
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 33

CONFISCATION AND RELATED PROCEEDINGS

CONFISCATION PROCEEDINGS

Statements in connection with confiscation orders

33.13.—(1) This rule applies where—

- (a) the court can make a confiscation order; and
- (b) the prosecutor asks the court to make such an order, or the court decides to make such an order on its own initiative.

(2) Within such periods as the court directs—

- (a) if the court so orders, the defendant must give such information, in such manner, as the court directs;
- (b) the prosecutor must serve a statement of information relevant to confiscation on the court officer and the defendant; and
- (c) if the court so directs—
 - (i) the defendant must serve a response notice on the court officer and the prosecutor, and
 - (ii) the parties must identify what is in dispute.

(3) Where it appears to the court that a person other than the defendant holds, or may hold, an interest in property held by the defendant which property is likely to be realised or otherwise used to satisfy a confiscation order—

- (a) the court must not determine the extent of the defendant's interest in that property unless that other person has had a reasonable opportunity to make representations; and
- (b) the court may order that other person to give such information, in such manner and within such a period, as the court directs.

(4) The court may—

- (a) shorten or extend a time limit which it has set;
- (b) vary, discharge or supplement an order which it has made; and
- (c) postpone confiscation proceedings without a hearing.

(5) A prosecutor's statement of information must—

- (a) identify the maker of the statement and show its date;
- (b) identify the defendant in respect of whom it is served;

- (c) specify the conviction which gives the court power to make the confiscation order, or each conviction if more than one;
 - (d) if the prosecutor believes the defendant to have a criminal lifestyle, include such matters as the prosecutor believes to be relevant in connection with deciding—
 - (i) whether the defendant has such a lifestyle,
 - (ii) whether the defendant has benefited from his or her general criminal conduct,
 - (iii) the defendant's benefit from that conduct, and
 - (iv) whether the court should or should not make such assumptions about the defendant's property as legislation permits;
 - (e) if the prosecutor does not believe the defendant to have a criminal lifestyle, include such matters as the prosecutor believes to be relevant in connection with deciding—
 - (i) whether the defendant has benefited from his or her particular criminal conduct, and
 - (ii) the defendant's benefit from that conduct; and
 - (f) in any case, include such matters as the prosecutor believes to be relevant in connection with deciding—
 - (i) whether to make a determination about the extent of the defendant's interest in property in which another person holds, or may hold, an interest, and
 - (ii) what determination to make, if the court decides to make one.
- (6) A defendant's response notice must—
- (a) indicate the extent to which the defendant accepts the allegations made in the prosecutor's statement of information; and
 - (b) so far as the defendant does not accept an allegation, give particulars of any matters on which the defendant relies,
- in any manner directed by the court.
- (7) The court must satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary)—
- (a) that if the defendant accepts to any extent an allegation in a prosecutor's statement of information, then the court may treat that as conclusive for the purposes of deciding whether the defendant has benefited from general or particular criminal conduct, and if so by how much;
 - (b) that if the defendant fails in any respect to comply with a direction to serve a response notice, then the court may treat that as acceptance of each allegation to which the defendant has not replied, except the allegation that the defendant has benefited from general or particular criminal conduct; and
 - (c) that if the defendant fails without reasonable excuse to comply with an order to give information, then the court may draw such inference as it believes is appropriate.

[Note. Under section 6 of the Proceeds of Crime Act 2002(1), where a defendant is convicted of an offence the Crown Court must (with some exceptions)—

- (a) *decide whether the defendant has 'a criminal lifestyle', within the meaning of the Act, or has benefited from particular criminal conduct;*
- (b) *decide the 'recoverable amount', within the meaning of the Act; and*
- (c) *make a confiscation order requiring the defendant to pay that amount.*

(1) 2002 c. 29; section 6 was amended by paragraph 75 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), section 74(2) of, and paragraphs 1 and 2 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 10 of, and paragraphs 11 and 12 of the Schedule to, the Prevention of Social Housing Fraud Act 2013 (c. 3).

