

**2003 No. 421 (L. 7)**

**SUPREME COURT OF ENGLAND AND WALES**

**The Crown Court (Confiscation, Restraint and  
Receivership) Rules 2003**

*Made* - - - - - *20th February 2003*

*Laid before Parliament* *27th February 2003*

*Coming into force* - - *24th March 2003*

We, the Crown Court Rule Committee, in exercise of the powers conferred upon us by sections 52, 84(1), (5A) and (6), and 86 of the Supreme Court Act 1981(a) and sections 91 and 446 of the Proceeds of Crime Act 2002(b), hereby make the following Rules:

**PART I**

INTRODUCTION

**Citation and commencement**

1. These Rules may be cited as the Crown Court (Confiscation, Restraint and Receivership) Rules 2003 and shall come into force on 24th March 2003.

**Interpretation**

2. In these Rules—

- (a) “the Act” means the Proceeds of Crime Act 2002;
- (b) “business day” means any day other than—
  - (i) a Saturday, Sunday, Christmas Day or Good Friday; or
  - (ii) a bank holiday under the Banking and Financial Dealings Act 1971(c), in England and Wales;
- (c) “court officer” means a member of the Crown Court staff;
- (d) “document” means anything in which information of any description is recorded;
- (e) “hearsay evidence” means evidence consisting of hearsay within the meaning of section 1(2) of the Civil Evidence Act 1995(d);
- (f) “restraint proceedings” means proceedings under sections 42 and 58(2) and (3) of the Act;
- (g) “receivership proceedings” means proceedings under sections 48, 49, 50, 51, 52, 53, 54(4), 56(4), 59(2) and (3), 60(2) and (3), 62 and 63 of the Act;
- (h) “witness statement” means a written statement signed by a person which contains the evidence, and only that evidence, which that person would be allowed to give orally;

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(a) 1981 c. 54; sub-sections 84(5A) and (6) were substituted by the Civil Procedure Act 1997 (c. 12).

(b) 2002 c. 29.

(c) 1971 c. 80.

(d) 1995 c. 38.

(i) words and expressions used have the same meaning as in Part 2 of the Act.

3.—(1) This rule shows how to calculate any period of time for doing any act which is specified by these Rules for the purposes of any proceedings under Part 2 of the Act or by an order of the Crown Court in restraint proceedings or receivership proceedings.

(2) A period of time expressed as a number of days shall be computed as clear days.

(3) In this rule “clear days” means that in computing the number of days—

(a) the day on which the period begins; and

(b) if the end of the period is defined by reference to an event, the day on which that event occurs are not included.

(4) Where the specified period is 5 days or less and includes a day which is not a business day that day does not count.

4. When the period specified by these Rules or by an order of the Crown Court under Part 2 of the Act for doing any act at the court office falls on a day on which the office is closed, that act shall be in time if done on the next day on which the court office is open.

## PART II

### CONFISCATION PROCEEDINGS

#### **Statements in connection with confiscation orders**

5.—(1) When the prosecutor or the Director is required, under section 16 of the Act, to give a statement to the Crown Court, the prosecutor or the Director, as the case may be, must also, as soon as practicable, serve a copy of the statement on the defendant.

(2) Any statement given to the Crown Court by the prosecutor or the Director under section 16 of the Act must, in addition to the information required by the Act, include the following information—

(a) the name of the defendant;

(b) the name of the person by whom the statement is made and the date on which it is made;

(c) where the statement is not given to the Crown Court immediately after the defendant has been convicted, the date on which and the place where the relevant conviction occurred.

(3) Where, under section 17 of the Act, the Crown Court orders the defendant to indicate the extent to which he accepts each allegation in a statement given by the prosecutor or the Director, the defendant must indicate this in writing to the prosecutor or the Director (as the case may be) and must give a copy to the Crown Court.

(4) Where the Crown Court orders the defendant to give to it any information under section 18 of the Act, the defendant must provide the information in writing and must, as soon as practicable, serve a copy of it on—

(a) the prosecutor, if the prosecutor asked the court to proceed under section 6 of the Act; or

(b) the Director, if the Director asked the court to proceed under section 6 of the Act.

#### **Postponement of confiscation proceedings**

6. The Crown Court may grant a postponement under section 14(1)(b) of the Act without a hearing.

#### **Application for reconsideration of decision to make confiscation order or benefit assessed for purposes of confiscation order**

7.—(1) This rule applies where the prosecutor or Director makes an application under section 19, 20 or 21 of the Act.

(2) The application must be in writing and give details of—

(a) the name of the defendant;

- (b) the date on which and the place where any relevant conviction occurred;
  - (c) the date on which and the place where any relevant confiscation order was made or varied;
  - (d) the grounds for the application; and
  - (e) an indication of the evidence available to support the application.
- (3) The application must be lodged with the Crown Court.
- (4) The application must be served on the defendant at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

**Application for reconsideration of available amount**

**8.**—(1) This rule applies where the prosecutor, the Director or a receiver makes an application under section 22 of the Act for a new calculation of the available amount.

- (2) The application must be in writing and may be supported by a witness statement.
- (3) The application and any witness statement must be lodged with the Crown Court.
- (4) The application and any witness statement must be served on—
  - (a) the defendant;
  - (b) the receiver, if the prosecutor or the Director is making the application and a receiver has been appointed under section 50 or 52 of the Act; and
  - (c) if the receiver is making the application—
    - (i) the prosecutor; or
    - (ii) if the Director is appointed as the enforcement authority under section 34 of the Act, the Director,

at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

**Variation of confiscation order due to inadequacy of available amount**

**9.**—(1) This rule applies where the defendant or a receiver makes an application under section 23 of the Act for the variation of a confiscation order.

