
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 103

**Act of Adjournal (Criminal Procedure Rules
1996 Amendment) (Miscellaneous) 2016**

Amendment of Chapter 37AA of the Criminal Procedure Rules 1996

3.—(1) Chapter 37AA (proceedings under the Proceeds of Crime Act 2002) of the Criminal Procedure Rules 1996⁽¹⁾ is amended in accordance with this paragraph.

(2) For rule 37AA.1 (interpretation of this Chapter)⁽²⁾, substitute—

“Interpretation of this Chapter

37AA.1. In this Chapter—

“the Act of 2002” means the Proceeds of Crime Act 2002⁽³⁾;

“the 2014 Regulations” means the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014⁽⁴⁾;

“compliance order” has the meaning given by section 97B(2) of the Act of 2002⁽⁵⁾.”.

(3) After rule 37AA.2 (confiscation orders)⁽⁶⁾, insert—

“Confiscation orders: certification

37AA.2A.—(1) A request by the prosecutor for a certificate under paragraph 7(1) of Schedule 1 to the 2014 Regulations must—

- (a) be made by minute prior to the making of a domestic confiscation order;
- (b) set out why the prosecutor considers that the property to which the application relates—
 - (i) was used or was intended to be used for the purposes of an offence; or
 - (ii) is the proceeds of an offence;
- (c) contain the specified information.

(2) Where the court issues a certificate, it must—

- (a) do so in the form annexed to Council Framework Decision 2006/783/JHA of 6th October 2006 on the application of the principle of mutual recognition to confiscation orders⁽⁷⁾;
- (b) provide in the domestic confiscation order for notice to be given in accordance with paragraph 7(4) of Schedule 1 to the 2014 Regulations.

(1) Chapter 37AA was inserted by [S.S.I. 2003/120](#) and last amended by [S.S.I. 2009/244](#).

(2) Rule 37AA.1 was inserted by [S.S.I. 2003/120](#).

(3) [2002 c. 29](#). The Act was relevantly amended by the Serious Crime Act 2015 ([c. 9](#)), Schedule 4, paragraph 35.

(4) [S.I. 2014/3141](#).

(5) [2002 c. 29](#). Section 97B(2) was inserted by the Serious Crime Act 2015 ([c.9](#)), section 16.

(6) Rule 37AA.2 was inserted by [S.S.I. 2003/120](#) and amended by [S.S.I. 2009/244](#).

(7) OJ No. L 328, 24.11.2006, p. 59.

(3) In this rule, “domestic confiscation order” and “specified information” have the meanings given by paragraph 1 of Schedule 1 to the 2014 Regulations.”.

(4) After rule 37AA.2A (confiscation orders: certification) as so inserted, insert—

“Compliance orders

37AA.2B.—(1) An application by the prosecutor for a compliance order is to be made in Form 37AA.2B–A.

- (2) When an application is lodged, the court must—
- (a) order intimation of the application to the accused;
 - (b) appoint a hearing on the application.
- (3) A compliance order is to be in Form 37AA.2B–B.

Compliance orders: discharge and variation

37AA.2C.—(1) An application to discharge or vary a compliance order is to be made in Form 37AA.2C–A.

- (2) When an application is lodged, the court must—
- (a) order intimation of the application to—
 - (i) the prosecutor, where the application is made by the accused;
 - (ii) the accused, where the application is made by the prosecutor;
 - (b) appoint a hearing on the application.
- (3) Where the court discharges or varies a compliance order, it is to do so in Form 37AA.2C–B.
- (4) An appeal under section 97D of the Act of 2002 is to be made by lodging a note of appeal in Form 37AA.2C–C.
- (5) When an appeal is lodged, the court must—
- (a) order intimation of the application to—
 - (i) the prosecutor, where the accused is the appellant;
 - (ii) the accused, where the prosecutor is the appellant;
 - (b) appoint a hearing on the appeal.

Compliance orders: breach

37AA.2D.—(1) Where the prosecutor considers that an accused who is subject to a compliance order has failed to comply with it, the prosecutor must notify the court.

- (2) That notification is to be given in Form 37AA.2D–A.
- (3) A citation under section 97C(2)(b) of the Act of 2002 is to be in Form 37AA.2D–B.
- (4) Where the court revokes or varies a compliance order under section 97C(6) or (7), it is to do so in Form 37AA.2D–C.”.
- (5) In rule 37AA.9 (hearings)(8)—
- (a) after paragraph (a) insert—
 - “(aa) 37AA.2A (confiscation orders: certification);”;

- (b) after paragraph (aa) as so inserted, insert—
- “(ab) 37AA.2B (compliance orders);
 - (ac) 37AA.2C(1) (compliance orders: discharge and variation applications);
 - (ad) 37AA.2C(4) (compliance orders: discharge and variation appeals);”.