

2018 No. 12

HIGH COURT OF JUSTICIARY

SHERIFF COURT

**Act of Adjournal (Criminal Procedure Rules 1996 Amendment)
(Miscellaneous) 2018**

Made - - - - - *15th January 2018*

Laid before the Scottish Parliament *16th January 2018*

Coming into force in accordance with paragraph 1

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 section 36(3) of the Criminal Justice (Scotland) Act 2016(b) 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) (Miscellaneous) 2018.

(2) With the exception of those provisions mentioned in subparagraph (3), this Act of Adjournal comes into force on 25th January 2018.

(3) Paragraphs 2(2) and (3) come into force on 31st January 2018.

(4) 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(c) are amended in accordance with this paragraph.

(2) In Chapter 37AA (Proceedings under the Proceeds of Crime Act 2002)(d)—

(a) at the end of rule 37AA.2 (confiscation orders)(e) insert—

“(4) An application by the prosecutor under subsection (6)(a) of section 131ZA of the Act of 2002 (seized money) may be made orally at the bar or by minute.”; and

(b) in paragraph (1)(b) of rule 37AA.10 (application, discharge and variation) after “investigation” insert “or a money laundering investigation”.

(a) 1995 c.46. Section 305 was amended by section 111(1) of the Criminal Justice (Scotland) Act 2016 (asp 1) and S.S.I. 2015/338, and was extended by section 36A(4) of the Serious Crime Act 2007 (c.27), and section 32(5) of the Psychoactive Substances Act 2016 (c.2).

(b) 2016 asp 1.

(c) 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. 2017/429).

(d) Chapter 37AA was inserted by S.S.I. 2003/120 and last amended by S.S.I. 2017/429.

(e) Rule 37AA.2 was amended by S.S.I. 2009/244.

(3) In Chapter 43 (Terrorism Act 2000 and Anti-Terrorism, Crime and Security Act 2001)(a) after rule 43.2(1)(b) (applications under the Act of 2000 or 2001) insert—

“(ba) paragraph 19(1) (disclosure orders) of Schedule 5A to the Act of 2000(b);

(bb) paragraph 24(3) (variation or discharge of a disclosure order) of Schedule 5A to the Act of 2000;”.

(4) After Chapter 65 (Psychoactive Substances Act 2016)(c) insert—

“CHAPTER 66

REVIEW OF LIBERATION CONDITIONS AND AUTHORISATION FOR QUESTIONING

Interpretation of this Chapter

66.1. In this Chapter—

“the 2016 Act” means the Criminal Justice (Scotland) Act 2016(d);

“intimate” includes intimation by electronic means (and “intimation” is construed accordingly).

Review of investigative liberation conditions

66.2.—(1) An application under section 19(1) of the 2016 Act (review of conditions) is to be made in Form 66.2–A.

(2) On receipt of an application under paragraph (1) the court must—

(a) appoint a hearing on the application to take place in private within 7 days of the date of receipt of the application;

(b) intimate the application and the date of the hearing to the procurator fiscal; and

(c) intimate the date of the hearing to the applicant.

(3) The applicant must be personally present at the hearing.

(4) An order to remove a condition or to impose an alternative condition is to be made in Form 66.2–B.

Review of undertaking conditions

66.3.—(1) An application under section 30(1) of the 2016 Act (review of undertaking) is to be made in Form 66.3–A.

(2) On receipt of an application under paragraph (1) the court must—

(a) appoint a hearing on the application to take place in private within 7 days of the date of receipt of the application;

(b) intimate the application and the date of the hearing to the procurator fiscal; and

(c) intimate the date of the hearing to the applicant.

(3) The applicant must be personally present at the hearing.

(4) An order to remove a condition or to impose an alternative condition is to be made in Form 66.3–B.

(a) Chapter 43 was inserted by S.S.I. 2001/486 and last amended by S.S.I. 2017/429.

(b) Schedule 5A was inserted by paragraphs 3 and 4 of schedule 2 of the Criminal Finances Act 2017 (c.22).

(c) Chapter 65 was inserted by S.S.I. 2017/251.

(d) 2016 asp 1.

Authorisation for questioning

66.4.—(1) When made in writing, an application under section 36(1) of the 2016 Act (authorisation: further provision) is to be made in Form 66.4–A.

(2) Before granting an application under section 36(1) of the 2016 Act (whether made in writing or not) the court must appoint a hearing to take place in private.

(3) Where section 35(5) of the 2016 Act (authorisation for questioning) applies the court must—

- (a) order intimation of the application to the person to be questioned; and
- (b) give the person to be questioned an opportunity to make representations at the hearing fixed under Rule 66.4(2).

(4) Where the court grants an application for authorisation for questioning under section 35 of the 2016 Act (whether made orally or in writing) the authorisation is to be in Form 66.4–B.”.