- (2) The application must be in writing and may be supported by a witness statement.
- (3) The application and any witness statement must be lodged with the Crown Court.
- (4) The application and any witness statement must be served on—
  - (a) the prosecutor, or if the Director is appointed as the enforcement authority under section 34, the Director;
  - (b) the defendant, if the receiver is making the application; and
  - (c) the receiver, if the defendant is making the application and a receiver has been appointed under section 50 or 52 of the Act,

at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

**Application by justices' chief executive to discharge confiscation order**

**10.**—(1) This rule applies where a justices' chief executive makes an application under section 24 or 25 of the Act for the discharge of a confiscation order.

- (2) The application must be in writing and give details of—
  - (a) the confiscation order;
  - (b) the amount outstanding under the order; and
  - (c) the grounds for the application.
- (3) The application must be served on—
  - (a) the defendant;
  - (b) the prosecutor; and
  - (c) any receiver appointed under section 50 of the Act.

(4) The Crown Court may determine the application without a hearing unless a person listed in paragraph (3) indicates, within 7 days after the application was served on him, that he would like to make representations.

(5) If the Crown Court makes an order discharging the confiscation order, the court must, at once, send a copy of the order to—

- (a) the justices' chief executive who applied for the order;
- (b) the defendant;
- (c) the prosecutor; and
- (d) any receiver appointed under section 50 of the Act.

#### **Application for variation of confiscation order made against an absconder**

**11.—**(1) This rule applies where the defendant makes an application under section 29 of the Act for the variation of a confiscation order made against an absconder.

(2) The application must be in writing and supported by a witness statement which must give details of—

- (a) the confiscation order made against an absconder under section 6 of the Act as applied by section 28 of the Act;
- (b) the circumstances in which the defendant ceased to be an absconder;
- (c) the defendant's conviction of the offence or offences concerned; and
- (d) the reason why he believes the amount required to be paid under the confiscation order was too large.

(3) The application and witness statement must be lodged with the Crown Court.

(4) The application and witness statement must be served on the prosecutor or, if the Director is appointed as the enforcement authority under section 34 of the Act, the Director at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

#### **Application for discharge of confiscation order made against an absconder**

**12.—**(1) This rule applies if the defendant makes an application under section 30 of the Act for the discharge of a confiscation order.

(2) The application must be in writing and supported by a witness statement which must give details of—

- (a) the confiscation order made under section 28 of the Act;
- (b) the date on which the defendant ceased to be an absconder;
- (c) the acquittal of the defendant if he has been acquitted of the offence concerned; and
- (d) if the defendant has not been acquitted of the offence concerned—
  - (i) the date on which the defendant ceased to be an absconder;
  - (ii) the date on which the proceedings taken against the defendant were instituted and a summary of steps taken in the proceedings since then; and
  - (iii) any indication given by the prosecutor that he does not intend to proceed against the defendant.

(3) The application and witness statement must be lodged with the Crown Court.

(4) The application and witness statement must be served on the prosecutor or, if the Director is appointed as the enforcement authority under section 34 of the Act, the Director at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(5) If the Crown Court orders the discharge of the confiscation order, the court must serve notice on the magistrates' court responsible for enforcing the order if the Director has not been appointed as the enforcement authority under section 34 of the Act.

#### **Application for increase in term of imprisonment in default**

**13.—**(1) This rule applies where the prosecutor or the Director makes an application under section 39(5) of the Act to increase the term of imprisonment in default of payment of a confiscation order.

- (2) The application must be made in writing and give details of—
  - (a) the name and address of the defendant;
  - (b) the confiscation order;
  - (c) the grounds for the application; and
  - (d) the enforcement measures taken, if any.
- (3) On receipt of the application, the court must—
  - (a) at once, send to the defendant and, if the Director has not been appointed as the enforcement authority under section 34 of the Act, the magistrates' court responsible for enforcing the order, a copy of the application; and
  - (b) fix a time, date and place for the hearing and notify the applicant and the defendant of that time, date and place.
- (4) If the Crown Court makes an order increasing the term of imprisonment in default, the court must, at once, send a copy of the order to—
  - (a) the applicant;
  - (b) the defendant;
  - (c) where the defendant is in custody at the time of the making of the order, the person having custody of the defendant; and
  - (d) if the Director has not been appointed as the enforcement authority under section 34 of the Act, the magistrates' court responsible for enforcing the order.

#### **Compensation—general**

- 14.—**(1) This rule applies to an application for compensation under section 72 of the Act.
- (2) The application must be in writing and may be supported by a witness statement.
  - (3) The application and any witness statement must be lodged with the Crown Court.
  - (4) The application and any witness statement must be served on—
    - (a) the person alleged to be in default; and
    - (b) the person by whom the compensation would be payable under section 72(9) of the Act (or if the compensation is payable out of a police fund under section 72(9)(a), the chief officer of the police force concerned),at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court directs otherwise.

#### **Compensation—confiscation order made against absconder**

- 15.—**(1) This rule applies to an application for compensation under section 73 of the Act.
- (2) The application must be in writing and supported by a witness statement which must give details of—
    - (a) the confiscation order made under section 28 of the Act;
    - (b) the variation or discharge of the confiscation order under section 29 or 30 of the Act;
    - (c) the realisable property to which the application relates; and
    - (d) the loss suffered by the applicant as result of the confiscation order.
  - (3) The application and witness statement must be lodged with the Crown Court.
  - (4) The application and witness statement must be served on the prosecutor or, if the Director is appointed as the enforcement authority under section 34, the Director at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

## PART III

### RESTRAINT PROCEEDINGS

#### **Application for restraint order**

**16.**—(1) This rule applies where the prosecutor, the Director or an accredited financial investigator makes an application for a restraint order under section 42 of the Act.

