
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 244

**Act of Adjournal (Criminal Procedure Rules
Amendment No. 3) (Confiscation Proceedings) 2009**

Citation, commencement, interpretation and transitional provisions

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Confiscation Proceedings) 2009 and comes into force on 5th August 2009.

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

(3) In this Act of Adjournal, “the Rules” means the Criminal Procedure Rules 1996⁽¹⁾.

(4) Chapter 37AA of the Rules as it applied immediately before 5th August 2009 continues to have effect where the High Court is proceeding under section 92 in a case where the statement of information is given by the prosecutor under section 101(1) or 110(2)(b) of the Proceeds of Crime Act 2002⁽²⁾ before that date.

Amendment of Chapter 37AA: Proceedings under the Proceeds of Crime Act 2002

2.—(1) After paragraph (2) in rule 37AA.2 of the Rules (confiscation orders)⁽³⁾ insert—

“(2A) In the High Court, where written representations are made under paragraph (2) after the second procedural hearing fixed under rule 37AA.5B(4)(a) has taken place—

(a) a hearing shall be fixed for a date no later than 4 weeks after the date of lodging of the written representations; and

(b) the Clerk of Justiciary shall intimate the date of that hearing and a copy of the written representations to the parties.”.

(2) In rule 37AA.5 of the Rules (statement of information)⁽⁴⁾—

(a) for paragraph (3) substitute—

“(3) At the same time as giving a statement under paragraph (2) the prosecutor shall—

(a) serve a copy on the accused; and

(b) make arrangements, where applicable, for the accused to view, and copy if required, any documents that the prosecutor intends to rely upon.”;

(b) in paragraph (4) after “(accused’s response to statement of information)” insert “(called the “response”)

(c) after paragraph (4) insert—

“(5) At the same time as giving a response under paragraph (4), the accused shall serve a copy on the prosecutor.”.

(3) After rule 37AA.5 of the Rules insert—

⁽¹⁾ 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. 2009/243).

⁽²⁾ 2002 c.29.

⁽³⁾ Rule 37AA.2 was inserted by S.S.I. 2003/120.

⁽⁴⁾ Rule 37AA.5 was inserted by S.S.I. 2003/120.

“Initial period of adjustment

37AA.5A. In the High Court, parties may adjust their respective statements during the 6 week period following the expiry of the period ordered by the court under section 102(1) of the Act of 2002 for the lodging of the response.

First procedural hearing

37AA.5B.—(1) Where the High Court is proceeding under section 92 of the Act of 2002, a procedural hearing called “the first procedural hearing” shall take place on the first Monday after the period for adjustment mentioned in rule 37AA.5A has expired.

(2) At the first procedural hearing the High Court shall ascertain the state of readiness of the parties to conduct a hearing to dispose of the matter.

(3) The High Court may—

- (a) set a date for the lodging of any forensic report by the accused;
- (b) make an order for exchange of documents between parties;
- (c) make an order for the production of documents;
- (d) provide for further adjustment of the respective statements of the parties;
- (e) make any further order it considers necessary.

(4) The High Court shall either—

- (a) order that there shall be a further procedural hearing (called “the second procedural hearing”) and fix a date for that hearing; or
- (b) order a hearing to dispose of the matter (called “the determination hearing”) and the Clerk of Justiciary shall fix a date for that hearing.

(5) Where the High Court orders a determination hearing, it shall ascertain from the parties their estimates of the likely length of that hearing.

Second procedural hearing

37AA.5C.—(1) At the second procedural hearing, the High Court shall—

- (a) ascertain the state of readiness of the parties to conduct a determination hearing;
- (b) make such further orders as the High Court thinks fit for the purpose of reaching a position where the parties are so ready; and
- (c) either—
 - (i) continue the hearing for a period of not longer than 4 weeks; or
 - (ii) order a determination hearing and the Clerk of Justiciary shall fix a date for that hearing.

(2) Where the High Court orders a determination hearing, it shall ascertain from the parties their estimates of the likely length of that hearing.

Preparation for determination hearing

37AA.5D.—(1) Where the High Court fixes a determination hearing it shall—

- (a) direct the Clerk of Justiciary to issue a timetable specifying—
 - (i) that a pre-determination hearing meeting is to take place at least 8 weeks before the determination hearing;

- (ii) the date for lodging of the minute in Form 37AA.5D-A of the above meeting, to be at least 5 weeks before the determination hearing;
 - (iii) the last date for lodging productions, to be at least 4 weeks before the determination hearing;
 - (iv) the last date for lodging witness lists, to be at least 4 weeks before the determination hearing.
- (b) make such further orders regarding preparation as it sees fit.
- (2) The timetable issued under paragraph (1)(a) shall be in Form 37AA.5D-B and shall be treated for all purposes as an interlocutor of the High Court signed by a judge of that court.
- (3) A party shall not be permitted to refer to any document that has not been lodged by the date required under paragraph (1)(a)(iii) except by leave of the High Court on cause shown.
- (4) At the same time as lodging productions and witness lists, copies shall be intimated to the other parties.

Hearing to check preparation

- 37AA.5E.**—(1) A hearing shall take place on the last Monday which is at least 4 weeks before the determination hearing.
- (2) At the hearing the High Court shall—
- (a) consider the minute in Form 37AA.5D-A;
 - (b) ascertain the state of readiness of the parties to conduct the determination hearing; and
 - (c) make such further orders as the High Court thinks fit for the purpose of ensuring that the parties are so ready.

General provision on adjustment

- 37AA.5F.**—(1) In the High Court, any adjustments to the statement of information or response must be intimated as soon as practicable to the other party.
- (2) The statement of information and response, as adjusted, shall be lodged by the respective parties on the day after the adjustment period ends and at the same time a copy fully adjusted to date shall be intimated to the other party.

Public holidays

- 37AA.5G.** Where any hearing on a Monday set by virtue of rule 37AA.5B or 37AA.5E would otherwise fall on a public holiday, it shall take place on the next Monday following which is not a public holiday.”
- (4) After Form 37.5(5) in the appendix to the Rules insert the forms set out in the Schedule to this Act of Adjournal.

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
