

**2009 No. 345**

**HIGH COURT OF JUSTICIARY**

**SHERIFF COURT**

**JUSTICE OF THE PEACE COURT**

**Act of Adjournal (Criminal Procedure Rules Amendment No. 5)  
(Miscellaneous) 2009**

*Made* - - - - - *6th October 2009*

*Coming into force* - - - - - *27th October 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 21(3) of the Crime (International Co-operation) Act 2003(a), section 223A(1) and section 305 of the Criminal Procedure (Scotland) Act 1995(b), and of all other powers enabling them in that behalf do hereby enact and declare:

**Citation and commencement, etc.**

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 5) (Miscellaneous) 2009 and comes into force on 27th October 2009.

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

**Crime (International Co-operation) Act 2003: overseas freezing orders**

2.—(1) After rule 36.9 of the Criminal Procedure Rules 1996 (proceedings before a nominated court)(c) insert—

**“Time period for consideration of overseas freezing order**

**36.9A.**—(1) This rule applies where the Lord Advocate has nominated a sheriff to give effect to an overseas freezing order under section 21(2) of the Act of 2003 (considering the overseas freezing order).

(2) Subject to paragraph (3), the sheriff shall consider the order no later than the day after receipt of the order.

(3) The sheriff may, exceptionally, consider the order later than the period prescribed in paragraph (2) but shall do so no later than 5 days after receipt of the order.

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(a) 2003 c.32.

(b) 1995 c.46. Section 223A was inserted by the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (S.S.I. 2009/342).

(c) 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. 2009/322).

(4) Where the day mentioned in paragraph (2) or the last day of the period mentioned in paragraph (3) falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.

(5) In calculating the period mentioned in paragraph (3), any Saturday, Sunday or court holiday that falls within that period shall be disregarded.

#### **Form of warrant for seizure and retention of evidence**

**36.9B.** A warrant under section 22(1) of the Act of 2003 (giving effect to the overseas freezing order) shall be in Form 36.9B.

#### **Application for release of evidence**

**36.9C.** An application under section 25(1) of the Act of 2003 (release of evidence held under overseas freezing order) shall be in Form 36.9C.”.

(2) After Form 36.8D in the appendix to the Criminal Procedure Rules 1996(a) insert Forms 36.9B and 36.9C set out in Part 1 of the Schedule to this Act of Adjournal.

#### **Confiscation proceedings**

**3.** In Form 37AA.5D-B in the appendix to the Criminal Procedure Rules 1996 (form of timetable order)(b)—

(a) in paragraph 1 for “is to take place on (*date*)” substitute “is to take place no later than (*date*)”;

(b) after paragraph 3 insert—

“**4.** The hearing to check preparation before the determination hearing will take place on (*date*).

**5.** The determination hearing will take place on (*date*).”.

#### **Mutual recognition of criminal financial penalties**

**4.—(1)** After Chapter 53 of the Criminal Procedure Rules 1996 (review of fixed penalty or compensation offers by procurator fiscal)(c) insert—

## **“CHAPTER 54**

### **MUTUAL RECOGNITION OF CRIMINAL FINANCIAL PENALTIES**

#### **Form of certificate**

**54.1.** A certificate issued under section 223A(1) of the Act of 1995 (recognition of financial penalties: requests to other member States) shall be in Form 54.1.”.

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(a) Form 36.8-D was inserted by S.S.I. 2004/195.  
(b) Form 37AA.5D-B was inserted by S.S.I. 2009/244.  
(c) Chapter 53 was inserted by S.S.I. 2008/61.

(2) After Form 53.1 in the appendix to the Criminal Procedure Rules 1996<sup>(a)</sup> insert Form 54.1 set out in Part 2 of the Schedule to this Act of Adjournal.

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

Edinburgh  
6th October 2009

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<sup>(a)</sup> Form 53.1 was inserted by S.S.I. 2008/61.

## SCHEDULE

Paragraphs 2(2) and 4(2)

### PART 1

#### Form 36.9B

##### Rule 36.9B

##### **Form of warrant under section 22(1) of the Crime (International Co-operation) Act 2003**

*(Place and date)* The sheriff at *(place)*, having heard [*or* having considered the written representations of] the procurator fiscal [*or* the procurator fiscal having declined an opportunity to be heard] grants a warrant under section 22(1) of the Crime (International Co-operation) Act 2003 in relation to the attached overseas freezing order dated *(date)* issued by the court of *(set out details of court and place)*.

By virtue of section 22(1) of that Act, this warrant authorises a constable from *(specify police force)* to—

- (a) to enter the premises to which the overseas freezing order relates and search the premises to the extent reasonably required for the purpose of discovering any evidence to which the order relates; and
- (b) to seize and retain any evidence for which he is authorised to search.

