

2016 No. 137

HIGH COURT OF JUSTICIARY

SHERIFF COURT

**Act of Adjournal (Criminal Procedure Rules 1996 Amendment)
(No. 2) (Serious Crime Prevention Orders) 2016**

<i>Made</i> - - - -	<i>2nd March 2016</i>
<i>Laid before the Scottish Parliament</i>	<i>3rd March 2016</i>
<i>Coming into force</i> - -	<i>17th March 2016</i>

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by section 305 of the Criminal Procedure (Scotland) Act 1995^(a) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 2) (Serious Crime Prevention Orders) 2016.

(2) It comes into force on 17th March 2016.

(3) A certified copy is to be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure Rules 1996

2.—(1) The Criminal Procedure Rules 1996^(b) are amended in accordance with this paragraph.

(2) After Chapter 62 (request for final decision and reasons)^(c) insert—

“CHAPTER 63

SERIOUS CRIME PREVENTION ORDERS

Interpretation of this Chapter

63.1.—(1) In this Chapter—

“the 2007 Act” means the Serious Crime Act 2007^(d);

(a) 1995 c.46. Section 305 was extended by the Serious Crime Act 2007 (c.27), section 36A(4).

(b) The Criminal Procedure Rules 1996 are in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2016/103).

(c) Chapter 62 was inserted by S.S.I. 2015/375.

(d) 2007 c. 27. Part 1 was relevantly amended by the Serious Crime Act 2015 (c. 9), sections 46 and 49 and Schedule 1.

“person who is the subject of a serious crime prevention order” is to be construed in accordance with section 1(6) of the 2007 Act;

“serious crime prevention order” has the meaning given by section 1(5) of the 2007 Act;

“subject” means the person who is the subject of a serious crime prevention order.

Serious crime prevention orders

63.2.—(1) An application by the Lord Advocate under section 22A of the 2007 Act (orders by High Court of Justiciary and sheriff on conviction)(a) is to be in Form 63.2–A.

(2) When an application is lodged, the court must—

- (a) order intimation of the application to the person who is the proposed subject;
- (b) appoint a hearing on the application.

(3) A serious crime prevention order made under section 22A of the 2007 Act is to be in Form 63.2–B.

Variation or replacement of serious crime prevention orders

63.3.—(1) An application by the Lord Advocate under section 22B of the 2007 Act (powers of High Court and sheriff to vary orders on conviction)(b) is to be made in Form 63.3–A.

(2) An application by the Lord Advocate under section 22C of the 2007 Act (powers of High Court and sheriff to vary or replace orders on breach)(c) is to be made in Form 63.3–B.

(3) When an application under section 22B or 22C is lodged, the court must—

- (a) order intimation of the application to the subject;
- (b) appoint a hearing on the application.

(4) Where the court grants an application under section 22B or 22C and varies a serious crime prevention order, the varied order is to be in Form 63.3–C.

(5) Where the court grants an application under section 22C and replaces a serious crime prevention order, the new order is to be in Form 63.3–D.

Extension of serious crime prevention orders

63.4.—(1) An application by the Lord Advocate under section 22E of the 2007 Act (extension of orders pending outcome of criminal proceedings)(d) is to be in Form 63.4–A.

(2) When an application is lodged, the court must—

- (a) order intimation of the application to the subject;
- (b) appoint a hearing on the application.

(3) Where the court grants an application under section 22E and varies a serious crime prevention order, the varied order is to be in Form 63.4–B.

Notification of making or variation of order

63.5.—(1) This rule applies where a serious crime prevention order is—

- (a) made under section 22A of the 2007 Act;

(a) Section 22A was inserted by the Serious Crime Act 2015 (c. 9), Schedule 1, paragraph 17.
(b) Section 22B was inserted by the Serious Crime Act 2015 (c. 9), Schedule 1, paragraph 17.
(c) Section 22C was inserted by the Serious Crime Act 2015 (c. 9), Schedule 1, paragraph 17.
(d) Section 22E was inserted by the Serious Crime Act 2015 (c. 9), section 49.

