

SCHEDULE 2

Rule 4(2)

RULES TO BE INSERTED IN ORDER 116

“PART III

PROCEEDS OF CRIME ACT 2002

**Interpretation**

42. In this Part of this Order –

“the Act” means the Proceeds of Crime Act 2002(1) and a section referred to by number means the section so numbered in the Act;

expressions used in this Part of this Order which are used in the Act have the same meaning in this Part of this Order as in the Act.

**Assignment of proceedings**

43. In this Order the jurisdiction of the High Court under the Act shall be assigned to the Queen’s Bench Division and shall be exercised by a judge in chambers.

**Title and service of proceedings**

44.—(1) An originating summons under this Part of this Order shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.

(2) Any originating summons, or other document, required to be served under this Part of this Order may be served out of the jurisdiction with the leave of the court.

**Application for restraint order**

45.—(1) An application for a restraint order under section 191 may be made ex parte by originating summons.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall –

- (a) give full particulars of the matters relied upon in the support of the application;
- (b) to the best of the deponent’s ability, give full particulars of the realisable property in respect of which the order is sought and specify the person holding such property;
- (c) give the grounds for, and full particulars of, any order sought under section 190(7); and
- (d) where the applicant is an accredited financial investigator, include a statement that he has been authorised under section 216 to make the application.

(3) Where a restraint order is made the applicant shall, unless the Court directs otherwise, serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify of its terms all other persons or bodies of whom the applicant is aware who are affected by the order.

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(1) 2002 c. 29

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### **Restraint Order**

46.—(1) A restraint order may require the applicant to indemnify third parties against expenses incurred in complying with the order but the applicant shall not be required to give an undertaking to abide by an order as to damages sustained by the defendant or other person as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until the Court makes an order varying or discharging the restraint order.

### **Application for discharge or variation of restraint order by person affected by the order**

47. An application for the discharge or variation of a restraint order or an order made under section 190(7) by a person affected by the order shall be made by summons which, together with any affidavit in support, shall be lodged with the Court and, not less than two days before the date fixed for the hearing of the summons, served on:

- (a) the person who applied for the restraint order;
- (b) all other named persons restrained by the order; and
- (c) any other person of whom the applicant is aware who may be affected by the application.

### **Application for variation of restraint order by person who applied for the order**

48.—(1) An application for variation of a restraint order or an order made under section 190(7) by the person who applied for the order shall be made by summons.

(2) The application shall be supported by an affidavit which shall:

- (a) give full particulars of the matters relied upon in support of the application;
- (b) where the application is for the inclusion of further realisable property in the restraint order, to the best of the deponent's ability give full particulars of the realisable property in respect of which the variation of the order is sought and specify the person holding such property; and
- (c) where the applicant is an accredited financial investigator, include a statement that he has been authorised under section 216 to make the application.

(3) The summons and affidavit in support shall be lodged with the Court not less than two days before the date fixed for hearing the summons and, subject to paragraph (4), served on:

- (a) the defendant; and
- (b) the receiver, where one has been appointed in the matter; and
- (c) any other person of whom the applicant is aware who may be affected by the order.

(4) An application under paragraph (1) may be made ex parte where the case is one of urgency or the giving of notice would cause a reasonable apprehension of dissipation of assets.

(5) Rule 45(3) shall apply to the service of an order varying a restraint order and to the notification of all other persons or bodies affected thereby.

### **Application for discharge of restraint order by person who applied for the order**

49.—(1) An application for discharge of a restraint order or an order made under section 190(7) by the applicant for the order may be made ex parte by summons.

(2) An application under paragraph (1), together with any affidavit in support, shall be lodged with the Court not less than two days before the date fixed for the hearing of the summons.

(3) Rule 45(3) shall apply to the service of an order discharging a restraint order and to the notification of all persons or bodies affected thereby.

### **Application for appointment of a receiver**

50.—(1) An application for the appointment of a receiver under section 196 shall be made by summons.

(2) The application shall be supported by an affidavit, which shall include –

- (a) full particulars of the matters relied upon in support of the application;
- (b) full details of the proposed receiver;
- (c) to the best of the deponent’s ability, full particulars of the realisable property in respect of which the order is sought and specify the person holding such property;
- (d) where the applicant is an accredited financial investigator, a statement that he has been authorised under section 216 to make the application; and
- (e) if the proposed receiver is not a member of staff of the Agency, the Department of the Director of Public Prosecutions (Northern Ireland) or the Commissioners of Her Majesty’s Customs and Excise and the applicant wishes the Court to authorise the proposed receiver to act without the giving of security or before he has given security, a statement of the reasons why the applicant considers this to be necessary.

(3) The summons and affidavit in support shall be lodged with the Court not less than seven days before the date fixed for the hearing, and subject to paragraph (4), served on:

- (a) the defendant;
- (b) any person who holds realisable property to which the application relates; and
- (c) any other person of whom the applicant is aware who may be affected by the application.

(4) An application under paragraph (1) may be made ex parte where –

- (a) it is joined with an application for a restraint order under rule 45;
- (b) the case is one of urgency; or
- (c) the giving of notice would cause a reasonable apprehension of dissipation of assets.