- (2) The application may be made without notice.
- (3) The application must be in writing and supported by a witness statement which must—
  - (a) give the grounds for the application;
  - (b) to the best of the witness's ability, give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;
  - (c) give the grounds for, and full details of, any application for an ancillary order under section 41(7) of the Act for the purposes of ensuring that the restraint order is effective; and
  - (d) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the Act.

#### **Restraint orders**

**17.**—(1) The Crown Court may make a restraint order subject to exceptions, including, but not limited to, exceptions for reasonable living expenses and reasonable legal expenses, and for the purpose of enabling any person to carry on any trade, business or occupation.

(2) But the Crown Court must not make an exception for legal expenses where this is prohibited by section 41(4) of the Act.

(3) An exception to a restraint order may be made subject to conditions.

(4) The Crown Court must not require the applicant for a restraint order to give any undertaking relating to damages sustained as a result of the restraint order by a person who is prohibited from dealing with realisable property by the restraint order.

(5) The Crown Court may require the applicant for a restraint order to give an undertaking to pay the reasonable expenses of any person, other than a person who is prohibited from dealing with realisable property by the restraint order, which are incurred in complying with the restraint order.

(6) A restraint order must include a statement that disobedience of the order, either by a person to whom the order is addressed, or by another person, may be contempt of court and the order must include details of the possible consequences of being held in contempt of court.

(7) Unless the Crown Court directs otherwise, a restraint order made without notice has effect until the court makes an order varying or discharging the restraint order.

(8) The applicant for a restraint order must—

- (a) serve copies of the restraint order and of the witness statement made in support of the application on the defendant and any person who is prohibited from dealing with realisable property by the restraint order; and
- (b) notify any person whom the applicant knows to be affected by the restraint order of the terms of the restraint order.

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

**18.**—(1) This rule applies where a person affected by a restraint order makes an application to the Crown Court under section 42(3) of the Act to discharge or vary the restraint order or any ancillary order made under section 41(7) of the Act.

(2) The application must be in writing and may be supported by a witness statement.

(3) The application and any witness statement must be lodged with the Crown Court.

(4) The application and any witness statement must be served on the person who applied for the restraint order and any person who is prohibited from dealing with realisable property by the restraint order (if he is not the person making the application) at least 2 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

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

**19.**—(1) This rule applies where the applicant for a restraint order makes an application under section 42(3) of the Act to the Crown Court to vary the restraint order or any ancillary order made under section 41(7) of the Act (including where the court has already made a restraint order and the applicant is seeking to vary the order in order to restrain further realisable property).

(2) The application may be made without notice if the application is urgent or if there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application.

(3) The application must be in writing and must be supported by a witness statement which must—

- (a) give the grounds for the application;
- (b) where the application is for the inclusion of further realisable property in the order give full details, to the best of the witness's ability, of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property; and
- (c) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the Act.

(4) The application and witness statement must be lodged with the Crown Court.

(5) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be served on any person who is prohibited from dealing with realisable property by the restraint order at least 2 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(6) If the court makes an order for the variation of a restraint order, the applicant must serve copies of the order and of the witness statement made in support of the application on—

- (a) the defendant;
- (b) any person who is prohibited from dealing with realisable property by the restraint order (whether before or after the variation); and
- (c) any other person whom the applicant knows to be affected by the order.

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

**20.**—(1) This rule applies where the applicant for a restraint order makes an application under section 42(3) of the Act to discharge the order or any ancillary order made under section 41(7) of the Act.

(2) The application may be made without notice.

(3) The application must be in writing and must state the grounds for the application.

(4) If the court makes an order for the discharge of a restraint order, the applicant must serve copies of the order on—

- (a) the defendant;
- (b) any person who is prohibited from dealing with realisable property by the restraint order (whether before or after the discharge); and
- (c) any other person whom the applicant knows to be affected by the order.

## PART IV

### RECEIVERSHIP PROCEEDINGS

#### **Application for appointment of a management or enforcement receiver**

**21.**—(1) This rule applies to an application for the appointment of a management receiver under section 48(1) of the Act and an application for the appointment of an enforcement receiver under section 50(1) of the Act.

(2) The application may be made without notice if—

- (a) the application is joined with an application for a restraint order under rule 16;
- (b) the application is urgent; or
- (c) there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application.

(3) The application must be in writing and must be supported by a witness statement which must—

- (a) give the grounds for the application;
- (b) give full details of the proposed receiver;
- (c) to the best of the witness's ability, give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;
- (d) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the Act; and
- (e) if the proposed receiver is not a member of staff of the Assets Recovery Agency, the Crown Prosecution Service or the Commissioners of Customs and Excise and the applicant is asking the court to allow the receiver to act—
  - (i) without giving security; or
  - (ii) before he has given security or satisfied the court that he has security in place, explain the reasons why that is necessary.

(4) Where the application is for the appointment of an enforcement receiver, the applicant must provide the Crown Court with a copy of the confiscation order made against the defendant.

(5) The application and witness statement must be lodged with the Crown Court.

(6) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be lodged with the Crown Court and served on—

- (a) the defendant;
- (b) any person who holds realisable property to which the application relates; and
- (c) any other person whom the applicant knows to be affected by the application,

at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(7) If the court makes an order for the appointment of a receiver, the applicant must serve copies of the order and of the witness statement made in support of the application on—

- (a) the defendant;
- (b) any person who holds realisable property to which the order applies; and
- (c) any other person whom the applicant knows to be affected by the order.

#### **Application for conferral of powers on management receiver, enforcement receiver or Director's receiver**

**22.**—(1) This rule applies to an application for the conferral of powers on a management receiver under section 49(1) of the Act, an enforcement receiver under section 51(1) of the Act or a Director's receiver under section 53(1) of the Act.