Under section 14 of the 2002 Act(2), unless exceptional circumstances apply the court may postpone confiscation proceedings for a maximum of 2 years from the date of conviction, or until the end of a period of 3 months following the determination of an appeal by the defendant against conviction, if that is later.

Under section 16 of the 2002 Act(3), where the Crown Court is considering confiscation the prosecutor must give the court a statement of information which the prosecutor believes to be relevant to what the court must decide, within such period as the court directs. Under section 17 of the Act(4), where the prosecutor gives such a statement the court may order the defendant to respond and, if the defendant does not do so, then the court may treat the defendant as accepting the prosecutor's allegations. Under section 18(5), for the purpose of obtaining information to help it in carrying out its functions the court may at any time order the defendant to give it information specified in the order and, if the defendant does not do so, then the court may draw such inference as it believes appropriate. Under section 18A(6), for the purpose of obtaining information to help it to determine the extent of the defendant's interest in property the court may at any time order a person who the court thinks may hold an interest in that property to give it information specified in the order and, if that person does not do so, then the court may draw such inference as it believes appropriate.

Under section 27 of the 2002 Act(7), special provisions apply where the defendant absconds.

Under section 97 of the Serious Organised Crime and Police Act 2005(8), the Secretary of State may by order provide for confiscation orders to be made by magistrates' courts.]

Application for compliance order

33.14.—(1) This rule applies where—

- (a) the prosecutor wants the court to make a compliance order after a confiscation order has been made; or
- (b) the prosecutor or a person affected by a compliance order wants the court to vary or discharge the order.

(2) Such a prosecutor or person must—

- (a) apply in writing; and
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) as appropriate, the prosecutor and any person who is affected by the compliance order (or who would be affected if it were made), unless the court otherwise directs.

(3) The application must—

- (a) specify—
 - (i) the confiscation order, and
 - (ii) the compliance order, if it is an application to vary or discharge that order;

(2) 2002 c. 29; section 14 was amended by section 74(2) of, and paragraphs 1 and 4 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(3) 2002 c. 29; section 16 was amended by section 74(2) of, and paragraphs 1 and 5 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 2 of the Serious Crime Act 2015 (c. 9).

(4) 2002 c. 29; section 17 was amended by section 74(2) of, and paragraphs 1 and 6 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(5) 2002 c. 29; section 18 was amended by section 74(2) of, and paragraphs 1 and 7 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(6) 2002 c. 29; section 18A was inserted by section 2 of the Serious Crime Act 2015 (c. 9).

(7) 2002 c. 29; section 27 was amended by paragraph 75 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and section 74 of, and paragraphs 1 and 14 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(8) 2005 c. 15; section 97 was amended by S.I. 2010/976.

- (b) if it is an application for a compliance order—
 - (i) specify each measure that the prosecutor proposes to ensure that the confiscation order is effective, including in particular any restriction or prohibition on the defendant's travel outside the United Kingdom, and
 - (ii) explain why each such measure is appropriate;
- (c) if it is an application to vary or discharge a compliance order, as appropriate—
 - (i) specify any proposed variation, and
 - (ii) explain why it is appropriate for the order to be varied or discharged;
- (d) attach any material on which the applicant relies;
- (e) propose the terms of the order; and
- (f) ask for a hearing, if the applicant wants one, and explain why it is needed.
- (4) A person who wants to make representations about the application must—
 - (a) serve the representations on—
 - (i) the court officer, and
 - (ii) the applicant;
 - (b) do so as soon as reasonably practicable after service of the application;
 - (c) attach any material on which that person relies; and
 - (d) ask for a hearing, if that person wants one, and explain why it is needed.
- (5) The court—
 - (a) may determine the application at a hearing (which must be in private unless the court otherwise directs), or without a hearing; and
 - (b) may dispense with service on any person of a prosecutor's application for a compliance order if, in particular—
 - (i) the application is urgent, or
 - (ii) there are reasonable grounds for believing that to give notice of the application would cause the dissipation of property that otherwise would be available to satisfy the confiscation order.

