SCOTTISH STATUTORY INSTRUMENTS

2016 No. 103

HIGH COURT OF JUSTICIARY

SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Miscellaneous) 2016

Made - - - -	*15th February 2016*
Laid before the Scottish Parliament	*16th February 2016*
Coming into force - -	*1st March 2016*

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) (Miscellaneous) 2016.

(2) It comes into force on 1st March 2016.

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

Amendment of Chapter 34 of the Criminal Procedure Rules 1996

2.—(1) Chapter 34 (extradition) of the Criminal Procedure Rules 1996(**b**) is amended in accordance with this paragraph.

(2) For rules 34.3 (appeals) and 34.4 (hearing of appeals)(**c**) substitute—

"Application for leave to appeal

34.3.—(1) An application for leave to appeal under—

(a) section 26 of the Act of 2003 (appeal against extradition order) is made in Form 34.3–A;

(b) section 28 of the Act of 2003 (appeal against discharge at extradition hearing) is made in Form 34.3–B;

(c) section 103 (appeal where case sent to Scottish Ministers) or 108 (appeal against extradition order) of the Act of 2003 is made in Form 34.3–C;

(**a**) 1995 c. 46. Section 305 was amended by S.S.I. 2015/338, article 2.

(**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. 2015/443). Chapter 34 was substituted by S.S.I. 2004/346 and last amended by S.S.I. 2012/125.

(**c**) Rules 34.3 and 34.4 were substituted by S.S.I. 2004/346.

(d) section 105 (appeal against discharge at extradition hearing) or section 110 (appeal against discharge by Scottish Ministers) of the Act of 2003 is made in Form 34.3–D.

(2) Notice of an application for leave to appeal mentioned in paragraph (1) must be given by serving a copy of the application—

(a) in the case of an appeal under section 26, 103 or 108 of the Act of 2003, on the Crown Agent; and

(b) in the case of an appeal under section 28, 105 or 110 of the Act of 2003, on the arrested person.

(3) An application for leave to appeal under paragraph (1)—

(a) must be accompanied by an execution of service; and

(b) is made when it is lodged with the Clerk of Justiciary.

Hearing of appeals

34.3A.—(1) When an application for leave to appeal is made under—

(a) section 26 (appeal against extradition order);

(b) section 28 (appeal against discharge at extradition hearing);

(c) section 103 (appeal where case sent to Scottish Ministers); or

(d) section 105 (appeal against discharge at extradition hearing),

of the Act of 2003, the Clerk of Justiciary must intimate the application to the sheriff clerk.

(2) On intimation, the sheriff clerk must request a report from the presiding sheriff.

(3) The sheriff is to comply with that request within 14 days of receiving it.

(4) On receipt of the report from the sheriff the sheriff clerk must transmit that report together with two certified copies of the minutes of proceedings and any other relevant documents to the Clerk of Justiciary.

(5) When an application for leave to appeal is made under—

(a) section 108 (appeal against extradition order); or

(b) section 110 (appeal against discharge by Scottish Ministers),

of the Act of 2003, the Clerk of Justiciary must request a report from the Scottish Ministers.

(6) The Scottish Ministers are to comply with that request within 14 days of receiving it.

(7) Upon receipt of the report from the sheriff or the Scottish Ministers, the Clerk of Justiciary must—

(a) send a copy to the arrested person and the Crown Agent; and

(b) fix a diet for the hearing of the application for leave to appeal.

(8) At that diet the court may—

(a) refuse leave to appeal;

(b) grant leave to appeal and determine the appeal; or

(c) grant leave to appeal and order that a further diet be fixed for hearing the appeal.

(9) When leave to appeal is granted under paragraph (8)(c) the Clerk of Justiciary must fix a further diet for hearing the appeal.

Time limits

34.4.—(1) The High Court is to begin to hear an appeal under section 26 or 28 of the Act of 2003 within 40 days after the date on which the arrested person was arrested.