(2) The application may be made without notice if the application is to give the receiver power to take possession of property and—

- (a) the application is joined with an application for a restraint order under rule 16;
- (b) the application is urgent; or

- (c) there are reasonable grounds for believing that giving notice would cause the dissipation of the property which is the subject of the application.

(3) The application must be made in writing and supported by a witness statement which must—

- (a) give the grounds for the application;
- (b) give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property; and
- (c) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the Act.

(4) Where the application is for the conferral of powers on an enforcement receiver or Director's receiver, the applicant must provide the Crown Court with a copy of the confiscation order made against the defendant.

(5) The application and witness statement must be lodged with the Crown Court.

(6) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be served on—

- (a) the defendant;
- (b) any person who holds realisable property in respect of which a receiver has been appointed or in respect of which an application for a receiver has been made;
- (c) any other person whom the applicant knows to be affected by the application; and
- (d) the receiver (if one has already been appointed),

at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(7) If the court makes an order for the conferral of powers on a receiver, the applicant must serve copies of the order on—

- (a) the defendant;
- (b) any person who holds realisable property in respect of which the receiver has been appointed; and
- (c) any other person whom the applicant knows to be affected by the order.

#### **Applications for discharge or variation of receivership orders and applications for other orders**

**23.**—(1) This rule applies to applications under section 62(3) of the Act for orders (by persons affected by the action of receivers) and applications under section 63(1) of the Act for the discharge or variation of orders relating to receivers.

(2) The application must be made in writing and lodged with the Crown Court.

(3) The application must be served on the following persons (except where they are the person making the application)—

- (a) the person who applied for 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 whom the applicant knows to be affected by the application,

at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(4) If the court makes an order for the discharge or variation of an order relating to a receiver under section 63(2), the applicant must serve copies of the order on any persons whom he knows to be affected by the order.

#### **Sums in the hands of receivers**

**24.**—(1) This rule applies where the amount payable under a confiscation order has been fully paid and any sums remain in the hands of an enforcement receiver or Director's receiver.

(2) The receiver must make an application to the Crown Court for directions as to the distribution of the sums in his hands.

(3) The application and any evidence which the receiver intends to rely on in support of the application must be served on—

(a) the defendant; and

(b) any other person who held (or holds) interests in any property realised by the receiver, at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(4) If any of the provisions listed in paragraph (5) (provisions as to the vesting of funds in a trustee in bankruptcy) apply, then the Crown Court must make a declaration to that effect.

(5) These are the provisions—

(a) section 31B of the Bankruptcy (Scotland) Act 1985(a);

(b) section 306B of the Insolvency Act 1986(b); and

(c) article 279B of the Insolvency (Northern Ireland) Order 1989(c).

## Security

**25.**—(1) This rule applies where the Crown Court appoints a receiver under section 48, 50 or 52 of the Act and the receiver is not a member of staff of the Assets Recovery Agency, the Crown Prosecution Service or of the Commissioners of Customs and Excise (and it is immaterial whether the receiver is a permanent or temporary member or he is on secondment from elsewhere).

(2) The Crown Court may direct that before the receiver begins to act, or within a specified time, he must either—

(a) give such security as the Crown Court may determine; or

(b) file with the Crown Court and serve on all parties to any receivership proceedings evidence that he already has in force sufficient security,

to cover his liability for his acts and omissions as a receiver.

(3) The Crown Court may terminate the appointment of a receiver if he fails to—

(a) give the security; or

(b) satisfy the court as to the security he has in force,

by the date specified.

## Remuneration

**26.**—(1) This rule applies where the Crown Court appoints a receiver under section 48, 50 or 52 of the Act and the receiver is not a member of staff of the Assets Recovery Agency, the Crown Prosecution Service or of the Commissioners of Customs and Excise (and it is immaterial whether the receiver is a permanent or temporary member or he is on secondment from elsewhere).

(2) The receiver may only charge for his services if the Crown Court—

(a) so directs; and

(b) specifies the basis on which the receiver is to be remunerated.

(3) Unless the Crown Court orders otherwise, in determining the remuneration of the receiver, the Crown Court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account—

(a) the time properly given by him and his staff to the receivership;

(b) the complexity of the receivership;

(c) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;

(d) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and

(e) the value and nature of the subject matter of the receivership.

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(a) 1985 c. 66.

(b) 1986 c. 45.

(c) S.I. 1989/2405 (N.I. 19).

(4) The Crown Court may refer the determination of a receiver's remuneration to be ascertained by the taxing authority of the Crown Court and rules 15 to 18 of the Crown Court Rules 1982<sup>(a)</sup> shall have effect as if the taxing authority was ascertaining costs.

(5) A receiver appointed under section 48 of the Act is to receive his remuneration by realising property in respect of which he is appointed, in accordance with section 49(2)(d) of the Act.

(6) A receiver appointed under section 50 of the Act is to receive his remuneration by applying to the justices' chief executive for payment under section 55(4)(b) of the Act.

(7) A receiver appointed under section 52 of the Act is to receive his remuneration by applying to the Director for payment under section 57(4)(b) of the Act.

### **Accounts**

**27.**—(1) The Crown Court may order a receiver appointed under section 48, 50 or 52 of the Act to prepare and serve accounts.

(2) A party to receivership proceedings served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts.

(3) Any party to receivership proceedings may, within 14 days of being served with the accounts, serve notice on the receiver—

- (a) specifying any item in the accounts to which he objects;
- (b) giving the reason for such objection; and
- (c) requiring the receiver within 14 days of receipt of the notice, either—
  - (i) to notify all the parties who were served with the accounts that he accepts the objection; or
  - (ii) if he does not accept the objection, to apply for an examination of the accounts in relation to the contested item.