[Note. See section 13A of the Proceeds of Crime Act 2002(9).]

Application for reconsideration

- 33.15.**—(1) This rule applies where the prosecutor wants the court, in view of fresh evidence—
- (a) to consider making a confiscation order where the defendant was convicted but no such order was considered;
 - (b) to reconsider a decision that the defendant had not benefited from criminal conduct; or
 - (c) to reconsider a decision about the amount of the defendant's benefit.
- (2) The application must—
- (a) be in writing and give—
 - (i) the name of the defendant,
 - (ii) the date on which and the place where any relevant conviction occurred,

(9) 2002 c. 29; section 13A was inserted by section 7 of the Serious Crime Act 2015 (c. 9).

- (iii) the date on which and the place where any relevant confiscation order was made or varied,
 - (iv) details of any slavery and trafficking reparation order made by virtue of any relevant confiscation order,
 - (v) the grounds for the application, and
 - (vi) an indication of the evidence available to support the application; and
- (b) where the parties are agreed on the terms of the proposed order include, in one or more documents—
 - (i) a draft order in the terms proposed, and
 - (ii) evidence of the parties' agreement.
- (3) The application must be served on—
 - (a) the court officer; and
 - (b) the defendant.
- (4) The court—
 - (a) may determine the application without a hearing where the parties are agreed on the terms of the proposed order; but
 - (b) must determine the application at a hearing in any other case.
- (5) Where this rule or the court requires the application to be heard, the court officer must arrange for the court to hear it no sooner than the eighth day after it was served unless the court otherwise directs.

[Note. See sections 19, 20 and 21 of the Proceeds of Crime Act 2002(10) and section 10 of the Modern Slavery Act 2015(11).]

Application for new calculation of available amount

33.16.—(1) This rule applies where the prosecutor or a receiver wants the court to make a new calculation of the amount available for confiscation.

- (2) The application—
 - (a) must be in writing and may be supported by a witness statement;
 - (b) must identify any slavery and trafficking reparation order made by virtue of the confiscation order; and
 - (c) where the parties are agreed on the terms of the proposed order, must include in one or more documents—
 - (i) a draft order in the terms proposed, and
 - (ii) evidence of the parties' agreement.
- (3) The application and any witness statement must be served on the court officer.
- (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; and

(10) 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). Sections 19 and 20 were further amended by paragraphs 16 and 17 of Schedule 5 to the Modern Slavery Act 2015 (c. 30).

(11) 2015 c. 30.

- (c) the prosecutor, if the receiver is making the application.
- (5) The court—
 - (a) may determine the application without a hearing where the parties are agreed on the terms of the proposed order; but
 - (b) must determine the application at a hearing in any other case.
- (6) Where this rule or the court requires the application to be heard, the court officer must arrange for the court to hear it no sooner than the eighth day after it was served unless the court otherwise directs.

[Note. See section 22 of the Proceeds of Crime Act 2002(12) and section 10 of the Modern Slavery Act 2015.]

Variation of confiscation order due to inadequacy of available amount

33.17.—(1) This rule applies where the defendant, the prosecutor or a receiver wants the court to vary a confiscation order because the amount available is inadequate.

- (2) The application—
 - (a) must be in writing and may be supported by a witness statement;
 - (b) must identify any slavery and trafficking reparation order made by virtue of the confiscation order; and
 - (c) where the parties are agreed on the terms of the proposed order, must include in one or more documents—
 - (i) a draft order in the terms proposed, and
 - (ii) evidence of the parties' agreement.
- (3) The application and any witness statement must be served on the court officer.
- (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.
- (5) The court—
 - (a) may determine the application without a hearing where the parties are agreed on the terms of the proposed order; but
 - (b) must determine the application at a hearing in any other case.
- (6) Where this rule or the court requires the application to be heard, the court officer must arrange for the court to hear it no sooner than the eighth day after it was served unless the court otherwise directs.