- (b) varied under section 22B, 22C or 22E of the 2007 Act; or
 - (c) replaced under section 22C of the 2007 Act.
- (2) Where the subject is present or represented at the hearing where the order is made, varied or replaced, the clerk of court must give a copy of the order or the variation to—
- (a) the subject;
 - (b) any other person specified in the order or the variation.
- (3) Where the subject is not present or represented at the hearing where the order is made, varied or replaced, the Lord Advocate must give notice of the making, variation or replacement of the order on—
- (a) the subject;
 - (b) any other person specified in the order or the variation.
- (4) Notice is to be given by serving a copy of the order, the variation or the replacement order in accordance with section 10(2) of the 2007 Act.”
- (3) Chapter 49 (financial reporting orders)(a) is revoked.
- (4) In the Appendix—
- (a) omit Form 49.2 (form of financial reporting order)(b) and Form 49.3 (form of petition for variation or revocation of financial reporting order)(c);
 - (b) after Form 62.2 (request for final decision and reasons)(d), insert Forms 63.2–A, 63.2–B, 63.3–A, 63.3–B, 63.3–C, 63.3–D, 63.4–A and 63.4–B set out in the Schedule to this Act of Adjournal.

Saving provision

3.—(1) Paragraphs 2(2) and 2(4)(b) do not apply to a person who is being dealt with on or after 1st March 2016 in relation to an offence of which the person was convicted before that date.

(2) Paragraphs 2(3) and 2(4)(a) do not apply to a financial reporting order made before 1st March 2016.

CJM SUTHERLAND
Lord Justice General
I.P.D.

Edinburgh
2nd March 2016

(a) Chapter 49 was inserted by S.S.I. 2006/205 and amended by S.S.I. 2010/418.
(b) Form 49.2 was inserted by S.S.I. 2006/205.
(c) Form 49.3 was inserted by S.S.I. 2006/205.
(d) Form 62.2 was inserted by S.S.I. 2015/375.

SCHEDULE

Paragraph 2(4)(b)

Form 63.2–A

Rule 63.2(1)

Form of application for serious crime prevention order

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

APPLICATION

by

HER MAJESTY'S ADVOCATE

APPLICANT

for

SERIOUS CRIME PREVENTION ORDER

under section 22A of the Serious Crime Act 2007

HUMBLY SHEWETH:

1. That (*name of proposed subject*) (“the convicted person”) was convicted by the High Court of Justiciary [or the sheriff at (*place*)] on (*date*) of (*specify offence*).
2. That the offence is a serious offence in Scotland within the meaning of section 2A(2) of the Serious Crime Act 2007 because (*specify reasons*).
3. That the proposed serious crime prevention order would protect the public by preventing, restricting or disrupting involvement by the convicted person in serious crime in Scotland because (*specify reasons*).
4. That the convicted person is not already the subject of a serious crime prevention order in Scotland. [or
4. That the convicted person is subject to an existing order made by (*court*) on (*date*), a copy of which is attached to this application.]
5. That the terms of the proposed serious crime prevention order are set out in the attached schedule.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- (1) to appoint intimation of this application to be made to the convicted person;
- (2) to appoint a hearing on the application at the earliest practicable date;

- (3) thereafter to make a serious crime prevention order in the terms set out in the schedule;
- (4) [(where the convicted person is the subject of an existing order) to discharge the existing order made by (court) on (date);]
- (5) (where the convicted person is present or represented at the hearing) to appoint the clerk of court to give a copy of the order to the convicted person; [or
- (5) (where the convicted person is not present or represented at the hearing) to appoint the Lord Advocate to serve notice of the making of the order on the convicted person in accordance with section 10(2) of the Serious Crime Act 2007;]
- (6) to appoint the clerk of court to give a copy of the order to the persons specified in the schedule;
- (7) or to do otherwise as to your Lordship(s) seems appropriate.

ACCORDING TO JUSTICE, etc.

(Signed)

On behalf of Her Majesty's Advocate

(Address and telephone number)

(Email address)

SCHEDULE

(set out terms of order sought)

(specify persons to whom a copy of the order should be sent)

Form 63.2–B

Rule 63.2(3)

Form of serious crime prevention order

SERIOUS CRIME PREVENTION ORDER

under section 22A of the Serious Crime Act 2007

Court:

Date:

Convicted person:

Address:

Date of birth:

THE COURT:

- (1) has considered the application made by the Lord Advocate for a serious crime prevention order in respect of the convicted person;
- (2) is satisfied that the convicted person has been convicted of a serious offence in Scotland within the meaning of section 2A(2) of the Serious Crime Act 2007;
- (3) has reasonable grounds to believe that making a serious crime prevention order would protect the public by preventing, restricting or disrupting involvement by the convicted person in serious crime in Scotland;
- (4) has sentenced the convicted person in respect of the offence concerned; [*or*
- (4) has made an order discharging the person absolutely;]

ACCORDINGLY, THE COURT ORDERS that:

- [(1) the serious crime prevention order made by (*court*) on (*date*) is discharged;]
- (2) (*set out terms of the order*)

This order comes into force on (*date*). It ceases to be in force on (*date*).

