Criminal Procedure Rules 1996 to expand on the procedure set out for confiscation proceedings under the Proceeds of Crime Act 2002 (c. 29).

Paragraph 2(1) amends rule 37AA.2 to provide for a hearing within 4 weeks where written representations are lodged under section 92(8) of the Proceeds of Crime Act 2002.

Paragraph 2(2) amends rule 37AA.5 to require the prosecutor and the accused to serve on each other a copy of the statement of information and response given to the Court and requires arrangements to be made for the accused to view and, if required, copy documents the prosecutor intends to rely upon.

Paragraph 2(3) inserts new rules 37AA.5A to 37AA.5G setting out a new procedure for confiscation proceedings where the High Court is proceeding under section 92 and a statement of information is given by the prosecutor under section 101(1) or 110(2)(b) of the Proceeds of Crime Act 2002. The procedure envisages a maximum of two procedural hearings, a hearing to check preparation and a final determination hearing.

Rule 37AA.5A provides that parties may adjust in the 6 week period following the lodging of the accused's response.

Under rule 37AA.5B the High Court shall, at the first procedural hearing (which is to take place at the end of the adjustment period), ascertain the readiness of parties, may make certain procedural orders and may either fix a second procedural hearing or proceed to fix a determination hearing.

Rule 37AA.5C provides that, where a second procedural hearing is fixed, the High Court will again ascertain the state of readiness of the parties and may make further procedural orders. At that stage, the High Court may continue the hearing for a period of up to 4 weeks or fix a determination hearing.

Rule 37AA.5D provides that, where the High Court fixes a determination hearing, a timetable shall be issued by the Clerk of Justiciary providing for a pre-determination hearing meeting to take place, a minute of the meeting to be lodged and the last date for lodging productions and witness lists. The High Court may also make any further orders it considers appropriate. A form of minute of the pre-determination hearing meeting and a form of timetable order is provided.

Rule 37AA.5E makes provision for a hearing to check preparation at which the minute of the pre-determination hearing meeting will be considered by the High Court. The High Court will also ascertain the state of readiness of the parties and may make any further orders it considers appropriate.

Rule 37AA.5F makes provision for adjustment and rule 37AA.5G makes provision for the date of any hearing to take into account public holidays that fall on a Monday, both rules applying to proceedings before the High Court only.

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