[Note. See section 23 of the Proceeds of Crime Act 2002(13) and section 10 of the Modern Slavery Act 2015.]

Application by magistrates' court officer to discharge confiscation order

33.18.—(1) This rule applies where a magistrates' court officer wants the court to discharge a confiscation order because the amount available is inadequate or the sum outstanding is very small.

(12) 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).

(13) 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) and section 8 of the Serious Crime Act 2015 (c. 9).

- (2) The application must be in writing and give details of—
 - (a) the confiscation order;
 - (b) any slavery and trafficking reparation order made by virtue of the confiscation order;
 - (c) the amount outstanding under the order; and
 - (d) the grounds for the application.
- (3) The application must be served on—
 - (a) the defendant;
 - (b) the prosecutor; and
 - (c) any receiver.
- (4) The court may determine the application without a hearing unless a person listed in paragraph (3) indicates, within 7 days after the application was served, that he or she would like to make representations.
- (5) If the court makes an order discharging the confiscation order, the court officer 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.

[Note. See sections 24 and 25 of the Proceeds of Crime Act 2002(14) and section 10 of the Modern Slavery Act 2015.]

Application for variation of confiscation order made against an absconder

33.19.—(1) This rule applies where the defendant wants the court to vary a confiscation order made while the defendant was an absconder.

- (2) The application must be in writing and supported by a witness statement which must give details of—
 - (a) the confiscation order;
 - (b) any slavery and trafficking reparation order made by virtue of the confiscation order;
 - (c) the circumstances in which the defendant ceased to be an absconder;
 - (d) the defendant's conviction of the offence or offences concerned; and
 - (e) the reason why the defendant believes the amount required to be paid under the confiscation order was too large.

(3) The application and witness statement must be served on the court officer.

(4) The application and witness statement must be served on the prosecutor at least 7 days before the date fixed by the court for hearing the application, unless the court specifies a shorter period.

[Note. See section 29 of the Proceeds of Crime Act 2002(15) and section 10 of the Modern Slavery Act 2015.]

(14) 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).

(15) 2002 c. 29.

Application for discharge of confiscation order made against an absconder

33.20.—(1) This rule applies where the defendant wants the court to discharge a confiscation order made while the defendant was an absconder and—

- (a) the defendant since has been tried and acquitted of each offence concerned; or
- (b) the prosecution has not concluded or is not to proceed.

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

- (a) the confiscation order;
- (b) the date on which the defendant ceased to be an absconder;
- (c) the acquittal of the defendant if he or she 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 that the prosecutor does not intend to proceed against the defendant.

(3) The application and witness statement must be served on the court officer.

(4) The application and witness statement must be served on the prosecutor at least 7 days before the date fixed by the court for hearing the application, unless the court specifies a shorter period.

(5) If the court orders the discharge of the confiscation order, the court officer must serve notice on any other court responsible for enforcing the order.

[Note. See section 30 of the Proceeds of Crime Act 2002(16).]

Application for increase in term of imprisonment in default

33.21.—(1) This rule applies where—

- (a) a court varies a confiscation order; and
- (b) the prosecutor wants the court in consequence to increase the term of imprisonment to be served in default of payment.

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

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

(3) On receipt of the application, the court officer must—

- (a) at once, send to the defendant and any other 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 court makes an order increasing the term of imprisonment in default, the court officer 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) any other court responsible for enforcing the order.

[Note. See section 39(5) of the Proceeds of Crime Act 2002(17).]

Compensation – general

33.22.—(1) This rule applies where a person who held realisable property wants the court to award compensation for loss suffered in consequence of anything done in relation to that property in connection with confiscation proceedings.

(2) The application must be in writing and may be supported by a witness statement.

(3) The application and any witness statement must be served on the court officer.

(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,

at least 7 days before the date fixed by the court for hearing the application, unless the court directs otherwise.

[Note. See section 72 of the Proceeds of Crime Act 2002(18).]

Compensation – confiscation order made against absconder

33.23.—(1) This rule applies where—

- (a) the court varies or discharges a confiscation order made against an absconder;
- (b) a person who held realisable property suffered loss as a result of the making of that confiscation order; and
- (c) that person wants the court to award compensation for that loss.