(where different provisions are to come into force, or cease to be in force, on different dates, specify the dates in respect of each provision)

(Signed)

Clerk of Court

COPY:

Convicted person

[Scottish Prison Service]

[Police Scotland]

[National Crime Agency]

[Crown Office]

Form 63.3–A

Rule 63.3(1)

Form of application to vary a serious crime prevention order

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

APPLICATION

by

HER MAJESTY'S ADVOCATE

APPLICANT

for

VARIATION OF A SERIOUS CRIME PREVENTION ORDER

under section 22B of the Serious Crime Act 2007

HUMBLY SHEWETH:

1. That (*name of proposed subject*) (“the convicted person”) was convicted by the High Court of Justiciary [or the sheriff at (*place*)] on (*date*) of (*specify offence*).
2. That the offence is a serious offence in Scotland within the meaning of section 2A(2) of the Serious Crime Act 2007 because (*specify reasons*).
3. That the convicted person is subject to an existing serious crime prevention order made by (*court*) on (*date*), a copy of which is attached to this application.
4. That the proposed variation of the existing order would protect the public by preventing, restricting or disrupting involvement by the convicted person in serious crime in Scotland because (*specify reasons*).
5. That the terms of the proposed variation of the existing order are set out in the attached schedule.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- (1) to appoint intimation of this application to be made to the convicted person;
- (2) to appoint a hearing on the application at the earliest practicable date;
- (3) thereafter to vary the existing serious crime prevention order in the terms set out in the schedule;

- (4) *(where the convicted person is present or represented at the hearing)* to appoint the clerk of court to give a copy of the variation to the convicted person; [*or*
- (4) *(where the convicted person is not present or represented at the hearing)* to appoint the Lord Advocate to serve notice of the variation on the convicted person in accordance with section 10(2) of the Serious Crime Act 2007;]
- (5) to appoint the clerk of court to give a copy of the variation to the persons specified in the schedule;
- (6) or to do otherwise as to your Lordship(s) seems appropriate.

ACCORDING TO JUSTICE, etc.

(Signed)

On behalf of Her Majesty's Advocate

(Address and telephone number)

(Email address)

SCHEDULE

(set out terms of variation sought)

(specify persons to whom a copy of the variation should be sent)

Form 63.3–B

Rule 63.3(2)

Form of application to vary or replace a serious crime prevention order

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

APPLICATION

by

HER MAJESTY’S ADVOCATE

APPLICANT

for

VARIATION [or REPLACEMENT] OF A SERIOUS CRIME PREVENTION ORDER

under section 22C of the Serious Crime Act 2007

HUMBLY SHEWETH:

1. That (*name of proposed subject*) (“the convicted person”) was convicted by the High Court of Justiciary [or the sheriff at (*place*)] on (*date*) of an offence under section 25 of the Serious Crime Act 2007 in relation to a serious crime prevention order.
2. That the serious crime prevention order, a copy of which is attached to this application, was made by (*court*) on (*date*).
3. That the proposed variation of the existing order [or replacement of the existing order with a new order] would protect the public by preventing, restricting or disrupting involvement by the convicted person in serious crime in Scotland because (*specify reasons*).
4. That the terms of the proposed variation of the existing order [or proposed new order] are set out in the attached schedule.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- (1) to appoint intimation of this application to be made to the convicted person;
- (2) to appoint a hearing on the application at the earliest practicable date;
- (3) thereafter to vary the existing serious crime prevention order in the terms set out in the schedule; [or

- (3) thereafter to discharge the existing serious crime prevention order and make a new serious crime prevention order in the terms set out in the schedule;]
- (4) (*where the convicted person is present or represented at the hearing*) to appoint the clerk of court to give a copy of the variation [*or the new order*] to the convicted person; [*or*
- (4) (*where the convicted person is not present or represented at the hearing*) to appoint the Lord Advocate to serve notice of the variation [*or the new order*] on the convicted person in accordance with section 10(2) of the Serious Crime Act 2007;]
- (5) to appoint the clerk of court to give a copy of the variation [*or the new order*] to the persons specified in the schedule;
- (5) or to do otherwise as to your Lordship(s) seems appropriate.

ACCORDING TO JUSTICE, etc.

