

2017 No. 251

HIGH COURT OF JUSTICIARY

SHERIFF APPEAL COURT

SHERIFF COURT

**Act of Adjournal (Criminal Procedure Rules 1996 Amendment)
(No. 3) (Miscellaneous) 2017**

Made - - - - - *20th July 2017*

Laid before the Scottish Parliament *24th July 2017*

Coming into force - - - *21st August 2017*

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. 3) (Miscellaneous) 2017.

(2) It comes into force on 21st August 2017.

(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 64 (trafficking and exploitation prevention orders)^(c) insert—

“CHAPTER 65

PSYCHOACTIVE SUBSTANCES ACT 2016

Interpretation of this Chapter

65.1.—(1) In this Chapter—

(a) 1995 c.46. Section 305 was extended by the Psychoactive Substances Act 2016 (c.2), section 32(5).

(b) The Criminal Procedure Rules 1996 are in schedule 2 of the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513), last amended by S.S.I. 2017/145.

(c) Chapter 64 was inserted by S.S.I. 2017/145.

“the 2016 Act” means the Psychoactive Substances Act 2016(a);
“forfeiture order” has the meaning given by section 54(5) of the 2016 Act;
“premises order” has the meaning given by section 20(2) of the 2016 Act;
“prohibition order” has the meaning given by section 17(1) of the 2016 Act;
“subject” means the person against whom the prohibition order or the premises order has been made.

Prohibition orders

65.2. A prohibition order made under section 19 of the 2016 Act (prohibition orders following conviction) is to be in Form 65.2.

Variation or discharge of orders

65.3—(1) An application under section 28 of the 2016 Act (variation and discharge on application) for the variation or discharge of a prohibition order which was made under section 19 of the 2016 Act is to be made in Form 65.3—A.

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

- (a) order intimation of the application to the subject, where the application is made by a person other than the subject;
- (b) order intimation of the application to the Lord Advocate or procurator fiscal, where the application is made by a person other than the Lord Advocate or procurator fiscal;
- (c) order intimation of the application to any other person who the court considers may have an interest in the prohibition order; and
- (d) appoint a hearing on the application.

(3) Where the court varies or discharges a prohibition order under section 28 or section 29 of the 2016 Act, it is to do so in Form 65.3—B.

(4) Where the court varies a premises order under section 29 of the 2016 Act (variation following conviction), it is to do so in Form 65.3—C.

Notification of making, variation or discharge of orders

65.4—(1) This rule applies where—

- (a) a prohibition order is made under section 19 of the 2016 Act;
- (b) a prohibition order is discharged under section 28 of the 2016 Act;
- (c) a prohibition order is varied under section 28 or section 29 of the 2016 Act; or
- (d) a premises order is varied under section 29 of the 2016 Act.

(2) The clerk of court must give a copy of the order, variation or discharge to—

- (a) the subject;
- (b) any other person specified in the order, variation or discharge; and
- (c) the court that made the prohibition order or premises order, where that order was made by a court other than the court varying or discharging it.

(3) The clerk of court may give a copy of the order by—

- (a) delivering it in person; or
- (b) sending it by recorded delivery.

Forfeiture orders

65.5. A forfeiture order is to be in Form 65.5.

Forfeiture orders: representations

65.6—(1) This rule applies where the court is considering making a forfeiture order in relation to an item that was used in the commission of an offence.

(2) In this rule, “convicted person” means a person who has been convicted of an offence to which section 54 of the 2016 Act applies.

(3) The court must appoint a hearing at which a forfeiture order may be made.

(4) The clerk of court must intimate the date and time of that hearing to—

- (a) the convicted person;
- (b) the owner of the item (where known); and
- (c) any other person who the court considers may have an interest in the item.

(5) The court must give the convicted person and any person who claims to be the owner of, or has an interest in, the item an opportunity to make representations before a forfeiture order is made.

(6) Those representations must—

- (a) be made in Form 65.6; and
- (b) be sent to the court by such date as the court directs.”.

(3) In the Appendix—

- (a) in Form 5.2 (form of record of proceedings at judicial examination)(a) omit “(Signed) Sheriff Clerk”; and
- (b) after Form 64.4 (form of application to make representations under section 14(5) of the Human Trafficking and Exploitation (Scotland) Act 2015), insert Forms 65.2, 65.3—A, 65.3—B, 65.3—C, 65.5 and 65.6 set out in the schedule of this Act of Adjournal.

CJM SUTHERLAND
Lord Justice General
I.P.D.

Edinburgh
20th July 2017

(a) Form 5.2 was amended by S.S.I. 2017/144.