(5) In the Appendix, after Form 65.6 (form of representations about proposed forfeiture order)(a) insert the forms set out in the schedule of this Act of Adjournal.

CJM SUTHERLAND
Lord Justice General
I.P.D.

Edinburgh
15th January 2018

(a) Form 65.6 was inserted by S.S.I. 2017/251.

SCHEDULE

Paragraph 2(5)

Form 66.2–A

Rule 66.2(1)

Form of application for review of investigative liberation conditions

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

AT *(place)*

APPLICATION

of

[A.B.]

APPLICANT

Police National Custody Number.

for

REVIEW OF INVESTIGATIVE LIBERATION CONDITION[S]

under section 19(1) of the Criminal Justice (Scotland) Act 2016

HUMBLY SHEWETH, that:

1. On *(here insert date)* the Applicant was released from custody in *(here insert place of detention)* and the following condition[s] was *[or were]* imposed *(here insert condition(s) imposed under section 16(2) of the Criminal Justice (Scotland) Act 2016 and attach copy of conditions)*.
2. The Applicant seeks a review of *(here insert condition(s) in respect of which review is sought)* on the following grounds: *(here insert grounds for review)*.

MAY IT THEREFORE PLEASE YOUR LORDSHIP:

- (1) to order intimation of this application to be made to the procurator fiscal;
- (2) to ordain the Applicant and, if so advised, the procurator fiscal to be heard thereon;
and
- (3) to remove the condition[s] referred to at paragraph 2 or do otherwise as to your Lordship seems fit.

ACCORDING TO JUSTICE, etc.

(signed)

Applicant

Or

Solicitor for Applicant

Form 66.2–B

Rule 66.2(4)

Form of modification of investigative liberation conditions

MODIFICATION OF INVESTIGATIVE LIBERATION CONDITION[S]

under section 19(3) of the Criminal Justice (Scotland) Act 2016

Court Reference.

Police National Custody Number.

Court:

Date:

Applicant:

Address:

Date of birth:

THE COURT:

1. Having considered the application to review the investigative liberation condition[s] imposed on the Applicant on *(here insert date)*;
2. Not being satisfied that the condition[s] *(here specify condition(s))* is [or are] necessary and proportionate for the purpose[s] for which it was [or they were] imposed;
3. REMOVES the condition[s] [*and IMPOSES the following alternative condition(s) (here specify alternative condition(s) imposed)*].

(Signed)

Clerk of Court

Form 66.3–A

Rule 66.3(1)

Form of application for review of undertaking conditions

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

AT *(place)*

APPLICATION

of

[A.B.]

APPLICANT

Police National Custody Number.

for

REVIEW OF UNDERTAKING CONDITION[S]

under section 30(1) of the Criminal Justice (Scotland) Act 2016

HUMBLY SHEWETH, that:

1. On *(here insert date)* the Applicant was released from custody in *(here insert place of detention)* and the following condition[s] was *[or were]* imposed *(here insert condition(s) imposed under section 26(3)(b) of the 2016 Act and attach copy of condition(s))*.
2. The Applicant seeks a review of *(here insert condition(s) in respect of which review is sought)* on the following grounds: *(here insert grounds for review)*.

MAY IT THEREFORE PLEASE YOUR LORDSHIP:

- (1) to order intimation of this application to be made to the procurator fiscal;
- (2) to ordain the Applicant and, if so advised, the procurator fiscal to be heard thereon;
and
- (3) to remove the condition[s] referred to at paragraph 2 or do otherwise as to your Lordship seems fit.

ACCORDING TO JUSTICE, etc.

(signed)

Applicant

or

Solicitor for Applicant

Form 66.3–B

Rule 66.3(4)

Form of order for modification of undertaking conditions

MODIFICATION OF UNDERTAKING CONDITION[S]

under section 30(3) of the Criminal Justice (Scotland) Act 2016

Court Reference.

Police National Custody Number.

Court:

Date:

Applicant:

Address:

Date of birth:

THE COURT:

1. Having considered the application to review the undertaking condition[s] imposed on the applicant on *(here insert date)*;
2. Not being satisfied that the condition[s] *(here specify condition(s))* is [or are] necessary and proportionate for the purpose[s] for which it was [or they were] imposed;
3. REMOVES the condition[s] [*and IMPOSES the following alternative condition(s) (here specify alternative condition(s) imposed)*].

(Signed)

Clerk of Court

Form 66.4–A

Rule 66.4(1)

Form of application for authorisation to question a person officially accused

UNTO THE 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

under section 36(1) of the Criminal Justice (Scotland) Act 2016

by

HER MAJESTY'S ADVOCATE [or PROCURATOR FISCAL] [or NAME OF CONSTABLE]
as the case may be

Applicant

for

AUTHORISATION TO QUESTION A PERSON OFFICIALLY ACCUSED

Police National Custody Number.