*(Signed)*

Sheriff

*(Court name, address, email and telephone number)*

**Note to constable: contact the clerk of court on seizing and retention of any evidence.**

Form 36.9C

Rule 36.9C

**Form of application for release of evidence under section 25(1) of the Crime  
(International Co-operation) Act 2003**

UNTO THE HONOURABLE SHERIFF OF *(name of sheriffdom)* AT *(place)*

under section 25(1) of the Crime (International Co-operation) Act 2003

APPLICATION

by

[A.B.] *(address)*

[or THE PROCURATOR FISCAL *(place)*]

APPLICANT

HUMBLY SHEWETH:

1. That on *(date)* the sheriff of *(name of sheriffdom)* at *(place)* issued a warrant under section 22(1) of the Crime (International Co-operation) Act 2003.

[2. That [A.B.] is affected by the order in the following way: *(narrate reasons)*]

3. The applicant seeks release of the following evidence retained under section 24 of the said Act *(describe evidence referred to)* on the following grounds: *(here narrate grounds with reference to the conditions mentioned in section 21(6) or (7) as appropriate)*.

MAY IT THEREFORE PLEASE YOUR LORDSHIP—

- (a) *(here state the terms of the order sought)*;
- (b) where appropriate to fix a diet for the hearing of this application; and
- (c) to do otherwise as to your Lordship shall seem proper.

IN RESPECT WHEREOF

*(signed)*

[A.B.] [or solicitor for A.B.]

*(address)*

*(place and date)*

[or PROCURATOR FISCAL]

PART 2

Form 54.1

Rule 54.1

Form of certificate issued under section 223A(1) of the Criminal Procedure (Scotland) Act 1995

CERTIFICATE

This is the certificate referred to in Article 4 of and contained in the annex to Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties.

(a)

- Issuing State .....
- Executing State .....

(b) The authority which issued the decision imposing the financial penalty:

Official name: .....

Address: .....

File reference (...) .....

Tel. No: (country code) (area/city code) .....

Fax No: (country code) (area/city code) .....

E-mail (when available) .....

Languages in which it is possible to communicate with the issuing authority .....

Contact details for person(s) to contact to obtain additional information for the purpose of the enforcement of the decision or, where applicable, for the purpose of the transfer to the issuing State of monies obtained from the enforcement (name, title/grade, tel. no., fax no., and, when available, E-mail) .....

(c) The authority competent for the enforcement of the decision imposing the financial penalty in the issuing State (if the authority is different from the authority under point (b)):

Official name: .....

.....

Address: .....

.....

Tel. No: (country code) (area/city code) .....

Fax No: (country code) (area/city code) .....

E-mail (when available) .....

Languages in which it is possible to communicate with the authority competent for the enforcement .....

Contact details for person(s) to contact to obtain additional information for the purpose of the enforcement of the decision or, where applicable, for the purpose of the transfer to the issuing State of monies obtained from the enforcement (name, title/grade, tel. no., fax no., and, when available, E-mail): .....

.....

.....

(d) Where a central authority has been made responsible for the administrative transmission of decisions imposing financial penalties in the issuing State:

Name of the central authority: .....

.....

Contact person, if applicable (title/grade and name): .....

.....

Address: .....

.....

File reference .....

Tel. No: (country code) (area/city code) .....

Fax No: (country code) (area/city code) .....

E-mail (when available) .....

(e) The authority or authorities which may be contacted (in the case where point (c) and/or (d) has been filled):

Authority mentioned under point (b)

Can be contacted for questions concerning: .....

Authority mentioned under point (c)

Can be contacted for questions concerning: .....

Authority mentioned under point (d)

Can be contacted for questions concerning: .....

(f) Information regarding the natural or legal person on which the financial penalty has been imposed:

1. In case of a natural person

Name: .....

Forename(s): .....

Maiden name, where applicable: .....

Aliases, where applicable: .....

Sex: .....

Nationality: .....

Identity number of social security number (when available): .....

Date of birth: .....

Place of birth: .....

Last known address: .....

.....

Language(s) which the person understands (if known): .....

.....

- (a) If the decision is transmitted to the executing State because the person against whom the decision has been passed is normally resident, add the following information:

Normal residence in the executing State: .....  
.....  
.....

- (b) If the decision is transmitted to the executing State because the person against whom the decision has been passed has property in the executing State, add the following information:

Description of the property of the person: .....  
Location of the property of the person: .....

- (c) If the decision is transmitted to the executing State because the person against whom the decision has been passed has income in the executing State, add the following information:

Description of the source(s) of income of the person: .....  
Location of the source(s) of income of the person: .....

2. In case of legal person:

Name: .....  
Form of legal person: .....  
Registration number (if available): .....  
Registered seat (if available): .....  
Address of the legal person: .....