(Signed)

On behalf of Her Majesty's Advocate

(Address and telephone number)

(Email address)

SCHEDULE

(set out terms of variation or new order sought)

(specify persons to whom a copy of the variation or new order should be sent)

Form 63.3–C

Rule 63.3(4)

Form of variation of serious crime prevention order

VARIATION OF SERIOUS CRIME PREVENTION ORDER

under section 22B [*or* 22C] of the Serious Crime Act 2007

Court:

Date:

Convicted person:

Address:

Date of birth:

THE COURT:

- (1) has considered the application made by the Lord Advocate to vary the serious crime prevention order dated (*date*) in respect of the convicted person;
- (2) (*section 22B variations*) is satisfied that the convicted person has been convicted of a serious offence in Scotland within the meaning of section 2A(2) of the Serious Crime Act 2007; [*or*
- (2) (*section 22C variations*) is satisfied that the convicted person has been convicted of an offence under section 25 of the Serious Crime Act 2007 in relation to a serious crime prevention order;]
- (3) has reasonable grounds to believe that varying the serious crime prevention order would protect the public by preventing, restricting or disrupting involvement by the convicted person in serious crime in Scotland;
- (4) has sentenced the convicted person in respect of the offence concerned; [*or*
- (4) has made an order discharging the person absolutely;]

ACCORDINGLY, THE COURT ORDERS that the serious crime prevention order made by (*court*) on (*date*) is varied as follows:

(*set out terms of the variation*)

(*Signed*)

Clerk of Court

COPY:

Convicted person

[Scottish Prison Service]

[Police Scotland]

[National Crime Agency]

[Crown Office]

Form 63.3–D

Rule 63.3(5)

Form of replacement serious crime prevention order
REPLACEMENT SERIOUS CRIME PREVENTION ORDER
under section 22C of the Serious Crime Act 2007

Court:

Date:

Convicted person:

Address:

Date of birth:

THE COURT:

- (1) has considered the application made by the Lord Advocate to replace the serious crime prevention order dated (*date*) in respect of the convicted person;
- (2) is satisfied that the convicted person has been convicted of an offence under section 25 of the Serious Crime Act 2007 in relation to a serious crime prevention order;
- (3) has reasonable grounds to believe that making a new serious crime prevention order would protect the public by preventing, restricting or disrupting involvement by the convicted person in serious crime in Scotland;
- (4) has sentenced the convicted person in respect of the offence concerned; [*or*
- (4) has made an order discharging the person absolutely;]

ACCORDINGLY, THE COURT ORDERS that:

- (1) the serious crime prevention order made by (*court*) on (*date*) is discharged;
- (2) (*set out terms of the order*)

This order comes into force on (*date*). It ceases to be in force on (*date*).

(where different provisions are to come into force, or cease to be in force, on different dates, specify the dates in respect of each provision)

(Signed)

Clerk of Court

COPY:

Offender

[Scottish Prison Service]

[Police Scotland]

[National Crime Agency]

[Crown Office]

Form 63.4–A

Rule 63.4(1)

Form of application to extend a serious crime prevention order

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

APPLICATION

by

HER MAJESTY’S ADVOCATE

APPLICANT

for

EXTENSION OF A SERIOUS CRIME PREVENTION ORDER

under section 22E of the Serious Crime Act 2007

HUMBLY SHEWETH:

1. That (*name of subject*) (“the subject”) is subject to an existing serious crime prevention order made by (*court*) on (*date*), a copy of which is attached to this application.
- [2. (*where the order has been varied*) That the existing order was varied by (*court*) on (*date*), and a copy of the variation is attached to this application.]
3. That the subject was charged on (*date*) with (*specify offence*).
4. That the offence is a serious offence in Scotland within the meaning of section 2A(2) of the Serious Crime Act 2007 because (*specify reasons*). [*or*
4. That the offence is an offence under section 25 of the Serious Crime Act 2007 of failing to comply with a serious crime prevention order.]
5. That the existing order will cease to have effect on (*date*).
6. That the applicant requests that the existing order be varied so that it continues in effect until one of the events specified in section 22E(4) of the Serious Crime Act 2007 occurs.
7. That the proposed variation of the existing order would protect the public by preventing, restricting or disrupting involvement by the subject in serious crime in Scotland because (*specify reasons*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- (1) to appoint intimation of this application to be made to the subject;
- (2) to appoint a hearing on the application at the earliest practicable date;

- (3) thereafter to vary the existing serious crime prevention order as sought in paragraph 6;
- (4) *(where the convicted person is present or represented at the hearing)* to appoint the clerk of court to give a copy of the variation to the subject; [*or*
- (4) *(where the convicted person is not present or represented at the hearing)* to appoint the Lord Advocate to serve notice of the variation on the subject in accordance with section 10(2) of the Serious Crime Act 2007;]
- (5) to appoint the clerk of court to give a copy of the variation to the persons specified in the schedule;
- (6) or to do otherwise as to your Lordship(s) seems appropriate.