(2) The High Court is to begin to hear an appeal under section 103, 105, 108 or 110 of the Act of 2003 within 76 days after the date on which the note of appeal is lodged.".

Amendment of Chapter 37AA of the Criminal Procedure Rules 1996

3.—(1) Chapter 37AA (proceedings under the Proceeds of Crime Act 2002) of the Criminal Procedure Rules 1996(**a**) is amended in accordance with this paragraph.

(2) For rule 37AA.1 (interpretation of this Chapter)(**b**), substitute—

"Interpretation of this Chapter

37AA.1. In this Chapter—

"the Act of 2002" means the Proceeds of Crime Act 2002(**c**);

"the 2014 Regulations" means the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014(**d**);

"compliance order" has the meaning given by section 97B(2) of the Act of 2002(**e**).".

(3) After rule 37AA.2 (confiscation orders)(**f**), insert—

"Confiscation orders: certification

37AA.2A.—(1) A request by the prosecutor for a certificate under paragraph 7(1) of Schedule 1 to the 2014 Regulations must—

(a) be made by minute prior to the making of a domestic confiscation order;

(b) set out why the prosecutor considers that the property to which the application relates—

(i) was used or was intended to be used for the purposes of an offence; or

(ii) is the proceeds of an offence;

(c) contain the specified information.

(2) Where the court issues a certificate, it must—

(a) do so in the form annexed to Council Framework Decision 2006/783/JHA of 6th October 2006 on the application of the principle of mutual recognition to confiscation orders(**g**);

(b) provide in the domestic confiscation order for notice to be given in accordance with paragraph 7(4) of Schedule 1 to the 2014 Regulations.

(3) In this rule, "domestic confiscation order" and "specified information" have the meanings given by paragraph 1 of Schedule 1 to the 2014 Regulations.".

(4) After rule 37AA.2A (confiscation orders: certification) as so inserted, insert—

"Compliance orders

37AA.2B.—(1) An application by the prosecutor for a compliance order is to be made in Form 37AA.2B–A.

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

(a) order intimation of the application to the accused;

(b) appoint a hearing on the application.

(3) A compliance order is to be in Form 37AA.2B–B.

(**a**) Chapter 37AA was inserted by S.S.I. 2003/120 and last amended by S.S.I. 2009/244.
(**b**) Rule 37AA.1 was inserted by S.S.I. 2003/120.
(**c**) 2002 c. 29. The Act was relevantly amended by the Serious Crime Act 2015 (c. 9), Schedule 4, paragraph 35.
(**d**) S.I. 2014/3141.
(**e**) 2002 c. 29. Section 97B(2) was inserted by the Serious Crime Act 2015 (c.9), section 16.
(**f**) Rule 37AA.2 was inserted by S.S.I. 2003/120 and amended by S.S.I. 2009/244.
(**g**) OJ No. L 328, 24.11.2006, p. 59.

Compliance orders: discharge and variation

37AA.2C.—(1) An application to discharge or vary a compliance order is to be made in Form 37AA.2C–A.

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

(a) order intimation of the application to—

(i) the prosecutor, where the application is made by the accused;

(ii) the accused, where the application is made by the prosecutor;

(b) appoint a hearing on the application.

(3) Where the court discharges or varies a compliance order, it is to do so in Form 37AA.2C–B.

(4) An appeal under section 97D of the Act of 2002 is to be made by lodging a note of appeal in Form 37AA.2C–C.

(5) When an appeal is lodged, the court must—

(a) order intimation of the application to—

(i) the prosecutor, where the accused is the appellant;

(ii) the accused, where the prosecutor is the appellant;

(b) appoint a hearing on the appeal.

Compliance orders: breach

37AA.2D.—(1) Where the prosecutor considers that an accused who is subject to a compliance order has failed to comply with it, the prosecutor must notify the court.

(2) That notification is to be given in Form 37AA.2D–A.