Prosecution Reference.

Court Reference.

HUMBLY SHEWETH, that:

1. On (*here insert date*) (*here insert name and date of birth of person officially accused of committing offence*) was officially accused of committing (*here insert details of offence*).
2. The Applicant seeks authorisation to question (*here insert name of person officially accused*) about the offence on the following grounds: (*here insert basis of application*).
- [3. Another application has been made for authorisation to question (*here insert name of person officially accused*) about the offence or an offence arising from the same circumstances as the offence.]
4. *Here insert factors relevant to section 35(3)(b) of the Criminal Justice (Scotland) Act 2016.*
5. *Here insert factors relevant to section 35(3)(c) of the Criminal Justice (Scotland) Act 2016.*

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- [(1) *(where a warrant has been granted to arrest the person in respect of the offence or the person has appeared before a court in relation to the offence)* to give *(here insert name of person officially accused)* an opportunity to make representations;]
- (2) to appoint the Applicant to be heard in private hereon;
- (3) to grant authorisation to question *(here insert name of person officially accused.)* for such period and on such condition[s] as to your Lordship[s] seem *[or seems]* fit;
- [(4) to grant a warrant in terms of section 37 of the Criminal Justice (Scotland) Act 2016 for the arrest of *(here insert name of person officially accused.)*]

ACCORDING TO JUSTICE, etc.

(signed)

Applicant

or

Solicitor for Applicant

or

Procurator fiscal

Form 66.4–B

Rule 66.4(4)

Form of authorisation to question a person officially accused

AUTHORISATION TO QUESTION A PERSON OFFICIALLY ACCUSED

under section 35 of the Criminal Justice (Scotland) Act 2016

Court Reference.

Police National Custody Number.

Court:

Date:

Applicant:

Person officially accused:

Date of birth:

THE COURT:

1. Having considered the application to question (*here insert name of person officially accused*) about (*here insert offence(s)*);
- [2. (*Where the application is made orally*) And having had regard to (*here insert factors relevant to section 35(3) of the Criminal Justice (Scotland) Act 2016 relied upon by the Applicant*);]
3. Being satisfied that allowing the person to be questioned is necessary in the interests of justice;
4. Grants authorisation for a period of (*here insert duration of period for which questioning is authorised*) to question (*here insert name of person officially accused*) about (*here insert offence(s)*) [subject to the following condition[s] (*here insert condition(s), if any, specified by the court*)];
- [5. Being satisfied that it is expedient to do so, grants warrant to arrest (*here insert name of person officially accused*) with a maximum period of detention under said warrant of (*here insert maximum period of detention*).]

(Signed)

Judge or Sheriff

or

Clerk of Court

EXPLANATORY NOTE

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

This Act of Adjournal amends Chapter 37AA (Proceedings under the Proceeds of Crime Act 2002) and Chapter 43 (Terrorism Act 2000 and Anti-terrorism, Crime and Security Act 2001) of the Criminal Procedure Rules 1996 in consequence of amendments made to the Proceeds of Crime Act 2002 and the Terrorism Act 2000 (“the 2000 Act”) by the Criminal Finances Act 2017.

It also inserts a new Chapter 66 (Review of liberation conditions and authorisation for questioning) in consequence of the commencement of Part 1 of the Criminal Justice (Scotland) Act 2016.

Paragraph 2(2)(a) provides that applications for seized money to be paid to the court may be made orally or by minute.

Paragraph 2(2)(b) extends the application of rule 37AA.10(1), which provides that certain specified applications are made by petition, to money laundering investigations.

Paragraph 2(3) provides that applications for, or for variation or discharge of, a disclosure order under schedule 5A of the Act of 2000 are to be made by petition.

Paragraph 2(4) inserts the new Chapter 66.

New rule 66.2 prescribes the form in which an application for review of investigative liberation conditions is to be made and the form of the order. When an application is lodged, the court must order the application to be intimated to the procurator fiscal and appoint a hearing in private within 7 days at which the applicant must be personally present.

New rule 66.3 makes similar provision for an application to vary undertaking conditions.

New rule 66.4 prescribes the form in which an application for authorisation for questioning is to be made and the form of the order. When an application is lodged, the court must appoint a hearing to take place in private and, if the person in respect of whom the authorisation is sought has already appeared in court or is the subject of a warrant to arrest, the court must intimate the application to that person and give the person an opportunity to make representations at the hearing.

With the exception of paragraph 2(2) and (3), the Act of Adjournal comes into force on 25th January 2018. Paragraph 2(2) and (3) come into force on 31st January 2018.

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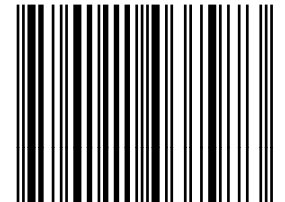
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