

**ACT OF ADJOURNAL (CRIMINAL PROCEDURE RULES) 1996 SI 1996/513**

**SCHEDULE 2**

**CRIMINAL PROCEDURE RULES 1996**

***PART VII Miscellaneous procedures***

**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.

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

(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) 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.

(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) (called the "response") shall do so in writing to the Clerk of Court.

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

## **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.

### **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.

### **Time for payment**

37AA.8 (1) An application by the accused under subsection (4) of section 116 of the Act of 2002 (time for payment) may be made-

- (a) by minute; or
- (b) orally at the bar.

(2) Where an accused makes an application by minute, he shall serve a copy on the prosecutor.

### **Hearings**

37AA.9 Any request or application mentioned in the following rules shall be determined at a hearing, unless the court otherwise directs:

- (a) 37AA.2 (confiscation orders);
- (b) 37AA.3 (disposal of family home);
- (c) 37AA.6 (reconsideration of case, benefit or available amount);
- (d) 37AA.7 (variation or discharge of confiscation order),
- (e) 37AA.8 (time for payment);
- (f) 37AA.10 (application, discharge and variation).

## **INVESTIGATIONS**

### **Application, discharge and variation**

37AA.10 (1) The following applications shall be by petition:-

(a) by the appropriate person to the Sheriff under any of the following provisions of the Act of 2002-

- (i) subsection (1) of section 380 (production orders);
- (ii) subsection (1) of section 387 (search warrants);
- (iii) subsection (1) of section 397 (customer information orders);
- (iv) subsection (1) of section 404 (account monitoring orders),

in relation to a confiscation investigation or money laundering investigation; and

(b) by the Lord Advocate, to the High Court of Justiciary under subsection (1) of section 391 of that Act (disclosure orders) for a disclosure order in relation to a confiscation investigation.

(2) An application under subsection (2) of section 382 of the Act of 2002 (order to grant entry)-

(a) may be included in a petition in respect of an application under paragraph (1)(a)(i) of this rule; or

(b) if made after the lodging of the petition, shall be by minute, and paragraph (3) of this rule shall apply to such an application.

(3) An application under any of the following provisions of the Act of 2002 shall be by minute and shall be intimated to any person affected by it:-

(a) subsection (4) of section 386 (production orders: supplementary) to discharge or vary a production order or an order to grant entry;

(b) subsection (4) of section 396 (disclosure orders: supplementary) to discharge or vary a disclosure order;

(c) subsection (4) of section 403 (customer information orders: supplementary) to discharge or vary a customer information order;

(d) subsection (4) of section 408 (account monitoring orders: supplementary) to discharge or vary an account monitoring order.