SCOTTISH STATUTORY INSTRUMENTS

2003 No. 120

HIGH COURT OF JUSTICIARY SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules Amendment) (Proceeds of Crime Act 2002) 2003

Made - - - - 20th February 2003

Coming into force in accordance with paragraph 1

The Lord Justice-General, the Lord Justice-Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred upon them by section 305 of the Criminal Procedure (Scotland) Act 1995(**1**) and subsections (2) and (3)(a) of sections 386, 396, 403 and 408 of the Proceeds of Crime Act 2002(**2**) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment) (Proceeds of Crime Act 2002) 2003 and shall come into force–

(a) for proceedings under Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (Investigations: Scotland), on 24th February 2003; and

(b) for proceedings under Part 3 of that Act (Confiscation: Scotland), on 24th March 2003.

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

Amendment of the Criminal Procedure Rules

2.—(1) The Criminal Procedure Rules 1996(**3**) shall be amended in accordance with the following sub-paragraph.

(2) For Chapter 37 (causes under the Proceeds of Crime (Scotland) Act 1995), there shall be inserted–

(**1**) 1995 c. 46.
(**2**) 2002 c. 29.
(**3**) S.I. 1996/513, to which there are amendments not relevant to this Act of Adjournal.

"Chapter 37AA

PROCEEDINGS UNDER THE PROCEEDS OF CRIME ACT 2002

Interpretation of this Chapter

37AA.1. In this Chapter "the Act of 2002" means the Proceeds of Crime Act 2002.

CONFISCATION

Confiscation orders

37AA.2.—(1) A request by the prosecutor under subsection (3) of section 92 of the Act of 2002 (making of order) may be made orally at the bar.

(2) A person who wishes to make representations to the court under subsection (8) of section 92 of the Act of 2002 shall do so–

(a) in writing to the Clerk of Court, unless the court otherwise directs; and

(b) by such date as the court directs.

(3) An application under–

(a) subsection (2) of section 111 (conviction or other disposal of accused); or

(b) subsection (2) of section 112 (accused neither convicted nor acquitted),

of the Act of 2002 may be made–

(i) orally at the bar; or

(ii) by minute.

Disposal of family home

37AA.3. An application by an administrator under subsection (2) of section 98 of the Act of 2002 (disposal of family home) to dispose of a right or interest in a person's family home shall be–

(a) by petition; and

(b) served on–

(i) the person in respect of whose right or interest the application is made; and

(ii) any other person likely to be affected by the application.

Application for postponement

37AA.4. An application by the accused or the prosecutor for postponement or extension under subsection (7) of section 99 of the Act of 2002 (postponement)–

(a) may be made either–

(i) orally at the bar; or

(ii) in writing by minute; and

(b) may be determined by the court without a hearing.

Statement of information

37AA.5.—(1) This rule applies where the court ordains the prosecutor to give a statement of information or further statement of information, as the case may be, under any of the following provisions of the Act of 2002:–

(a) subsection (1) of section 101 (statement of information);

(b) subsection (5) of that section; or

(c) paragraph (b) of subsection (2) of section 110 (information).

(2) The prosecutor shall give a statement referred to in the foregoing paragraph within such period as the court determines.

(3) The prosecutor shall serve a copy of a statement given in terms of paragraph (1) on the accused.

(4) An accused who gives an indication under subsection (1) of section 102 of the Act of 2002 (accused's response to statement of information) shall do so in writing to the Clerk of Court.

Reconsideration of case, benefit or available amount

37AA.6.—(1) This rule applies to an application by the prosecutor under any of the following provisions of the Act of 2002:–

(a) to consider new evidence under–

(i) paragraph (c) of subsection (1) of section 104 (no order made: reconsideration of case);

(ii) paragraph (b) of subsection (3) of section 105 (no order made: reconsideration of benefit); or

(iii) paragraph (d) of subsection (1) of section 106 (order made: reconsideration of benefit); and

(b) to make a new calculation of the available amount under paragraph (c) of subsection (1) of section 107 (order made: reconsideration of available amount).

(2) An application mentioned in the foregoing paragraph–

(a) shall be made by minute; and

(b) shall be served by the prosecutor on the accused and any other person likely to be affected by it.

Variation or discharge of confiscation order

37AA.7.—(1) Any of the following applications made under any of the following provisions of the Act of 2002 shall be by minute:–

(a) by the accused or the prosecutor under paragraph (b) of subsection (1) of section 108 (inadequacy of available amount: variation of order);

(b) by the prosecutor under paragraph (b) of subsection (1) of section 109 (inadequacy of available amount: discharge of order);

(c) by the accused under paragraph (e) of subsection (1) of section 113 (variation of order); or

(d) by the accused under–

(i) paragraph (c) of subsection (1); or

(ii) paragraph (d) of subsection (3),

of section 114 (discharge of order).

(2) A party who makes an application mentioned in the foregoing paragraph shall serve a copy on every person likely to be affected by it.