(3) A citation under section 97C(2)(b) of the Act of 2002 is to be in Form 37AA.2D–B.

(4) Where the court revokes or varies a compliance order under section 97C(6) or (7), it is to do so in Form 37AA.2D-C.".

(5) In rule 37AA.9 (hearings)(**a**)—

(a) after paragraph (a) insert—

"(aa) 37AA.2A (confiscation orders: certification);";

(b) after paragraph (aa) as so inserted, insert—

"(ab) 37AA.2B (compliance orders);

(ac) 37AA.2C(1) (compliance orders: discharge and variation applications);

(ad) 37AA.2C(4) (compliance orders: discharge and variation appeals);".

Amendment of the Appendix to the Criminal Procedure Rules 1996

4. In the Appendix—

(a) for Form 34.3–A (note of appeal under section 26(1)), Form 34.3–B (note of appeal under section 28(1)), Form 34.3–C (note of appeal under section 103(1) or 108(1)) and Form 34.3–D (note of appeal under section 105(1) or 110(1)(**b**) substitute the forms set out in Schedule 1 to this Act of Adjournal;

(b) after Form 37.5 (form of note of appeal under section 27 of the Proceeds of Crime (Scotland) Act 1995)(**c**) insert Forms 37AA.2B-A, 37AA.2B–B, 37AA.2C–A, 37AA.2C–

(**a**) Rule 33AA.9 was inserted by S.S.I. 2003/120 and amended by S.S.I. 2003/468.
(**b**) Forms 34.3A to 34.3-D were substituted by S.S.I. 2004/346.
(**c**) Form 37.5 was inserted by S.I. 1997/2653 and amended by S.S.I. 2015/245.

B, 37AA.2C–C, 37AA.2D–A and 37AA.2D–B set out in Schedule 2 to this Act of Adjournal.

Saving provision

5.—(1) Paragraphs 2 and 4(a) do not apply to extradition appeals where the notice of appeal was given before 15 April 2015.

(2) Paragraphs 3(4), 3(5)(b) and 4(b) do not apply to any confiscation order under section 92 of the Proceeds of Crime Act 2002 made before 1st March 2016.

CJM SUTHERLAND
Lord Justice General
I.P.D.

Edinburgh
15th February 2016

SCHEDULE 1

Paragraph 4(a)

Form 34.3–A

Rule 34.3(1)(a)

Form of note of appeal to High Court of Justiciary under section 26 of the Extradition Act 2003

IN THE HIGH COURT OF JUSTICIARY

NOTE OF APPEAL

under section 26 of the Extradition Act 2003

By

[A.B.] (*address)*

[*or* presently a prisoner in the Prison of (*place*)]

APPELLANT

1. The appellant was arrested at (*place*) on (*date*) under section 5 of the Extradition Act 2003 [*or* under a warrant issued under Part 1of the Extradition Act 2003].

2. On (*date*) the sheriff of Lothian and Borders at *(place)* ordered the appellant's extradition to (*country*) being a category 1 territory within the meaning of section 1 of the Extradition Act 2003.

3. The appellant appeals to the High Court of Justiciary against the decision of the sheriff.

GROUNDS OF APPEAL

4. (*set out the ground(s) in numbered paragraphs*).

LEAVE TO APPEAL

5. (*set out in numbered paragraphs the grounds on which it is submitted leave to appeal should be granted).*

(Signed)

[A.B], Appellant

[*or* [X.Y.], Appellant's legal representative]

(*Address and telephone number*)

(*Email address*)

Form 34.3–B

Rule 34.3(1)(b)

Form of note of appeal under section 28 of the Extradition Act 2003

IN THE HIGH COURT OF JUSTICIARY

NOTE OF APPEAL

under section 28 of the Extradition Act 2003

by

HER MAJESTY'S ADVOCATE

on behalf of (*authority which issued the warrant under Part 1 of the Act of 2003*)

1. [A.B.] (*address*) ("the arrested person") was arrested at (*place*) on (*date*) under section 5 of the Extradition Act 2003 [*or* under Part 1 warrant within the meaning of section 2 of the Extradition Act 2003].

