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STATUTORY INSTRUMENTS

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**2005 No. 384**

**The Criminal Procedure Rules 2005**

**PART 56**

**CONFISCATION PROCEEDINGS UNDER THE CRIMINAL JUSTICE ACT 1988 AND THE DRUG TRAFFICKING ACT 1994**

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**Statements etc, relevant to making confiscation orders**

**56.1.**—(1) Where a prosecutor or defendant—

- (a) tenders to a magistrates' court any statement or other document under section 73 of the Criminal Justice Act 1988(1) in any proceedings in respect of an offence listed in Schedule 4 to that Act; or
- (b) tenders to the Crown Court any statement or other document under section 11 of the Drug Trafficking Act 1994(2) or section 73 of the 1988 Act in any proceedings in respect of a drug trafficking offence or in respect of an offence to which Part VI of the 1988 Act applies,

he must serve a copy as soon as practicable on the defendant or the prosecutor, as the case may be.

(2) Any statement tendered by the prosecutor to the magistrates' court under section 73 of the 1988 Act or to the Crown Court under section 11(1) of the 1994 Act or section 73(1A) of the 1988 Act shall include the following particular—

- (a) the name of the defendant;

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(1) 1988 c. 33; section 73 and Schedule 4 were repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 17(1) and (2)(a) and Schedule 12.

(2) 1994 c. 37; section 11 was repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 25(1) and (2)(a) and Schedule 12.

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- (b) the name of the person by whom the statement is made and the date on which it was made;
- (c) where the statement is not tendered immediately after the defendant has been convicted, the date on which and the place where the relevant conviction occurred; and
- (d) such information known to the prosecutor as is relevant to the determination as to whether or not the defendant has benefited from drug trafficking or relevant criminal conduct and to the assessment of the value of his proceeds of drug trafficking or, as the case may be, benefit from relevant criminal conduct.

(3) Where, in accordance with section 11(7) of the 1994 Act or section 73(1C) of the 1988 Act, the defendant indicates the extent to which he accepts any allegation contained within the prosecutor's statement, if he indicates the same in writing to the prosecutor, he must serve a copy of that reply on the court officer.

(4) Expressions used in this rule shall have the same meanings as in the 1994 Act or, where appropriate, the 1988 Act.

*[Note. Formerly rule 104A of the Magistrates' Courts Rules 1981(3) and rule 25A of the Crown Court Rules 1982(4). The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003 but they continue to have effect in respect of proceedings for offences committed before that date.]*

### **Postponed determinations**

**56.2.**—(1) Where an application is made by the defendant or the prosecutor—

- (a) to a magistrates' court under section 72A(5)(a) of the Criminal Justice Act 1988(5) asking the court to exercise its powers under section 72A(4) of that Act; or
- (b) to the Crown Court under section 3(5)(a) of the Drug Trafficking Act 1994(6) asking the Court to exercise its powers under section 3(4) of that Act, or under section 72A(5)(a) of the 1988 Act asking the court to exercise its powers under section 72A(4) of the 1988 Act,

the application must be made in writing and a copy must be served on the prosecutor or the defendant, as the case may be.

(2) A party served with a copy of an application under paragraph (1) shall, within 28 days of the date of service, notify the applicant and the court officer, in writing, whether or not he proposes to oppose the application, giving his reasons for any opposition.

(3) After the expiry of the period referred to in paragraph (2), the court shall determine whether an application under paragraph (1) is to be dealt with—

- (a) without a hearing; or
- (b) at a hearing at which the parties may be represented.

*[Note. Formerly rule 104B of the Magistrates' Courts Rules 1981 and rule 34 of the Crown Court Rules 1982. The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003 but they continue to have effect in respect of proceedings for offences committed before that date.]*

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(3) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1989/300, 1994/3154, 1995/2619, 2001/610.

(4) S.I. 1982/1109; amending instruments relevant to this Part are S.I. 1986/2151, 1991/1288, 1994/3153, 1995/2618, 2003/422.

(5) Section 72A was inserted by the Criminal Justice Act 1993 (c. 36), section 28.

(6) Section 3 was repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 25(1) and (2) (a) and Schedule 12.

### **Confiscation orders—revised assessments**

**56.3.**—(1) Where the prosecutor makes an application under section 13, 14 or 15 of the Drug Trafficking Act 1994(7) or section 74A, 74B or 74C of the Criminal Justice Act 1988(8), the application must be in writing and a copy must be served on the defendant.

(2) The application must include the following particulars—

- (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, as the case may be, varied;
- (d) the grounds on which the application is made; and
- (e) an indication of the evidence available to support the application.