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

- (a) the confiscation order;
- (b) the variation or discharge of the confiscation order;
- (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 served on the court officer.

(4) The application and witness statement must be served on the prosecutor at least 7 days before the date fixed by the court for hearing the application, unless the court specifies a shorter period.

[Note. See section 73 of the Proceeds of Crime Act 2002(19).]

(17) 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).

(18) 2002 c. 29; section 72 was amended by section 50(6) of, and paragraph 97 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), section 61 of the Policing and Crime Act 2009 (c. 26) and sections 15 and 55 of, and paragraphs 108 and 114 of Schedule 8 and paragraphs 14 and 19 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22).

(19) 2002 c. 29.

Payment of money held or detained in satisfaction of confiscation order

33.24.—(1) An order under section 67 of the Proceeds of Crime Act 2002⁽²⁰⁾ requiring the payment of money to a magistrates' court officer ('a payment order') shall—

- (a) be directed to—
 - (i) the bank or building society concerned, where the money is held in an account maintained with that bank or building society, or
 - (ii) the person on whose authority the money is detained, in any other case;
- (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 7 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) In this rule 'confiscation order' has the meaning given to it by section 88(6) of the Proceeds of Crime Act 2002.

Application to realise seized property

33.25.—(1) This rule applies where—

- (a) property is held by a defendant against whom a confiscation order has been made;
- (b) the property has been seized by or produced to an officer; and
- (c) an officer who is entitled to apply wants a magistrates' court—
 - (i) to make an order under section 67A of the Proceeds of Crime Act 2002⁽²¹⁾ authorising the realisation of the property towards satisfaction of the confiscation order, or
 - (ii) to determine any storage, insurance or realisation costs in respect of the property which may be recovered under section 67B of the 2002 Act⁽²²⁾.

(2) Such an officer must—

- (a) apply in writing; and
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) any person whom the applicant believes would be affected by an order.

(3) The application must—

⁽²⁰⁾ 2002 c. 29; section 67 was amended by section 109 of, and paragraph 409 of Schedule 8 to, the Courts Act 2003 (c. 39), section 74 of, and paragraph 33 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), section 14 of the Serious Crime Act 2015 (c. 9) and section 26 of the Criminal Finances Act 2017 (c. 22).

⁽²¹⁾ 2002 c. 29; section 67A was inserted by section 58 of the Policing and Crime Act 2009 (c. 26) and amended by section 14 of the Serious Crime Act 2015 (c. 9).

⁽²²⁾ 2002 c. 29; section 67B was inserted by section 58 of the Policing and Crime Act 2009 (c. 26).

- (a) specify the property;
- (b) explain—
 - (i) the applicant's entitlement to apply,
 - (ii) how the proposed realisation meets the conditions prescribed by section 67A of the 2002 Act, and
 - (iii) how any storage, etc. costs have been calculated;
- (c) attach any material on which the applicant relies; and
- (d) propose the terms of the order.
- (4) The court may—
 - (a) determine the application at a hearing, or without a hearing;
 - (b) consider an application made orally instead of in writing; and
 - (c) consider an application which has not been served on a person likely to be affected by an order.
- (5) If the court authorises the realisation of the property, the applicant must—
 - (a) notify any person affected by the order who was absent when it was made; and
 - (b) serve on the court officer a list of those so notified.

[Note. Under section 67A of the Proceeds of Crime Act 2002, one of the officers listed in section 41A of the Act may apply to a magistrates' court for authority to realise property seized by such an officer if—

- (a) a confiscation order has been made against the owner of the property;*
- (b) no receiver has been appointed in relation to that property; and*
- (c) any period allowed for payment of the confiscation order has expired.*

Under section 67B of the 2002 Act, if a magistrates' court makes an order under section 67A then on the same or a subsequent occasion the court may determine an amount which may be recovered by the applicant in respect of reasonable costs incurred in storing or insuring the property, or realising it.]