(4) When the receiver applies for the examination of the accounts he must at the same time lodge with the Crown Court—

- (a) the accounts; and
- (b) a copy of the notice served on him under this rule.

(5) If the receiver fails to comply with paragraph (3)(c) of this rule, any party to receivership proceedings may apply to the Crown Court for an examination of the accounts in relation to the contested item.

(6) At the conclusion of its examination of the accounts the court will certify the result.

### **Non-compliance by receiver**

**28.**—(1) If a receiver appointed under section 48, 50 or 52 of the Act fails to comply with any rule, practice direction or direction of the Crown Court, the Crown Court may order him to attend a hearing to explain his non-compliance.

(2) At the hearing, the Crown Court may make any order it considers appropriate, including—

- (a) terminating the appointment of the receiver;
- (b) reducing the receiver's remuneration or disallowing it altogether; and
- (c) ordering the receiver to pay the costs of any party.

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<sup>(a)</sup> S.I. 1982/1109, to which there are amendments not relevant in this context.

## PART V

### OTHER APPLICATIONS

#### **Distress and forfeiture**

**29.**—(1) This rule applies to applications under sections 58(2) and (3), 59(2) and (3) and 60(2) and (3) of the Act for leave of the Crown Court to levy distress against property or exercise a right of forfeiture by peaceable re-entry in relation to a tenancy, in circumstances where the property or tenancy is the subject of a restraint order or a receiver has been appointed in respect of the property or tenancy.

(2) The application must be made in writing to the Crown Court.

(3) The application must be served on—

(a) the person who applied for the restraint order or the order appointing the receiver; and

(b) any receiver appointed in respect of the property or tenancy,

at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

#### **Application for registration of Scottish or Northern Ireland Order**

**30.**—(1) This rule applies to an application for registration of an order under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002(a).

(2) The application may be made without notice.

(3) The application must be in writing and may be supported by a witness statement which must—

(a) exhibit the order or a certified copy of the order; and

(b) to the best of the witness's ability, give full details of the realisable property located in England and Wales in respect of which the order was made and specify the person holding that realisable property.

(4) If the court registers the order, the applicant must serve notice of the registration on—

(a) any person who holds realisable property to which the order applies; and

(b) any other person whom the applicant knows to be affected by the order.

(5) The permission of the Crown Court under rule 60 is not required to serve the notice outside England and Wales.

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

**31.**—(1) An application to vary or set aside registration of an order under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002 may be made to the Crown Court by—

(a) any person who holds realisable property to which the order applies; and

(b) any other person affected by the order.

(2) The application must be in writing and may be supported by a witness statement.

(3) The application and any witness statement must be lodged with the Crown Court.

(4) The application must be served on the person who applied for registration at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(5) No property in England and Wales may be realised in pursuance of the order before the Crown Court has decided the application.

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(a) S.I. 2002/3133.

### **Register of orders**

**32.**—(1) The Crown Court must keep, under the direction of the Lord Chancellor, a register of the orders registered under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002.

(2) The register must include details of any variation or setting aside of a registration under rule 31 and of any execution issued on a registered order.

(3) If the person who applied for registration of an order which is subsequently registered notifies the Crown Court that the court which made the order has varied or discharged the order, details of the variation or discharge, as the case may be, must be entered in the register.

## **PART VI**

### **PROVISIONS APPLICABLE ONLY TO RESTRAINT AND RECEIVERSHIP PROCEEDINGS**

#### **Joining of applications**

**33.** An application for the appointment of a management receiver or enforcement receiver under rule 21 may be joined with—

- (a) an application for a restraint order under rule 16; and
- (b) an application for the conferral of powers on the receiver under rule 22.

#### **Applications to be dealt with in writing**

**34.** Applications in restraint proceedings and receivership proceedings are to be dealt with without a hearing, unless the Crown Court orders otherwise.

#### **Business in chambers**

**35.** Restraint proceedings and receivership proceedings may be heard in chambers.

#### **Power of court to control evidence**

**36.**—(1) When hearing restraint proceedings and receivership proceedings, the Crown Court may control the evidence by giving directions as to—

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide those issues;
- (c) the way in which the evidence is to be placed before the court.

(2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.

(3) The court may limit cross-examination in restraint proceedings and receivership proceedings.

#### **Evidence of witnesses**

**37.**—(1) The general rule is that, unless the Crown Court orders otherwise, any fact which needs to be proved in restraint proceedings or receivership proceedings by the evidence of a witness is to be proved by their evidence in writing.

(2) Where evidence is to be given in writing under this rule, any party may apply to the Crown Court for permission to cross-examine the person giving the evidence.

(3) If the Crown Court gives permission under paragraph (2) but the person in question does not attend as required by the order, his evidence may not be used unless the court gives permission.

#### **Witness summons**

**38.**—(1) Any party to restraint proceedings or receivership proceedings may apply to the Crown Court to issue a witness summons requiring a witness to—

- (a) attend court to give evidence; or

(b) produce documents to the court.

(2) Rule 23 of the Crown Court Rules 1982(a) applies to an application under this rule as it applies to an application under section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965(b).

### **Hearsay evidence**

**39.** Section 2(1) of the Civil Evidence Act 1995(c) (duty to give notice of intention to rely on hearsay evidence) does not apply to evidence in restraint proceedings and receivership proceedings.

### **Disclosure and inspection of documents**

**40.**—(1) This rule applies where, in the course of restraint proceedings or receivership proceedings, an issue arises as to whether property is realisable property.

(2) The Crown Court may make an order for disclosure of documents.

(3) Part 31 of the Civil Procedure Rules 1998(d) as amended from time to time shall have effect as if the proceedings were proceedings in the High Court.