2. On (*date*) the sheriff of Lothian and Borders at (*place*) ordered the discharge of the arrested person.

3. Her Majesty's Advocate appeals to the High Court of Justiciary under section 28(1) of the Extradition Act 2003 on the grounds set out in the following paragraphs.

GROUNDS OF APPEAL

4. (*set out the ground(s) in numbered paragraphs*).

LEAVE TO APPEAL

5. (s*et out in numbered paragraphs the grounds on which it is submitted leave to appeal should be granted).*

(Signed)

On behalf of Her Majesty's Advocate

(*Address and telephone number*)

(*Email address*)

Form 34.3–C

Rule 34.3(1)(c)

Form of note of appeal under section 103 or 108 of the Extradition Act 2003

IN THE HIGH COURT OF JUSTICIARY

NOTE OF APPEAL

under section 103 [*or* 108] of the Extradition Act 2003

by

[A.B.] (*address*)

APPELLANT

1. [A.B.] (*address*) was arrested at (*place*) on (*date*) under a warrant issued by the sheriff of Lothian and Borders under section 71(2) of the Extradition Act 2003 [*or* under a provisional warrant issued by the sheriff of (*name of sheriffdom*) under section 73 of the Extradition Act 2003].

2. On (*date*) the sheriff of Lothian and Borders at (*place*) sent the appellant's case to the Scottish Ministers for their decision whether the appellant was to be extradited. [On (*date*) the Scottish Ministers ordered the extradition of the appellant].

3. The appellant appeals to the High Court of Justiciary under section 103(1) [*or* 108(1)] of the Extradition Act 2003 on the grounds set out in the following paragraphs.

GROUNDS OF APPEAL

4. (*here set out the ground(s) in numbered paragraphs*).

LEAVE TO APPEAL

5. (*here set out in numbered paragraphs the grounds on which it is submitted leave to appeal should be granted).*

(Signed)

[A.B], Appellant

[*or* [X.Y.], Appellant's legal representative]

(*Address and telephone number*)

(*Email address*)

Form 34.3–D

Rule 34.3(1)(d)

Form of note of appeal under section 105 or 110 of the Extradition Act 2003

IN THE HIGH COURT OF JUSTICIARY

NOTE OF APPEAL

under section 105 [*or* 110] of the Extradition Act 2003

by

HER MAJESTY'S ADVOCATE

on behalf of (*specify category 2 territory*)

1. [A.B.] (*address*) ("the arrested person") was arrested at (*place*) on (*date*) under a warrant issued by the sheriff of Lothian and Borders under section 71(2) of the Extradition Act 2003 [*or* under a provisional warrant issued by the sheriff of (*name of sheriffdom*) under section 73(3) of the Extradition Act 2003].

2. On (*date*) the sheriff of Lothian and Borders at (*place*) ordered the discharge of the arrested person. [*or* On (*date*) the sheriff of Lothian and Borders sent the arrested person's case to the Scottish Ministers for their decision whether the arrested person was to be extradited. On (*date*) the Scottish Ministers ordered the discharge of the arrested person].

3. Her Majesty's Advocate appeals on behalf of (*specify category 2* territory) to the High Court of Justiciary under section 105(1) [*or* 110(1)] of the Extradition Act 2003 on the grounds set out in the following paragraphs.

GROUNDS OF APPEAL

4. (*set out the ground(s) in numbered paragraphs*).

