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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 251**

**HIGH COURT OF JUSTICIARY  
SHERIFF APPEAL COURT  
SHERIFF COURT**

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

<i>Made</i>	- - - -	<i>20th July 2017</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>24th July 2017</i>
<i>Coming into force</i>	- -	<i>21st August 2017</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<sup>(1)</sup> 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<sup>(2)</sup> are amended in accordance with this paragraph.

(2) After Chapter 64 (trafficking and exploitation prevention orders)<sup>(3)</sup> insert—

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(1) 1995 c.46. Section 305 was extended by the Psychoactive Substances Act 2016 (c.2), section 32(5).

(2) 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.

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

## “CHAPTER 65 PSYCHOACTIVE SUBSTANCES ACT 2016

### **Interpretation of this Chapter**

**65.1.**—(1) In this Chapter—

- “the 2016 Act” means the Psychoactive Substances Act 2016(4);
- “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)(5) 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.

Edinburgh  
20th July 2017

*CJM SUTHERLAND*  
Lord Justice General  
I.P.D.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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SCHEDULE

Paragraph 2(3)(b)

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**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.