### **Court documents**

**41.**—(1) Any order which the Crown Court issues in restraint proceedings or receivership proceedings must—

- (a) state the name and judicial title of the person who made it;
- (b) bear the date on which it is made; and
- (c) be sealed by the Crown Court.

(2) The Crown Court may place the seal on the order—

- (a) by hand; or
- (b) by printing a facsimile of the seal on the order whether electronically or otherwise.

(3) A document purporting to bear the court's seal shall be admissible in evidence without further proof.

### **Consent orders**

**42.**—(1) This rule applies where all the parties to restraint proceedings or receivership proceedings agree the terms in which an order should be made.

(2) Any party may apply for a judgment or order in the terms agreed.

(3) The Crown Court may deal with an application under paragraph (2) without a hearing.

(4) Where this rule applies—

- (a) the order which is agreed by the parties must be drawn up in the terms agreed;
- (b) it must be expressed as being “By Consent”;
- (c) it must be signed by the legal representative acting for each of the parties to whom the order relates or by the party if he is a litigant in person.

(5) Where an application is made under this rule, then the requirements of any other rule as to the procedure for making an application do not apply.

### **Slips and omissions**

**43.**—(1) The Crown Court may at any time correct an accidental slip or omission in an order made in restraint proceedings or receivership proceedings.

(2) A party may apply for a correction without notice.

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(a) Rule 23 was substituted by rule 2 of the Crown Court (Miscellaneous Amendments) Rules 1999 (S.I. 1999/598).

(b) 1965 c. 69.

(c) 1995 c. 38. Sections 2 to 4 of the Civil Evidence Act 1995 apply to restraint proceedings by virtue of section 46 of the Proceeds of Crime Act 2002 (c. 29).

(d) S.I. 1998/3132 (L. 17), to which there are amendments not relevant to these Rules.

### **Supply of documents from court records**

44.—(1) No document relating to restraint proceedings or receivership proceedings may be supplied from the records of the Crown Court for any person to inspect or copy unless the Crown Court grants permission.

(2) An application for permission under paragraph (1) must be made on notice to the parties to the proceedings.

### **Disclosure of documents in criminal proceedings**

45.—(1) This rule applies where—

- (a) proceedings for an offence have been started in the Crown Court and the defendant has not been either convicted or acquitted on all counts; and
- (b) an application for a restraint order under section 42(1) of the Act has been made.

(2) The judge presiding at the proceedings for the offence may be supplied from the records of the Crown Court with documents relating to restraint proceedings and any receivership proceedings.

(3) Such documents must not otherwise be disclosed in the proceedings for the offence.

### **Preparation of documents**

46.—(1) Every order in restraint proceedings or receivership proceedings will be drawn up by the Crown Court unless—

- (a) the Crown Court orders a party to draw it up;
- (b) a party, with the permission of the Crown Court, agrees to draw it up; or
- (c) the order is made by consent under rule 42.

(2) The Crown Court may direct that—

- (a) an order drawn up by a party must be checked by the Crown Court before it is sealed; or
- (b) before an order is drawn up by the Crown Court, the parties must lodge an agreed statement of its terms.

(3) Where an order is to be drawn up by a party—

- (a) he must lodge it with the Crown Court no later than 7 days after the date on which the court ordered or permitted him to draw it up so that it can be sealed by the Crown Court; and
- (b) if he fails to lodge it within that period, any other party may draw it up and lodge it.

(4) Nothing in this rule shall require the Crown Court to accept a document which is illegible, has not been duly authorised, or is unsatisfactory for some other similar reason.

### **Change of solicitor**

47.—(1) This rule applies where—

- (a) a party for whom a solicitor is acting in restraint proceedings or receivership proceedings wants to change his solicitor;
- (b) a party, after having represented himself in such proceedings, appoints a solicitor to act on his behalf (except where the solicitor is appointed only to act as an advocate for a hearing); or
- (c) a party, after having been represented by a solicitor in such proceedings, intends to act in person.

(2) Where this rule applies, the party or his solicitor (where one is acting) must—

- (a) lodge notice of the change at the Crown Court; and
- (b) serve notice of the change on every other party and, where paragraph (1)(a) or (c) applies, on the former solicitor.

(3) The notice lodged at the Crown Court must state that notice has been served as required by paragraph (2)(b).

(4) Subject to paragraph (5), where a party has changed his solicitor or intends to act in person, the former solicitor will be considered to be the party's solicitor unless and until—

- (a) notice is served in accordance with paragraph (2); or
- (b) the Crown Court makes an order under rule 48 and the order is served as required by paragraph (3) of that rule.

(5) Where the certificate of a LSC funded client is revoked or discharged—

- (a) the solicitor who acted for that person will cease to be the solicitor acting in the proceedings as soon as his retainer is determined under regulation 4 of the Community Legal Service (Costs) Regulations 2000(a); and
- (b) if that person wishes to continue, where he appoints a solicitor to act on his behalf paragraph (2) will apply as if he had previously represented himself in the proceedings.

(6) “Certificate” in paragraph (5) means a certificate issued under the Funding Code (approved under section 9 of the Access to Justice Act 1999(b)) and “LSC funded client” means an individual who receives services funded by the Legal Services Commission as part of the Community Legal Service within the meaning of Part I of the Access to Justice Act 1999.

#### **Application by solicitor for declaration that solicitor has ceased to act**

**48.**—(1) A solicitor may apply to the Crown Court for an order declaring that he has ceased to be the solicitor acting for a party to restraint proceedings or receivership proceedings.

(2) Where an application is made under this rule—

- (a) notice of the application must be given to the party for whom the solicitor is acting, unless the Crown Court directs otherwise; and
- (b) the application must be supported by evidence.