LEAVE TO APPEAL

5. (*set out in numbered paragraphs the grounds on which it is submitted leave to appeal should be granted).*

(Signed)

On behalf of Her Majesty's Advocate

(*Address and telephone number*)

(*Email address*)

SCHEDULE 2

Paragraph 4(b)

Form 37AA.2B–A

Rule 37AA.2B(1)

Form of application for compliance 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 [*or* THE PROCURATOR FISCAL, (*place*)]

APPLICANT

for

COMPLIANCE ORDER

under section 97B of the Proceeds of Crime Act 2002

HUMBLY SHEWETH:

1. That a confiscation order was made on (*date*) in the High Court of Justiciary [*or* in the Sheriff Court at (*place*)] against (*name of accused*).

2. That the court did not make a compliance order when it made the confiscation order. [The court gave the following reasons for not making a compliance order:

   (*specify reasons (if any)*)]

3. That the applicant considers that the confiscation order has not been effective for the following reasons:

   (*specify why the prosecutor considers that the confiscation order has not been effective, including details of the known assets of the accused and the extent of payments (if any) towards the confiscation order)*

4. That the applicant therefore seeks a compliance order against (*name of accused*).

5. That the terms of the proposed compliance order sought are set out in the attached schedule.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

(1) to order intimation of this application to be made to (*name of accused*);

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

(3) thereafter to make a compliance order in the terms set out in the schedule; or

(4) to do otherwise as to your Lordship(s) seems appropriate.

ACCORDING TO JUSTICE, etc.

(*signed*)

Prosecutor

SCHEDULE

(*set out terms of order sought*)

Form 37AA.2B–B

Rule 37AA.2B(3)

Form of compliance order

COMPLIANCE ORDER

under section 97B of the Proceeds of Crime Act 2002

Court:

Date:

Offender:

Address:

Date of birth:

THE COURT, being satisfied that it is appropriate to make a compliance order for the purpose of ensuring that the confiscation order dated (*date*) is effective,

[*or (where the compliance order is made following an application by the prosecutor)*

THE COURT, having considered the application made by the prosecutor for a compliance order in relation to a confiscation order dated (*date*),

AND being satisfied that it is appropriate to make a compliance order for the purpose of ensuring that the confiscation order is effective,]

ORDERS that (*set out details of the order*).

(*Signed*)

Clerk of Court

Form 37AA.2C–A

Rule 37AA.2C(1)

Form of application for discharge or variation of compliance 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 [*or* THE PROCURATOR FISCAL, (*place*)]

[*or* [A.B.] (*address*) [*or* Prisoner in the Prison of (*place*)]]

APPLICANT

for

DISCHARGE [*or* VARIATION] OF COMPLIANCE ORDER

under section 97B(5) of the Proceeds of Crime Act 2002

HUMBLY SHEWETH:

1. That a compliance order was made on (*date*) in the High Court of Justiciary [*or* in the sheriff court at (*place*)] against (*name of accused*).

2. That the applicant seeks to discharge [*or* vary] the compliance order for the following reasons:[*here insert reasons*]:

   (*specify reasons)*

[3. (*where the application is for variation*) That the terms of the varied compliance order sought 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 (*name of accused*) [*or* the prosecutor];

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

(3) thereafter to discharge [*or* vary] the compliance order; or

(4) to do otherwise as to your Lordship(s) seems appropriate.

ACCORDING TO JUSTICE, etc.

(*signed*)

Prosecutor

[*or* Legal representative of [A.B.]]

(*name, address, email address and telephone number*)

SCHEDULE

(*set out terms of varied order sought*)

Form 37AA.2C–B

Rule 37AA.2C(3)

Form of discharge or variation of compliance order under section 97B of the Proceeds of Crime Act 2002

DISCHARGE [*or* VARIATION] OF COMPLIANCE ORDER

under section 97B of the Proceeds of Crime Act 2002

Court:

Date:

Offender:

Address:

Date of birth:

THE COURT, having considered the application to discharge [*or* vary] the compliance order dated (*date*) made by the prosecutor [*or* the accused],

AND being satisified that it is appropriate to do so,

DISCHARGES the compliance order.