- (a) If the decision is transmitted to the executing State because the legal person against whom the decision has been passed has property in the executing State, add the following information:

Description of the property of the legal person: .....  
Location of the property of the legal person: .....

- (b) If the decision is transmitted to the executing State because the legal person against whom the decision has been passed has income in the executing State, add the following information:

Description of the source(s) of income of the legal person: .....  
Location of the source(s) of income of the legal person: .....  
.....

(g) The decision imposing a financial penalty:

1. The nature of the decision imposing the financial penalty (tick the relevant box):

- (i) Decision of a court of issuing State in respect of criminal offence under the law of the issuing State.
- (ii) Decision of an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.
- (iii) Decision of authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.
- (iv) Decision of a court having jurisdiction in particular in criminal matters regarding a decision as referred to in point iii.

The decision was made on (date) .....

The decision became final on (date) .....

Reference number of the decision (if available): .....

The financial penalty constitutes an obligation to pay (tick the relevant box(es) and indicate the amount(s) with indication of currency):

- (i) A sum of money on conviction of an offence imposed in a decision.  
Amount: .....
- (ii) Compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in its exercise of its criminal jurisdiction.  
Amount: .....
- (iii) A sum of money in respect of the costs of court or administrative proceedings leading to the decision.  
Amount: .....
- (iv) A sum of money to a public fund or a victim support organisation, imposed in the same decision.  
Amount: .....

The total amount of the financial penalty with indication of currency:  
.....

2. A summary of facts and a description of the circumstances in which the offence(s) has(have) been committed, including time and place: .....

.....  
.....  
.....  
.....  
.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the decision was made: .....

.....  
.....  
.....

3. To the extent that the offence(s) identified under point 2 above constitute(s) one or more of the following offences, confirm that by ticking the relevant box(es):

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting currency, including of the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;

- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage;
- conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods;
- smuggling of goods;
- infringements of intellectual property rights;
- threats and acts of violence against persons, including violence during sport events;
- criminal damage;
- theft;

offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

If this box is ticked, indicate the exact provisions of the instrument adopted on the basis of the EC Treaty or the EU Treaty that the offence relates to:

.....

.....

4 To the extent that the offence(s) identified under point 2 above are not covered by point 3, give a full description of the offence(s) concerned:

.....

.....

.....

(h) Status of the decision imposing the financial penalty

1. Confirm that (tick the boxes):

(a) the decision is a final decision

(b) to the knowledge of the authority issuing the Certificate, a decision against the same person in respect of the same acts has not been delivered in the executing State and that no such decision delivered in any State other than the issuing State or the executing State has been executed.

2 Indicate if the case been subject to a written procedure:

(a) No, it has not.

(b) Yes, it has. It is confirmed that the person concerned was, in accordance with the law of the issuing State, informed personally or via a representative competent according to national law of his right to contest the case and of time limits of such a legal remedy.

3 Indicate if the person concerned appeared personally in the proceedings:

(a) Yes, he or she did.

(b) No, he or she did not, it is confirmed:

that the person was informed personally, or via a representative competent according to national law, of the proceedings in accordance with the law of the issuing State,

or

that the person has indicated that her or she does not contest the case

4. Partial payment of the penalty

If any part of the penalty has been paid to the issuing State, or, to the knowledge of the authority issuing the Certificate, to any other State, indicate the amount which has been paid:

.....

(i) Alternative sanctions, including custodial sanctions

1. State whether the issuing State allows for the application by the executing State of alternative sanctions in case it is not possible to enforce the decision imposing a penalty, either totally or in part:

yes

no

2. If yes, state which sanctions may be applied (nature of the sanctions, maximum level or the sanctions):

Custody. Maximum period: .....

Community service (or equivalent). Maximum period: .....

Other sanctions. Description: .....

.....

(j) Other circumstances relevant to the case (Optional information): .....

.....

.....

(k) The text of the decision imposing the financial penalty is attached to the certificate.

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate: .....

.....

Name:

.....

Post held (title/grade): .....

Date: .....

Official stamp (if available)

## EXPLANATORY NOTE

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

This Act of Adjournal makes various amendments to the Criminal Procedure Rules 1996.

Paragraph 2 inserts new rules 36.9A to 36.9C into Chapter 36 (Crime (International Co-operation) Act 2003) making provision for overseas freezing orders. Rule 36.9A prescribes the time limit within which such orders must be considered by the sheriff. Rule 36.9B provides a form of warrant for seizure and retention of evidence which is the subject of an overseas freezing order. Rule 36.9C provides a form of application for release of evidence held under an overseas freezing order.

Paragraph 3 makes minor amendments to Form 37AA.5D-B (form of timetable order in confiscation proceedings).

Paragraph 4 provides a form of certificate issued under section 223A of the Criminal Procedure (Scotland) Act 1995 (recognition of financial penalties: requests to other member States).

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