(3) Where the Crown Court makes an order that a solicitor has ceased to act, the solicitor must serve a copy of the order on every party to the proceedings.

#### **Application by other party for declaration that solicitor has ceased to act**

**49.**—(1) Where—

- (a) a solicitor who has acted for a party to restraint proceedings or receivership proceedings—
  - (i) has died;
  - (ii) has become bankrupt;
  - (iii) has ceased to practise; or
  - (iv) cannot be found; and
- (b) the party has not given notice of a change of solicitor or notice of intention to act in person as required by rule 47,

any other party may apply to the Crown Court for an order declaring that the solicitor has ceased to be the solicitor acting for the other party in the proceedings.

(2) Where an application is made under this rule, notice of the application must be given to the party to whose solicitor the application relates unless the Crown Court directs otherwise.

(3) Where the Crown Court makes an order under this rule, the applicant must serve a copy of the order on every other party to the proceedings.

#### **Order for costs**

**50.**—(1) This rule applies where the Crown Court is deciding whether to make an order for costs under rule 12 of the Crown Court Rules 1982 in restraint proceedings or receivership proceedings.

(2) The court has discretion as to—

- (a) whether costs are payable by one party to another;
- (b) the amount of those costs; and

---

(a) S.I. 2000/441, amended by S.I. 2001/882.

(b) 1999 c. 22.

- (c) when they are to be paid.
- (3) If the court decides to make an order about costs—
  - (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
  - (b) the court may make a different order.
- (4) In deciding what order (if any) to make about costs, the court must have regard to all of the circumstances, including—
  - (a) the conduct of all the parties; and
  - (b) whether a party has succeeded on part of an application, even if he has not been wholly successful.
- (5) The orders which the court may make under rule 12 of the Crown Court Rules 1982 include an order that a party must pay—
  - (a) a proportion of another party's costs;
  - (b) a stated amount in respect of another party's costs;
  - (c) costs from or until a certain date only;
  - (d) costs incurred before proceedings have begun;
  - (e) costs relating to particular steps taken in the proceedings;
  - (f) costs relating only to a distinct part of the proceedings; and
  - (g) interest on costs from or until a certain date, including a date before the making of an order.
- (6) Where the court would otherwise consider making an order under paragraph (5)(f), it must instead, if practicable, make an order under paragraph (5)(a) or (c).
- (7) Where the court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.

#### **Assessment of costs**

- 51.**—(1) Where the Crown Court has made an order for costs in restraint proceedings or receivership proceedings it may either—
- (a) make an assessment of the costs itself; or
  - (b) order assessment of the costs under rule 14 of the Crown Court Rules 1982.
- (2) In either case, the Crown Court or the taxing authority, as the case may be, must—
- (a) only allow costs which are proportionate to the matters in issue; and
  - (b) resolve any doubt which it may have as to whether the costs were reasonably incurred or reasonable and proportionate in favour of the paying party.
- (3) The Crown Court or the taxing authority, as the case may be, is to have regard to all the circumstances in deciding whether costs were proportionately or reasonably incurred or proportionate and reasonable in amount.
- (4) In particular, the Crown Court or the taxing authority must give effect to any orders which have already been made.
- (5) The Crown Court or the taxing authority must also have regard to—
- (a) the conduct of all the parties, including in particular, conduct before, as well as during, the proceedings;
  - (b) the amount or value of the property involved;
  - (c) the importance of the matter to all the parties;
  - (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
  - (e) the skill, effort, specialised knowledge and responsibility involved;
  - (f) the time spent on the application; and
  - (g) the place where and the circumstances in which work or any part of it was done.

### **Time for complying with an order for costs**

**52.** A party to restraint proceedings or receivership proceedings must comply with an order for the payment of costs within 14 days of—

- (a) the date of the order if it states the amount of those costs;
- (b) if the amount of those costs is decided later under rule 14 of the Crown Court Rules 1982, the date of the taxing authority's decision; or
- (c) in either case, such later date as the Crown Court may specify.

### **Application of costs rules**

**53.** These Rules do not apply to the assessment of costs in proceedings to the extent that section 11 of the Access to Justice Act 1999 applies and provisions made under that Act make different provision.

## **PART VII**

### **GENERAL PROVISIONS**

#### **Statements of truth**

**54.—**(1) Any witness statement required to be served by these Rules must be verified by a statement of truth contained in the witness statement.

(2) A statement of truth is a declaration by the person making the witness statement to the effect that the witness statement is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true.

(3) The statement of truth must be signed by the person making the witness statement.

(4) If the person making the witness statement fails to verify the witness statement by a statement of truth, the Crown Court may direct that it shall not be admissible as evidence.

#### **Use of witness statements for other purposes**

**55.—**(1) Except as provided by this rule, a witness statement served in proceedings under Part 2 of the Act may be used only for the purpose of the proceedings in which it is served.

(2) Paragraph (1) does not apply if and to the extent that—

- (a) the witness gives consent in writing to some other use of it;
- (b) the Crown Court gives permission for some other use; or
- (c) the witness statement has been put in evidence at a hearing held in public.

#### **Expert evidence**

**56.—**(1) A party to proceedings under Part 2 of the Act who wishes to adduce expert evidence (whether of fact or opinion) in the proceedings must, as soon as practicable—

- (a) serve on the other parties a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence; and
- (b) serve on any party who requests it in writing, a copy of (or if it appears to the party proposing to adduce the evidence to be more practicable, a reasonable opportunity to examine)—
  - (i) the record of any observation, test, calculation or other procedure on which the finding or opinion is based; and
  - (ii) any document or other thing or substance in respect of which the observation, test, calculation or other procedure mentioned in sub-paragraph (i) has been carried out.