*[Note. Formerly rule 104C of the Magistrates' Courts Rules 1981 and rule 35 of the Crown Court Rules 1982. The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003 but they continue to have effect in respect of proceedings for offences committed before that date.]*

### **Application to Crown Court to discharge or vary order to make material available**

**56.4.**—(1) Where an order under section 93H of the Criminal Justice Act 1988(9) (order to make material available), section 55 of the Drug Trafficking Act 1994(10) (order to make material available), or section 345 of the Proceeds of Crime Act 2002(11) (production orders) has been made by the Crown Court, any person affected by it may apply in writing to the court officer for the order to be discharged or varied, and on hearing such an application a circuit judge or, in the case of an order under the 2002 Act, a judge entitled to exercise the jurisdiction of the Crown Court may discharge the order or make such variations to it as he thinks fit.

(2) Subject to paragraph (3), where a person proposes to make an application under paragraph (1) for the discharge or variation of an order, he shall give a copy of the application, not later than 48 hours before the making of the application—

- (a) to a constable at the police station specified in the order; or
- (b) where the application for the order was made under the 2002 Act and was not made by a constable, to the office of the appropriate officer who made the application, as specified in the order,

in either case together with a notice indicating the time and place at which the application for discharge or variation is to be made.

(3) A circuit judge or, in the case of an order under the 2002 Act, a judge entitled to exercise the jurisdiction of the Crown Court may direct that paragraph (2) need not be complied with if he is satisfied that the person making the application has good reason to seek a discharge or variation of the order as soon as possible and it is not practicable to comply with that paragraph.

(4) In this rule:

“appropriate officer” has the meaning given to it by section 378 of the 2002 Act;

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(7) Sections 13, 14 and 15 were repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 25(1) and (2)(a) and Schedule 12.

(8) Sections 74A, 74B and 74C were inserted by the Proceeds of Crime Act 1995 (c. 11), sections 5, 6 and 7 respectively, and repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 17(1) and (2)(a) and Schedule 12.

(9) Section 93H was inserted by the Proceeds of Crime Act 1995 (c. 11), section 11, and repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 17(1) and (2)(a) and Schedule 12.

(10) Section 55 was amended by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 25(1) and (2)(b) and Schedule 12 and by the Courts Act 2003 (c. 39), Schedule 8, paragraph 364.

(11) 2002 c. 29.

“constable” includes a person commissioned by the Commissioners of Customs and Excise;  
“police station” includes a place for the time being occupied by Her Majesty’s Customs and Excise.

*[Note. Formerly rule 25B of the Crown Court Rules 1982. For further rules applicable to investigations under the 2002 Act, see Part 62. The relevant provision of the 1988 Act was repealed on 24th February 2003 but it continues to have effect in respect of proceedings for offences committed before that date.]*

### **Application to Crown Court for increase in term of imprisonment in default of payment of a confiscation order**

**56.5.**—(1) This rule applies to applications made, or that have effect as made, to the Crown Court under section 10 of the Drug Trafficking Act 1994(**12**) and section 75A of the Criminal Justice Act 1988(**13**) (interest on sums unpaid under confiscation orders).

(2) Notice of an application to which this rule applies to increase the term of imprisonment or detention fixed in default of payment of a confiscation order by a person (“the defendant”) shall be made by the prosecutor in writing to the court officer.

(3) A notice under paragraph (2) shall—

- (a) state the name and address of the defendant;
- (b) specify the grounds for the application;
- (c) give details of the enforcement measures taken, if any; and
- (d) include a copy of the confiscation order.

(4) On receiving a notice under paragraph (2), the court officer shall—

- (a) forthwith send to the defendant and the magistrates' court required to enforce payment of the confiscation order under section 140(1) of the Powers of Criminal Courts (Sentencing) Act 2000(**14**), a copy of the said notice; and
- (b) notify in writing the applicant and the defendant of the date, time and place appointed for the hearing of the application.

(5) Where the Crown Court makes an order pursuant to an application mentioned in paragraph (1) above, the court officer shall send forthwith a copy of the order—

- (a) to the applicant;
- (b) to the defendant;
- (c) where the defendant is at the time of the making of the order in custody, to the person having custody of him; and
- (d) to the magistrates' court mentioned in paragraph (4)(a).

*[Note. Formerly rule 33 of the Crown Court Rules 1982. The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003 but they continue to have effect in respect of proceedings for offences committed before that date.]*

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(12) Section 10 was repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 25(1) and (2) (a) and Schedule 12.

(13) Section 75A was inserted by the Proceeds of Crime Act 1995 (c. 11), section 9, and repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 17(1) and (2)(a) and Schedule 12.

(14) 2000 c. 6; section 140(1) is amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraphs 74(1) and (4) (a), (b) and Schedule 37, Part 4, with effect from a date to be appointed.

### **Drug trafficking—compensation on acquittal in Crown Court**

**56.6.** Where a Crown Court cancels a confiscation order under section 22(2) of the Drug Trafficking Act 1994(15), the court officer shall serve notice to that effect on the High Court and on the magistrates' court which has responsibility for enforcing the order.

*[Note. Formerly rule 36 of the Crown Court Rules 1982. The relevant provision of the 1994 Act was repealed on 24th March 2003 but it continues to have effect in respect of proceedings for offences committed before that date.]*

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(15) Section 22 was repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 25(1) and (2) (a) and Schedule 12.