SCHEDULE

Paragraph 2(3)(b)

Form 65.2

Rule 65.2

Form of prohibition order

PROHIBITION ORDER

under section 19 of the Psychoactive Substances Act 2016

Court Ref No:

Court:

Date:

Person against whom the order is made (“the subject”):

Address:

Date of birth:

THE COURT:

- (1) is satisfied that the subject has been convicted of a relevant offence in Scotland within the meaning of section 19(5) of the Psychoactive Substances Act 2016;
- (2) considers that it is necessary and proportionate to make a prohibition order for the purpose of preventing the subject from carrying on any prohibited activity within the meaning of section 12 of the Psychoactive Substances Act 2016;
- (3) has sentenced the subject in respect of the offence concerned.

[*or*

- (3) has made an order discharging the subject absolutely.]

ACCORDINGLY, THE COURT ORDERS that:

(set out terms of the order)

This order comes into force on *(date)*.

[Where the subject is under the age of 18 at the time the order is made:

This order 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:

The subject

[The Lord Advocate]

[Procurator fiscal]

Form 65.3–A

Rule 65.3(1)

Form of application to vary or discharge prohibition 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

[NAME OF APPLICANT]

APPLICANT

for

VARIATION [OR DISCHARGE] OF A PROHIBITION ORDER

under section 28 of the Psychoactive Substances Act 2016

Court Ref No:

HUMBLY SHEWETH, that:

1. *(Name of the person against whom the order is made)* (“the subject”) was convicted by the High Court of Justiciary [or the sheriff at *(place)*] on *(date)* of *(specify offence)*.
2. The offence is a relevant offence within the meaning of section 19(5) of the Psychoactive Substances Act 2016.
3. The subject is subject to an existing prohibition order made under section 19 of the Psychoactive Substances Act 2016 by *(court)* on *(date)*, a copy of which is attached to this application.
4. *(where application is for variation of an order)* The terms of the proposed variation of the existing prohibition order are set out in the attached schedule.

[or

4. *(where application is for discharge of an order)* Discharge of the existing prohibition order is sought.]

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [or THE COURT]:

- (1) *(where the application is made by a person other than the subject, Lord Advocate or procurator fiscal)* to order intimation of this application to the subject, the Lord Advocate [*or procurator fiscal*] and any other person who the court considers may have an interest in the prohibition order;

[or

- (1) *(where the application is made by the Lord Advocate or procurator fiscal)* to order intimation of this application to the subject and any other person who the court considers may have an interest in the prohibition order;]

[or

- (1) *(where the application is made by the subject)* to order intimation of this application to the Lord Advocate [*or procurator fiscal*] and any other person who the court considers may have an interest in the prohibition order;]

- (2) to appoint a hearing on the application at the earliest practicable date;

- (3) to vary the existing prohibition order in the terms set out in the schedule;

[or

- (3) to discharge the existing prohibition order;]

- (4) to appoint the clerk of court to give a copy of the variation [*or discharge*] to the subject, the Lord Advocate [*or procurator fiscal*] and any other person who the court considers may have an interest in the prohibition order;

- (5) to appoint the clerk of court to give a copy of the order to the persons specified in the schedule;

- (6) to do otherwise as to your Lordship(s) [*or the court*] seems appropriate.

IN RESPECT WHEREOF

(Signed)

Applicant [*or*

Legal representative of the applicant]

(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 65.3–B

Rule 65.3(3)

Form of variation or discharge of prohibition order

VARIATION [*or* DISCHARGE] OF PROHIBITION ORDER

under section 28 [*or* 29] of the Psychoactive Substances Act 2016

Court Ref No:

Court:

Date:

Person against whom the order is made (“the subject”):

Address:

Date of birth:

THE COURT:

(1) (*section 28 applications*) has considered the application made by (*name and address of the applicant*) to vary the prohibition order dated (*date*) in respect of the subject.

[*or*

(1) (*section 29 variations*) is satisfied that the subject has been convicted of a relevant offence in Scotland within the meaning of section 29(5) of the Psychoactive Substances Act 2016, and that a prohibition order had previously been made against the subject;]

[*or*

(1) (*section 29 variations*) is satisfied that the subject has been convicted of an offence under section 26 of the Psychoactive Substances Act 2016 in relation to a prohibition order;]

(2) (*section 29 variations*) has sentenced the subject in respect of the offence concerned.

[*or has made an order discharging the subject absolutely.*]

THE COURT DISCHARGES the prohibition order.