(5) Where the Court makes an order appointing a receiver, unless the Court otherwise directs, the applicant shall serve copies of the order and of the affidavit in support on:

- (a) the defendant;
- (b) the receiver;
- (c) any person who holds realisable property to which the order applies; and
- (d) any other person of whom the applicant is aware who may be affected by the order.

### **Receivers**

51.—(1) Subject to the provisions of this Rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed under section 196.

(2) Where a receiver is appointed under section 196 and he is a member of the staff of the Agency, the Department of the Director of Public Prosecutions (Northern Ireland) or the Commissioners of Her Majesty’s Customs and Excise:

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- (a) it shall not be necessary for him to give security, unless the Court otherwise directs; and
- (b) Order 30 rule 3 shall not apply.

#### **Powers of a receiver**

52.—(1) An application for an order for the confirmation of powers on a receiver under section 197 shall be made by summons.

(2) The application shall be supported by an affidavit, which shall include –

- (a) full particulars of the matters relied upon in support of the application;
- (b) to the best of the deponent's ability, full particulars of the realisable property in respect of which the order is sought and details of the person holding such property; and
- (c) where the applicant is an accredited financial investigator, a statement that he has been authorised under section 216 to make the application.

(3) The summons and affidavit in support shall be lodged with the Court not less than seven days before the date fixed for hearing, and subject to paragraph (4), served on:

- (a) the defendant;
- (b) the receiver;
- (c) any person who holds realisable property to which the application relates; and
- (d) any other person of whom the applicant is aware who may be affected by the application.

(4) Except where section 197(8) applies, an application under paragraph (1) may be made *ex parte* –

- (a) where the application is joined with an application for a restraint order under rule 45;
- (b) the case is one of urgency; or
- (c) the giving of notice would cause a reasonable apprehension of dissipation of assets.

(5) Rule 50(5) shall apply to the service of an order conferring powers on the receiver.

#### **Application for discharge or variation of receivership order and application for other orders**

53.—(1) An application under section 210(3) or section 211(1) shall be made by summons which, together with any affidavit in support, shall be lodged with the Court and, not less than seven days before the date fixed for the hearing of the summons, be served, where he is not the applicant, on:

- (a) the person who applied for the appointment of the receiver;
- (b) the defendant;
- (c) any person who holds realisable property in respect of which the receiver has been appointed;
- (d) the receiver; and
- (e) any other person of whom the applicant is aware who may be affected by the application.

(2) Where the Court makes an order under section 211(2) for the discharge or variation of an order relating to a receiver, copies of the order shall be served by the applicant on all those who were served with a copy of the application under paragraph (1).

### **Application for leave**

54. An application for leave under section 206(2) shall be made by summons which, together with any affidavit in support, shall be lodged with the Court and, not less than seven days before date for the hearing of the application, be served on:

- (a) the tenant;
- (b) the applicant for the restraint order;
- (c) the person against whom the restraint order has been made;
- (d) the receiver (if appointed); and
- (e) any other person of whom the applicant is aware who may be affected by the application.

### **Application for registration**

55.—(1) An application for registration of an order under Article 16 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002(2) (“the 2002 Order”) may be made ex parte.

- (2) An application under paragraph (1) shall be supported by an affidavit –
  - (a) exhibiting the order, or a certified copy thereof; and
  - (b) giving, to the best of the deponent’s ability, full particulars of the realisable property located in Northern Ireland in respect of which the order was made, and specifying the person holding such property.

### **Register of orders**

56.—(1) There shall be kept in the Central Office under the direction of the Master a register of the orders registered under Article 16 of the 2002 Order.

(2) There shall be included in such register particulars of any variation or setting aside of a registration, of any variation or discharge of a registered order, and of any execution issued on the order.

### **Notice of registration**

57.—(1) Notice of the registration of an order shall be served on any person holding realisable property to which the order applies, and any other person of whom the applicant is aware who may be affected by the order, by delivering it to him personally or by sending it to him at his last known address or place of business or in such other manner as the Court may direct.

(2) Service of a notice under paragraph (1) out of the jurisdiction may be effected without leave and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a writ.

### **Application to vary or set aside registration**

- 58.—(1) An application to vary or set aside the registration of an order may be made by –
  - (a) any person who holds realisable property to which the order applies; and
  - (b) any person affected by an order.

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(2) An application under paragraph (1) shall be made to a judge by summons supported by affidavit.

(3) The summons, together with the affidavit in support, shall be lodged with the Court and served on the applicant for registration not less than seven days prior to the date fixed for the hearing of the summons.

(4) Where an application is made under paragraph (1), the registered order shall not, unless the Court otherwise orders, be enforced until after such application is determined.

**Variation and discharge of the registered order**

59. Upon the Court being notified by the applicant for registration that an order which has been registered has been varied or discharged, particulars of the variation or discharge, as the case may be, shall be entered in the register.

**Agency staff: pseudonyms**

60. Where a member of staff of the Assets Recovery Agency in relation to whom a direction under section 449 has effect, gives written or oral evidence under this Part of this Order, a copy of the certificate issued under section 449(3) shall be filed in the appropriate office.”