

---

STATUTORY INSTRUMENTS

---

**1986 No. 2289**

**The Rules of the Supreme Court (Amendment No. 3) 1986**

*Drug Trafficking Offences Act 1986(1)*

17. The following Order shall be added after Order 114—

**“ORDER 115**

**DRUG TRAFFICKING OFFENCES ACT 1986**

**Interpretation**

1.—(1) In this Order “the Act” means the Drug Trafficking Offences Act 1986 and a section referred to by number means the section so numbered in the Act.

(2) Expressions used in this Order which are used in the Act have the same meanings in this Order as in the Act.

**Assignment of proceedings**

2. The jurisdiction of the High Court under the Act shall be exercised by a judge of the Chancery Division or of the Queen's Bench Division in chambers.

**Application for restraint order or charging order**

3.—(1) An application for a restraint order under section 8 or for a charging order under section 9 (to either of which may be joined an application for the appointment of a receiver) may be made by the prosecutor ex parte by originating motion.

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

- (a) state the grounds for believing that the defendant has benefited from drug trafficking;
- (b) state, as the case may be, either that proceedings have been instituted against the defendant for a drug trafficking offence (giving particulars of the offence) and that they have not been concluded or that an information is to be laid that the defendant has or is suspected of having committed a drug trafficking offence;
- (c) 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 or persons holding such property;
- (d) where proceedings have not been instituted, verify that the prosecutor is to have the conduct of the proposed proceedings;
- (e) where proceedings have not been instituted, indicate when it is intended that they should be instituted.

---

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

---

(3) An originating motion under paragraph (1) 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.

(4) Unless the Court otherwise directs, an affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

### **Restraint order and charging order**

4.—(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to living expenses and legal expenses of the defendant, but the plaintiff shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made *ex parte* shall have effect until a day which shall be fixed for the hearing *inter partes* of the application and a charging order shall be an order to show cause, imposing the charge until such day.

(3) Where a restraint order is made the prosecutor shall 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 all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the prosecutor shall, unless the Court otherwise directs, serve copies of the order and of the affidavit in support on the defendant and, where the property to which the order relates is held by another person, on that person and shall serve a copy of the order on such of the persons or bodies specified in Order 50, rule 2(1) (b) to (d) as shall be appropriate.

### **Discharge or variation of order**

5.—(1) Any person or body on whom a restraint order or a charging order is served or who is notified of such an order may apply by summons to discharge or vary the order.

(2) The summons and any affidavit in support shall be lodged with the court and served on the prosecutor and, where he is not the applicant, on the defendant, not less than two clear days before the date fixed for the hearing of the summons.

(3) Upon the court being notified that proceedings for the offences have been concluded or that the amount payment of which is secured by a charging order has been paid into court, any restraint order or charging order, as the case may be, shall be discharged.

### **Further application by prosecutor**

6.—(1) Where a restraint order or a charging order has been made the prosecutor may apply by summons or, where the case is one of urgency, *ex parte*:—

- (a) to discharge or vary such order, or
- (b) for a restraint order or a charging order in respect of other realisable property, or
- (c) for the appointment of a receiver.

(2) An application under paragraph (1) shall be supported by an affidavit which, where the application is for a restraint order or a charging order, shall 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 or persons holding such property.

(3) The summons and affidavit in support shall be lodged with the court and served on the defendant and, where one has been appointed in the matter, on the receiver, not less than two clear days before the date fixed for the hearing of the summons.

(4) Rule 4(3) and (4) shall apply to the service of restraint orders and charging orders respectively made under this rule on persons other than the defendant.

### **Realisation of property**

7.—(1) An application by the prosecutor under section 11 shall, where there have been proceedings against the defendant in the High Court, be made by summons and shall otherwise be made by originating motion.

(2) The summons or originating motion, as the case may be, shall be served with the evidence in support not less than 7 days before the date fixed for the hearing of the summons on:—

- (a) the defendant,
- (b) any person holding any interest in the realisable property to which the application relates, and
- (c) the receiver, where one has been appointed in the matter.

(3) The application shall be supported by an affidavit, which shall, to the best of the deponent's ability, give full particulars of the realisable property to which it relates and specify the person or persons holding such property, and a copy of the confiscation order, of any certificate issued by the Crown Court under section 4(2) and of any charging order made in the matter shall be exhibited to such affidavit.

(4) The court may, on an application under section 11, exercise the power conferred by section 12(1) to direct the making of payments by the receiver.

### **Receivers**

8.—(1) Subject to the provisions of this rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed in pursuance of a charging order or under section 8 or 11.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Act, it shall not be necessary for an affidavit of fitness to be sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall apply by summons for directions as to the distribution of such sums.

(4) A summons under paragraph (3) shall be served with any evidence in support not less than 7 days before the date fixed for the hearing of the summons on:—

- (a) the defendant, and
- (b) any other person who held property realised by the receiver.

### **Certificate of inadequacy**

9.—(1) The defendant may apply by summons for a certificate under section 14(1).

(2) A summons under paragraph (1) shall be served with any supporting evidence not less than 7 days before the date fixed for the hearing of the summons on the prosecutor and on the receiver, where one has been appointed in the matter.

### **Compensation**

10. An application for an order under section 19 shall be made by summons, which shall be served, with any supporting evidence, on the person alleged to be in default and on the

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more**

---

relevant authority under section 19(4) not less than 7 days before the date fixed for the hearing of the summons.

### **Disclosure of information**

**11.—**(1) An application by the prosecutor under section 30 shall be made by summons, which shall state the nature of the order sought and whether material sought to be disclosed is to be disclosed to a receiver appointed under section 8 or 11 or in pursuance of a charging order or to a person mentioned in section 30(8).

(2) The summons and affidavit in support shall be served on the authorised Government Department in accordance with Order 77, rule 4 not less than 7 days before the date fixed for the hearing of the summons.

(3) The affidavit in support of an application under paragraph (1) shall state the grounds for believing that the conditions in section 30(4) and, if appropriate, section 30(7) are fulfilled.”.