[*or*

THE COURT ORDERS that the prohibition order made by (*court*) on (*date*) is varied as follows:

(*set out terms of the variation*)]

(Signed)

Clerk of Court

COPY:

The subject

[Lord Advocate]

[Procurator fiscal]

[Any other person who the court considers may have an interest in the variation or discharge of the prohibition order]

[The court that made the prohibition order, where that order was made by a court other than the court varying or discharging it]

Form 65.3–C

Rule 65.3(4)

Form of variation of premises order

VARIATION OF PREMISES ORDER

under section 29 of the Psychoactive Substances Act 2016

Court Ref No:

Court:

Date:

Person against whom the order is made (“the subject”):

Address:

Date of birth:

THE COURT:

(1) is satisfied that the subject has been convicted of a relevant offence in Scotland within the meaning of section 29(5) of the Psychoactive Substances Act 2016 and that a premises order has previously been made against the subject;

[*or*

(1) is satisfied that the subject has been convicted of an offence under section 26 of the Psychoactive Substances Act 2016 in relation to a premises order;]

(2) has sentenced the subject in respect of the offence concerned.

[*or*

(2) has made an order discharging the subject absolutely.]

THE COURT ORDERS that the premises order made by (*court*) on (*date*) is varied as follows:

(*set out terms of the variation*)

(*Signed*)

Clerk of Court

COPY:

The subject

[Lord Advocate]

[Procurator fiscal]

[Any other person who the court considers may have an interest in the variation of the premises order]

[The court that made the premises order, where that order was made by a court other than the court varying it]

Form 65.5

Rule 65.5

Form of forfeiture order

FORFEITURE ORDER

under section 54 of the Psychoactive Substances Act 2016

Court Ref No:

Court:

Date:

Person who has been convicted of an offence to which section 54 of the Psychoactive Substances Act 2016 applies (“the convicted person”):

Address:

Date of birth:

THE COURT:

- (1) is satisfied that the convicted person has been convicted of an offence to which section 54 of the Psychoactive Substances Act 2016 applies;
- (2) considers that the substance concerned is a psychoactive substance within the meaning of section 2(1) of the Psychoactive Substances Act 2016.
[or
(2) considers that the item concerned was used in the commission of the offence and has given the convicted person, and any person who claims to be the owner of or otherwise to have an interest in the item, an opportunity to make representations under section 54(6) of the Psychoactive Substances Act 2016.]

THE COURT ORDERS that:

(set out terms of the order)

This order comes into force on the date specified above, subject to section 54(7) of the Psychoactive Substances Act 2016.

(Signed)

Clerk of Court

COPY:

The convicted person

[Any person who claims to be the owner of the item]

[Any person who claims otherwise to have an interest in the item]

[Any person who the court considers may have an interest in the item]

Form 65.6

Rule 65.6(6)(a)

Form of representations about proposed forfeiture 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*)]

REPRESENTATIONS

by

[NAME OF APPLICANT]

APPLICANT

in relation to

A PROPOSED FORFEITURE ORDER

under section 54(4) of the Psychoactive Substances Act 2016

Court Ref No:

HUMBLY SHEWETH, that:

1. On (*date*) the High Court of Justiciary [*or* the sheriff at (*place*)] gave notice that the court is considering making a forfeiture order under section 54(4) of the Psychoactive Substances Act 2016 in the proceedings (*name of case and court reference if known*).
2. The applicant is the convicted person.
[*or*
2. The applicant is the owner of the item that is proposed to be subject to the forfeiture order.]
[*or*
2. The applicant is a person who has an interest in the item that is proposed to be subject to the forfeiture order for the following reasons: (*state reasons*).]
3. The applicant wishes to make the following representations: (*state representations*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*or* THE COURT] to consider these representations when deciding whether to make a forfeiture order at the hearing on (*date*).

IN RESPECT WHEREOF

(*Signed*)

Applicant [*or*
Legal representative of the applicant]

(*Address and telephone number*)

(*Email address*)

EXPLANATORY NOTE

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

This Act of Adjournal inserts a new Chapter 65 into the Criminal Procedure Rules 1996 in consequence of the Psychoactive Substances Act 2016 (“the 2016 Act”).

Paragraph 2(2) makes provision for the form of prohibition orders, applications to vary or discharge such orders, and the form of variation or discharge. It also makes provision for the form of variation of a premises order, form of a forfeiture order, and form of representations about a proposed forfeiture order.

Paragraph 2(3)(a) makes a minor correction to Form 5.2, which is contained in the Appendix to the Criminal Procedure Rules 1996.

© Crown copyright 2017

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, the Queen’s Printer for Scotland.

£6.00

S201707201003 07/2017 19585

<http://www.legislation.gov.uk/id/ssi/2017/251>

ISBN 978-0-11-103637-2



9 780111 036372