ACCORDING TO JUSTICE, etc.

(Signed)

On behalf of Her Majesty's Advocate

(Address and telephone number)

(Email address)

SCHEDULE

(specify persons to whom a copy of the variation should be sent)

Form 63.4–B

Rule 63.4(3)

Form of extension of serious crime prevention order

VARIATION OF SERIOUS CRIME PREVENTION ORDER

under section 22E of the Serious Crime Act 2007

Court:

Date:

Convicted person:

Address:

Date of birth:

THE COURT:

- (1) has considered the application made by the Lord Advocate to vary the serious crime prevention order dated (*date*) in respect of the convicted person so that it continues in effect until one of the events listed in section 22E(4) of the Serious Crime Act 2007 occurs;
- (2) is satisfied that the convicted person has been charged with a serious offence in Scotland within the meaning of section 2A(2) of the Serious Crime Act 2007; [*or*
- (2) is satisfied that the convicted person has been charged with an offence under section 25 of the Serious Crime Act 2007 of failing to comply with a serious crime prevention order;]
- (3) is satisfied that the order would cease to have effect before one of the events listed section 22E(4) of the Serious Crime Act 2007 occurs unless the application is granted;
- (4) has reasonable grounds to believe that varying the serious crime prevention order would protect the public by preventing, restricting or disrupting involvement by the convicted person in serious crime in Scotland;

ACCORDINGLY, THE COURT ORDERS that the serious crime prevention order made by (*court*) on (*date*) is varied as follows:

(set out terms of the variation that continues the order in effect until one of the events listed in section 22E(4) of the Serious Crime Act 2007 occurs)

(Signed)

Clerk of Court

COPY:

Offender

[Scottish Prison Service]

[Police Scotland]

[National Crime Agency]

[Crown Office]

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal inserts a new Chapter 63 (serious crime prevention orders) into the Criminal Procedure Rules 1996 in consequence of the amendments made to the Serious Crime Act 2007 by the Serious Crime Act 2015. Those amendments extend the availability of serious crime prevention orders so that they may be made in Scotland.

Paragraph 2(2) inserts the new Chapter. New rule 63.2 prescribes the form in which an application for a serious crime prevention order is to be made and the form of such an order. When an application is lodged, the court must order the application to be intimated to the proposed subject and appoint a hearing. Rule 63.3 makes similar provision for applications to vary (or replace) a serious crime prevention order. Rule 63.4 makes similar provision for applications to extend a serious crime prevention order by varying it pending the outcome of certain criminal proceedings. Rule 63.5 goes on to make provision about how the making of an order, its variation or replacement is to be brought to the attention of the subject. If the person is present in court or represented when the order is made, varied or replaced, the clerk is to give a copy of the order or variation to that person. Where, exceptionally, the person is neither present nor represented, the rules require the Lord Advocate (who is the applicant in all Scottish cases) to serve notice on the person in accordance with section 10 of the Serious Crime Act 2007. The forms referred to in the new Chapter are inserted by paragraph 2(4)(b).

Paragraph 2(3) revokes Chapter 49 (financial reporting orders). As a consequence of the extension of serious crime prevention orders to Scotland, the provisions about financial reporting orders in the Serious Organised Crime and Police Act 2005 are repealed on 1st March 2016 by section 50 of the Serious Crime Act 2015. Chapter 49 is accordingly revoked, as are its associated forms (paragraph 2(4)(a)).

Paragraph 3(1) disapplies new Chapter 63 and its associated forms in relation to a person who is being dealt with on or after 1st March 2016 in relation to an offence of which the person was convicted before that date. This mirrors the saving provision for sections 22A to 22C of the Serious Crime Act 2007 in regulation 5(1) of the Serious Crime Act 2015 (Commencement No. 5 and Transitional Provisions and Savings) Regulations 2016.

Paragraph 3(2) contains a saving provision in respect of the revocation of Chapter 49 and its forms, so that those provisions continue in force in connection with any financial reporting order made prior to 1st March 2016.

The Act of Adjournal comes into force on 17th March 2016.

© Crown copyright 2016

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.

£6.00

S201603021000 03/2016 19585

<http://www.legislation.gov.uk/id/ssi/2016/137>

ISBN 978-0-11-103195-7



9 780111 031957