Appeal about decision on application to realise seized property

33.26.—(1) This rule applies where on an application under rule 33.25 for an order authorising the realisation of property—

- (a) a magistrates' court decides not to make such an order and an officer who is entitled to apply wants to appeal against that decision to the Crown Court, under section 67C(1) of the Proceeds of Crime Act 2002⁽²³⁾;
 - (b) a magistrates' court makes such an order and a person who is affected by that decision, other than the defendant against whom the confiscation order was made, wants to appeal against it to the Crown Court, under section 67C(2) of the 2002 Act; or
 - (c) a magistrates' court makes a decision about storage, etc. costs and an officer who is entitled to apply wants to appeal against that decision to the Crown Court, under section 67C(4) of the 2002 Act.
- (2) The appellant must serve an appeal notice—
- (a) on the Crown Court officer and on any other party; and

⁽²³⁾ 2002 c. 29; section 67C was inserted by section 58 of the Policing and Crime Act 2009 (c. 26).

- (b) not more than 21 days after the magistrates' court's decision, or, if applicable, service of notice under rule 33.25(5).
- (3) The appeal notice must—
 - (a) specify the decision under appeal;
 - (b) where paragraph (1)(a) applies, explain why the property should be realised; and
 - (c) in any other case, propose the order that the appellant wants the court to make, and explain why.
- (4) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.

[Note. Under section 67C of the Proceeds of Crime Act 2002, an officer entitled to apply for an order under section 67A or 67B of that Act (authority to realise seized property towards satisfaction of a confiscation order; determination of storage, etc. costs) may appeal against a refusal to make an order, or against a costs determination; and a person affected by an order, other than the owner, may appeal against the order.]

Application for direction about surplus proceeds

- 33.27.**—(1) This rule applies where—
- (a) on an application under rule 33.25, a magistrates' court has made an order authorising an officer to realise property;
 - (b) an officer so authorised holds proceeds of that realisation;
 - (c) the confiscation order has been fully paid; and
 - (d) the officer, or a person who had or has an interest in the property represented by the proceeds, wants a magistrates' court or the Crown Court to determine under section 67D of the Proceeds of Crime Act 2002⁽²⁴⁾—
 - (i) to whom the remaining proceeds should be paid, and
 - (ii) in what amount or amounts.
- (2) Such a person must—
- (a) apply in writing; and
 - (b) serve the application on—
 - (i) the court officer, and
 - (ii) as appropriate, the officer holding the proceeds, or any person to whom such proceeds might be paid.
- (3) The application must—
- (a) specify the property which was realised;
 - (b) explain the applicant's entitlement to apply;
 - (c) describe the distribution proposed by the applicant and explain why that is proposed;
 - (d) attach any material on which the applicant relies; and
 - (e) ask for a hearing, if the applicant wants one, and explain why it is needed.
- (4) A person who wants to make representations about the application must—
- (a) serve the representations on—
 - (i) the court officer,
 - (ii) the applicant, and

⁽²⁴⁾ 2002 c. 29; section 67D was inserted by section 58 of the Policing and Crime Act 2009 (c. 26).

- (iii) any other person to whom proceeds might be paid;
 - (b) do so as soon as reasonably practicable after service of the application;
 - (c) attach any material on which that person relies; and
 - (d) ask for a hearing, if that person wants one, and explain why it is needed.
- (5) The court—
 - (a) must not determine the application unless the applicant and each person on whom it was served—
 - (i) is present, or
 - (ii) has had an opportunity to attend or to make representations; but
 - (b) subject to that, may determine the application—
 - (i) at a hearing (which must be in private unless the court otherwise directs), or without a hearing, and
 - (ii) in the absence of any party to the application.

[Note. Under section 67D of the Proceeds of Crime Act 2002, a magistrates' court or the Crown Court may determine to whom, and in what proportions, any surplus proceeds of realisation must be distributed. Once a magistrates' court has made such a determination, the Crown Court may not do so, and vice versa.]