[*or* VARIES the compliance order to the effect that (*set out details of variation*).]

(*Signed*)

Clerk of Court

Form 37AA.2C–C

Rule 37AA.2C(4)

Form of appeal against discharge or variation of compliance order

IN THE HIGH COURT OF JUSTICIARY [*or* THE SHERIFF APPEAL COURT]

NOTE OF APPEAL

under section 97D of the Proceeds of Crime Act 2002

by

HER MAJESTY'S ADVOCATE [*or* THE PROCURATOR FISCAL, (*place*)]

[*or* [A.B.] (*address*) [*or* Prisoner in the Prison of (*place*)]]

APPELLANT

against a decision to discharge [*or* refuse to discharge] a compliance order

[*or* against a decision to vary [*or* refuse to vary] a compliance order]

1. The appellant appeals to the High Court of Justiciary [*or* the Sheriff Appeal Court] against the decision to discharge [*or* refuse to discharge] [*or* to vary] [*or* refuse to vary] a compliance order made on (*date*).

GROUNDS OF APPEAL

2. (*set out the ground(s) in numbered paragraphs*).

(*signed*)

Prosecutor

[*or* Legal representative of [A.B.]]

(*name, address, email address and telephone number*)

Form 37AA.2D–A

Rule 37AA.2D(2)

Form of notification to court about breach of compliance 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*)]

REPORT

by

HER MAJESTY'S ADVOCATE [*or* THE PROCURATOR FISCAL, (*place*)]

Name of accused:

Date of birth:

Address:

1. A compliance order was made on (*date*) in the High Court of Justiciary [*or* in the sheriff court at (*place*)] against (*name of accused*).

[2. The compliance order was varied on (*date*) by the High Court of Justiciary [*or* by the sheriff at (*place*)]].

3. The terms of the [varied] compliance order are set out in the attached schedule.

4. It appears to the prosecutor that the accused has failed to comply with the [varied] compliance order for the following reasons:

   (*specify reasons)*

(*signed*)

Prosecutor

SCHEDULE

(*set out terms of [varied] compliance order*)

Form 37AA.2D–B

Rule 37AA.2D(3)

Form of citation under section 97C(2)(b) of the Proceeds of Crime Act 2002

IN THE HIGH COURT OF JUSTICIARY [*or* SHERIFF COURT AT [*place*]]

CITATION

To: (*name and address of offender*)

Date of citation: (*date*)

YOU ARE HEREBY CITED to appear on (*date*) at (*time*) in the High Court of Justiciary [*or* the sheriff court] at (*address*) because it has been reported to the court that you have failed to comply with a requirement of the compliance order made in respect of you on (*date*).

A copy of the report setting out the details of your alleged failure to comply with the compliance order is attached to this citation.

When you appear before the court, you are entitled to be legally represented.

You do not need to give an answer to the attached allegation before you:

(i) have had an opportunity to take legal advice; or

(ii) indicate that you do not wish to take legal advice.

IF YOU DO NOT ATTEND COURT WITHOUT A LAWFUL EXCUSE THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

(*Signed*)

Clerk of Court

Form 37AA.2D–C

Rule 37AA.2D(4)

Form of revocation or variation of compliance order under section 97C of the Proceeds of Crime Act 2002

REVOCATION [*or* VARIATION] OF COMPLIANCE ORDER

under section 97C of the Proceeds of Crime Act 2002

Court:

Date:

Offender:

Address:

Date of birth:

THE COURT, having considered the report made by the prosecutor alleging that the accused has failed to comply with the requirements of the compliance order dated (*date*),

(*where section 97C(6) applies)*

AND being satisified that the accused has failed without reasonable excuse to comply with the compliance order,

IMPOSES on the accused a fine of (*specify sum*) [and VARIES the compliance order to the effect that (*set out details of variation*)].

[*or* REVOKES the compliance order and sentences the accused to be imprisoned for a period of (*specify period*) and thereafter set at liberty.]