(2) A party may serve notice in writing waiving his right to be served with any of the matters mentioned in paragraph (1) above and, in particular, may agree that the statement mentioned in sub-paragraph (a) may be given to him orally and not served in writing.

(3) If a party who wishes to adduce expert evidence in proceedings under Part 2 of this Act fails to comply with this rule he may not adduce that evidence in those proceedings without the leave of the court, except where rule 57 applies.

### **Exceptions to procedure for expert evidence**

**57.**—(1) If a party has reasonable grounds for believing that the disclosure of any evidence in compliance with rule 56 might lead to the intimidation, or attempted intimidation, of any person on whose evidence he intends to rely in the proceedings, or otherwise to the course of justice being interfered with, he shall not be obliged to comply with those requirements in relation to that evidence, unless the Crown Court orders otherwise.

(2) Where, in accordance with paragraph (1), a party considers that he is not obliged to comply with the requirements imposed by rule 56 with regard to any evidence in relation to any other party, he must serve notice in writing on that party stating—

- (a) that the evidence is being withheld; and
- (b) the reasons for withholding the evidence.

### **Service of documents**

**58.**—(1) Rules 28 and 30 of the Crown Court Rules 1982(a) shall not apply in restraint proceedings and receivership proceedings.

(2) Where these Rules require service of a document, then, unless the Crown Court directs otherwise, the document may be served by any of the following methods—

- (a) in all cases, by delivering the document personally to the party to be served;
- (b) if no solicitor is acting for the party to be served by delivering the document at, or by sending it by first-class post to, his residence or his last-known residence;
- (c) if a solicitor is acting for the party to be served—
  - (i) by delivering the document at, or sending it by first-class post to, the solicitor's business address; or
  - (ii) where the solicitor's business address includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day to that document exchange; or
  - (iii) if the solicitor has indicated that he is willing to accept service by facsimile transmission, by sending a legible copy of the document by facsimile transmission to the solicitor's office.

(3) A document shall, unless the contrary is proved, be deemed to have been served—

- (a) in the case of service by first-class post, on the second business day after posting;
- (b) in the case of service in accordance with paragraph (2)(c)(ii), on the second business day after the day on which it is left at the document exchange; and
- (c) in the case of service in accordance with paragraph (2)(c)(iii), where it is transmitted on a business day before 4 p.m., on that day and in any other case, on the next business day.

(4) An order made in restraint proceedings or receivership proceedings may be enforced against the defendant or any other person affected by it notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Crown Court is satisfied that the person had notice of the order by being present when the order was made.

### **Service by an alternative method**

**59.**—(1) Where it appears to the Crown Court that there is a good reason to authorise service by a method not otherwise permitted by these Rules, the court may make an order permitting service by an alternative method.

(2) An application for an order permitting service by an alternative method—

- (a) must be supported by evidence;
- (b) may be made without notice.

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(a) S.I. 1982/1109. Rule 30 was inserted by the Crown Court (Amendment) Rules 1991 (S.I. 1991/1288).

- (3) An order permitting service by an alternative method must specify—
- (a) the method of service; and
  - (b) the date when the document will be deemed to be served.

#### **Service outside the jurisdiction**

**60.**—(1) Where these Rules require a document to be served on someone who is outside England and Wales, it may be served outside England and Wales with the permission of the Crown Court.

(2) Where a document is to be served outside England and Wales it may be served by any method permitted by the law of the country in which it is to be served.

(3) Nothing in this rule or in any court order shall authorise or require any person to do anything in the country where the document is to be served which is against the law of that country.

(4) Where these Rules require a document to be served a certain period of time before the date of a hearing and the recipient does not appear at the hearing, the hearing must not take place unless the Crown Court is satisfied that the document has been duly served.

#### **Certificates of service**

**61.**—(1) Where these Rules require that the applicant for an order in restraint proceedings or receivership proceedings serve a document on another person, the applicant must lodge a certificate of service with the Crown Court within 7 days of service of the document.

(2) The certificate must state—

- (a) the method of service;
- (b) the date of service; and
- (c) if the document is served under rule 59, such other information as the court may require when making the order permitting service by an alternative method.

(3) Where a document is to be served by the Crown Court in restraint proceedings and receivership proceedings and the court is unable to serve it, the court must send a notice of non-service stating the method attempted to the party who requested service.

*Irvine of Lairg, C.*  
*Woolf, C. J.*  
*Master McKenzie, Q.C.*  
*Kay, L. J.*  
*J. V. Pegden, Q.C.*  
*E. Barnett, J. P.*  
*G. White*  
*Miss L. Dickinson*

20th February 2003

## **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules make provision for the procedure to be followed in proceedings in the Crown Court under Part 2 of the Proceeds of Crime Act 2002, which makes provision about confiscation orders and ancillary orders such as the making of restraint orders and the appointment of receivers.

Part I of the Rules makes introductory provision. Part II deals with confiscation proceedings. Part III deals with restraint proceedings. Part IV deals with receivership proceedings. Part V deals with other applications, including applications for registration of orders made in Scotland or Northern Ireland. Part VI makes general provision applicable only to restraint proceedings and receivership proceedings, whereas Part VII contains general provision which applies to all proceedings.

Prior to the passing of the Proceeds of Crime Act 2002, all restraint proceedings and receivership proceedings were dealt with in the High Court. Therefore, many of the rules applicable to restraint proceedings and receivership proceedings make provision corresponding to Civil Procedure Rules, as permitted by section 91 of the Proceeds of Crime Act 2002.





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**STATUTORY INSTRUMENTS**

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**2003 No. 421 (L. 7)****SUPREME COURT OF ENGLAND AND WALES****The Crown Court (Confiscation, Restraint and  
Receivership) Rules 2003**

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