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STATUTORY INSTRUMENTS

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**2011 No. 1709**

The Criminal Procedure Rules 2011

PART 58

PROCEEDS OF CRIME ACT 2002: RULES APPLICABLE  
ONLY TO CONFISCATION PROCEEDINGS

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**Statements in connection with confiscation orders**

**58.1.**—(1) When the prosecutor is required, under section 16 of the Proceeds of Crime Act 2002(1), to give a statement to the Crown Court, the prosecutor must also, as soon as practicable, serve a copy of the statement on the defendant.

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(1) 2002 c. 29; section 16 was amended by paragraph 5 of Schedule 8 to the Serious Crime Act 2007 (c. 27).

(2) Any statement given to the Crown Court by the prosecutor under section 16 of the 2002 Act must, in addition to the information required by the 2002 Act, include the following information—

- (a) the name of the defendant;
- (b) the name of the person by whom the statement is made and the date on which it is made; and
- (c) where the statement is not given to the Crown Court immediately after the defendant has been convicted, the date on which and the place where the relevant conviction occurred.

(3) Where, under section 17 of the 2002 Act, the Crown Court orders the defendant to indicate the extent to which he accepts each allegation in a statement given by the prosecutor, the defendant must indicate this in writing to the prosecutor and must give a copy to the Crown Court.

(4) Where the Crown Court orders the defendant to give to it any information under section 18 of the 2002 Act, the defendant must provide the information in writing and must, as soon as practicable, serve a copy of it on the prosecutor.

### **Postponement of confiscation proceedings**

**58.2.** The Crown Court may grant a postponement under section 14(1)(b) of the Proceeds of Crime Act 2002 without a hearing.

### **Application for reconsideration**

**58.3.**—(1) This rule applies where the prosecutor makes an application under section 19, 20 or 21 of the Proceeds of Crime Act 2002(2).

- (2) The application must be in writing and give details of—
  - (a) the name of the defendant;
  - (b) the date on which and the place where any relevant conviction occurred;
  - (c) the date on which and the place where any relevant confiscation order was made or varied;
  - (d) the grounds for the application; and
  - (e) an indication of the evidence available to support the application.
- (3) The application must be lodged with the Crown Court.
- (4) The application must be served on the defendant at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

### **Application for new calculation of available amount**

**58.4.**—(1) This rule applies where the prosecutor or a receiver makes an application under section 22 of the Proceeds of Crime Act 2002(3) for a new calculation of the available amount.

- (2) The application must be in writing and may be supported by a witness statement.
- (3) The application and any witness statement must be lodged with the Crown Court.
- (4) The application and any witness statement must be served on—
  - (a) the defendant;
  - (b) the receiver, if the prosecutor is making the application and a receiver has been appointed under section 50 of the 2002 Act; and
  - (c) the prosecutor, if the receiver is making the application,

(2) [2002 c. 29](#); sections 19, 20 and 21 were amended by section 74(2) of, and paragraph 1 and paragraphs 8, 9 and 10 respectively, of Schedule 8 to, the [Serious Crime Act 2007 \(c. 27\)](#).

(3) [2002 c. 29](#); section 22 was amended by section 74(2) of, and paragraph 11 of Schedule 8 to, the [Serious Crime Act 2007 \(c. 27\)](#).

at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

#### **Variation of confiscation order due to inadequacy of available amount**

**58.5.**—(1) This rule applies where the defendant or a receiver makes an application under section 23 of the Proceeds of Crime Act 2002(4) for the variation of a confiscation order.

- (2) The application must be in writing and may be supported by a witness statement.
- (3) The application and any witness statement must be lodged with the Crown Court.
- (4) The application and any witness statement must be served on—
  - (a) the prosecutor;
  - (b) the defendant, if the receiver is making the application; and
  - (c) the receiver, if the defendant is making the application and a receiver has been appointed under section 50 of the 2002 Act,

at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

#### **Application by magistrates' court officer to discharge confiscation order**

**58.6.**—(1) This rule applies where a magistrates' court officer makes an application under section 24 or 25 of the Proceeds of Crime Act 2002(5) for the discharge of a confiscation order.

- (2) The application must be in writing and give details of—
  - (a) the confiscation order;
  - (b) the amount outstanding under the order; and
  - (c) the grounds for the application.
- (3) The application must be served on—
  - (a) the defendant;
  - (b) the prosecutor; and
  - (c) any receiver appointed under section 50 of the 2002 Act.

(4) The Crown Court may determine the application without a hearing unless a person listed in paragraph (3) indicates, within seven days after the application was served on him, that he would like to make representations.

(5) If the Crown Court makes an order discharging the confiscation order, the court must, at once, send a copy of the order to—

- (a) the magistrates' court officer who applied for the order;
- (b) the defendant;
- (c) the prosecutor; and
- (d) any receiver appointed under section 50 of the 2002 Act.

#### **Application for variation of confiscation order made against an absconder**

**58.7.**—(1) This rule applies where the defendant makes an application under section 29 of the Proceeds of Crime Act 2002 for the variation of a confiscation order made against an absconder.

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(4) [2002 c. 29](#); section 23 was amended by section 74(2) of, and paragraph 12 of Schedule 8 to, the [Serious Crime Act 2007 \(c. 27\)](#).  
(5) [2002 c. 29](#); sections 24 and 25 were amended by section 109(1) of, and paragraphs 406(a) and 406(b), respectively, of Schedule 8 to, the [Courts Act 2003 \(c. 39\)](#).