[*or* VARIES the compliance order to the effect that (*set out details of variation*).]

(*where section 97C(7) applies*)

BEING SATISFIED that the accused has failed to comply with the compliance order,

AND being satisfied that the accused had a reasonable excuse for the failure,

AND being satisfied that it is in the interests of justice to vary the compliance order, having regard to the circumstances which have arisen since the order was imposed,

VARIES the compliance order to the effect that (*set out details of variation*).

(*Signed*)

Clerk of Court

EXPLANATORY NOTE

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

Extradition appeals

This Act of Adjournal amends Chapter 34 (extradition) of the Criminal Procedure Rules 1996 in consequence of amendments made to the Extradition Act 2003 ("the 2003 Act") by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 which introduced a requirement to obtain leave to appeal in extradition cases.

Paragraph 2 of this instrument substitutes rules 34.3 and 34.4 of Chapter 34 and inserts a new rule 34.3A to take account of the requirement to obtain leave. Rule 34.3 specifies the forms for notes of appeal and these now contain an application for leave to appeal. The forms are substituted for the existing forms by paragraph 4(a).

Paragraph 5(1) provides that the amendments relating to extradition appeals do not apply to extradition appeals where the notice of appeal was given before 15 April 2015, which is the date on which section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 came into force.

Proceedings under the Proceeds of Crime Act 2002

This Act of Adjournal also amends Chapter 37AA (proceedings under the Proceeds of Crime Act 2002) of the Criminal Procedure Rules 1996 in consequence of (a) paragraph 7 of Schedule 1 to the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 ("the 2014 Regulations") and (b) the amendments made to the Proceeds of Crime Act 2002 ("the 2002 Act") by the Serious Crime Act 2015.

The 2014 Regulations make provision for the prosecutor, when seeking a confiscation order under section 92 of the 2002 Act, to apply to the court for a certificate under the Council Framework Decision 2006/783/JHA of 6th October 2006 on the application of the principle of mutual recognition to confiscation orders ("the 2006 Framework Decision") in respect of property situated in another member State.

The Serious Crime Act 2015 introduces compliance orders, which may be made at the same time as a confiscation order, or later on the application of the prosecutor.

Paragraph 3(2) substitutes rule 37AA.1 in order to insert new interpretation provisions relating to the 2014 Regulations and compliance orders.

Paragraph 3(3) inserts a new rule 37AA.2A which specifies how an application for a certificate is to be made. The new rule also specifies certain matters that must be included in an application and prescribes the form of the certificate as being the form annexed to the 2006 Framework Decision. Where the court issues a certificate it must also provide for notice to be given in accordance with paragraph 7(4) of Schedule 1 to the 2014 Regulations.

Paragraph 3(4) inserts new rules 37AA.2B to 37AA.2D into the Criminal Procedure Rules 1996. Rule 37AA.2B specifies the form in which the prosecutor may apply for a compliance order under section 97B of the 2002 Act. It also specifies the form that a compliance order is to take. Rule 37AA.2C specifies the form of an application to discharge or vary a compliance order, and makes provision about the form of an appeal against a decision about discharging or varying a compliance order. Rule 37AA.2D makes provision about failure to comply with a compliance order. It requires the prosecutor to notify the court about alleged failures and specifies the form of citation requiring an accused to appear before the court in respect of such an alleged failure.

Paragraph 3(5) modifies rule 37AA.9, which provides for applications under certain rules to be determined at a hearing, so that it includes applications under new rules 37AA.2A to 37AA.2D.

Paragraph 4(b) inserts new Forms into the Appendix to the Criminal Procedure Rules 1996 as a consequence of new rules 37AA.2B to 37AA.2D.

Paragraph 5(2) provides that the amendments relating to compliance orders do not apply in relation to any confiscation order made under section 92 of the 2002 Act before 1st March 2016.

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