(2) The application must be in writing and supported by a witness statement which must give details of—

- (a) the confiscation order made against an absconder under section 6 of the 2002 Act as applied by section 28 of the 2002 Act;
- (b) the circumstances in which the defendant ceased to be an absconder;
- (c) the defendant's conviction of the offence or offences concerned; and
- (d) the reason why he believes the amount required to be paid under the confiscation order was too large.

(3) The application and witness statement must be lodged with the Crown Court.

(4) The application and witness statement must be served on the prosecutor at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

#### **Application for discharge of confiscation order made against an absconder**

**58.8.**—(1) This rule applies if the defendant makes an application under section 30 of the Proceeds of Crime Act 2002 for the discharge of a confiscation order.

(2) The application must be in writing and supported by a witness statement which must give details of—

- (a) the confiscation order made under section 28 of the 2002 Act;
- (b) the date on which the defendant ceased to be an absconder;
- (c) the acquittal of the defendant if he has been acquitted of the offence concerned; and
- (d) if the defendant has not been acquitted of the offence concerned—
  - (i) the date on which the defendant ceased to be an absconder,
  - (ii) the date on which the proceedings taken against the defendant were instituted and a summary of steps taken in the proceedings since then, and
  - (iii) any indication given by the prosecutor that he does not intend to proceed against the defendant.

(3) The application and witness statement must be lodged with the Crown Court.

(4) The application and witness statement must be served on the prosecutor at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(5) If the Crown Court orders the discharge of the confiscation order, the court must serve notice on the magistrates' court responsible for enforcing the order.

#### **Application for increase in term of imprisonment in default**

**58.9.**—(1) This rule applies where the prosecutor makes an application under section 39(5) of the Proceeds of Crime Act 2002<sup>(6)</sup> to increase the term of imprisonment in default of payment of a confiscation order.

(2) The application must be made in writing and give details of—

- (a) the name and address of the defendant;
- (b) the confiscation order;

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<sup>(6)</sup> 2002 c. 29; section 39(5) was amended by section 74(2) of, and paragraphs 1 and 21(2) of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

- (c) the grounds for the application; and
  - (d) the enforcement measures taken, if any.
- (3) On receipt of the application, the court must—
- (a) at once, send to the defendant and the magistrates' court responsible for enforcing the order, a copy of the application; and
  - (b) fix a time, date and place for the hearing and notify the applicant and the defendant of that time, date and place.
- (4) If the Crown Court makes an order increasing the term of imprisonment in default, the court must, at once, send a copy of the order to—
- (a) the applicant;
  - (b) the defendant;
  - (c) where the defendant is in custody at the time of the making of the order, the person having custody of the defendant; and
  - (d) the magistrates' court responsible for enforcing the order.

#### **Compensation – general**

**58.10.**—(1) This rule applies to an application for compensation under section 72 of the Proceeds of Crime Act 2002.

- (2) The application must be in writing and may be supported by a witness statement.
- (3) The application and any witness statement must be lodged with the Crown Court.
- (4) The application and any witness statement must be served on—
  - (a) the person alleged to be in default; and
  - (b) the person or authority by whom the compensation would be payable under section 72(9) or 302(7A)(7) of the 2002 Act (or if the compensation is payable out of a police fund under section 72(9)(a) or 302(7A), the chief officer of the police force concerned),

at least seven days before the date fixed by the court for hearing the application, unless the Crown Court directs otherwise.

#### **Compensation – confiscation order made against absconder**

**58.11.**—(1) This rule applies to an application for compensation under section 73 of the Proceeds of Crime Act 2002.

- (2) The application must be in writing and supported by a witness statement which must give details of—
  - (a) the confiscation order made under section 28 of the 2002 Act;
  - (b) the variation or discharge of the confiscation order under section 29 or 30 of the 2002 Act;
  - (c) the realisable property to which the application relates; and
  - (d) the loss suffered by the applicant as a result of the confiscation order.
- (3) The application and witness statement must be lodged with the Crown Court.
- (4) The application and witness statement must be served on the prosecutor at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

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(7) 2002 c. 29; paragraph (7A) was inserted by section 79 of, and paragraphs 1 and 11 of Schedule 11 to, the Serious Crime Act 2007 (c. 27).

**Payment of money in bank or building society account in satisfaction of confiscation order**

**58.12.**—(1) An order under section 67 of the Proceeds of Crime Act 2002<sup>(8)</sup> requiring a bank or building society to pay money to a magistrates' court officer ('a payment order') shall—

- (a) be directed to the bank or building society in respect of which the payment order is made;
- (b) name the person against whom the confiscation order has been made;
- (c) state the amount which remains to be paid under the confiscation order;
- (d) state the name and address of the branch at which the account in which the money ordered to be paid is held and the sort code of that branch, if the sort code is known;
- (e) state the name in which the account in which the money ordered to be paid is held and the account number of that account, if the account number is known;
- (f) state the amount which the bank or building society is required to pay to the court officer under the payment order;
- (g) give the name and address of the court officer to whom payment is to be made; and
- (h) require the bank or building society to make payment within a period of seven days beginning on the day on which the payment order is made, unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances.

(2) The payment order shall be served on the bank or building society in respect of which it is made by leaving it at, or sending it by first class post to, the principal office of the bank or building society.

(3) A payment order which is served by first class post shall, unless the contrary is proved, be deemed to have been served on the second business day after posting.

(4) In this rule 'confiscation order' has the meaning given to it by section 88(6) of the Proceeds of Crime Act 2002.

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<sup>(8)</sup> 2002 c. 29; section 67 was amended by section 109 of, and paragraph 409 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 74 of, and paragraph 33 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).