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STATUTORY INSTRUMENTS

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**2011 No. 1709**

**The Criminal Procedure Rules 2011**

**PART 61**

**PROCEEDS OF CRIME ACT 2002: RULES APPLICABLE  
TO RESTRAINT AND RECEIVERSHIP PROCEEDINGS**

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**Distress and forfeiture**

**61.1.**—(1) This rule applies to applications under sections 58(2) and (3) and 59(2) and (3) of the Proceeds of Crime Act 2002<sup>(1)</sup> 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 seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

**Joining of applications**

**61.2.** An application for the appointment of a management receiver or enforcement receiver under rule 60.1 may be joined with—

- (a) an application for a restraint order under rule 59.1; and
- (b) an application for the conferral of powers on the receiver under rule 60.2.

**Applications to be dealt with in writing**

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

**Business in chambers**

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

**Power of court to control evidence**

**61.5.**—(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; and
- (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.

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(1) 2002 c. 29; section 58(2) is amended by section 62 of, and paragraphs 142 and 143 of Schedule 13 of the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed. Section 59(2) is amended by section 62 of, and paragraphs 142 and 144 of Schedule 13 of the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

## **Evidence of witnesses**

**61.6.**—(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**

**61.7.**—(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 28.3 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(2).

## **Hearsay evidence**

**61.8.** Section 2(1) of the Civil Evidence Act 1995(3) (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**

**61.9.**—(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(4) as amended from time to time shall have effect as if the proceedings were proceedings in the High Court.

## **Court documents**

**61.10.**—(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.

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(2) 1965 c. 69; section 2 was substituted, together with sections 2 A to 2E, by section 66 of the Criminal Procedure and Investigations Act 1996 (c. 25) and amended by section 119 of, and paragraph 8 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 126 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 169 of the Serious Organised Crime and Police Act 2005 (c. 15). It is further amended by sections 41 and 332 of, and paragraph 42 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) for limited purposes; and for remaining 1995 purposes, with effect from a date to be appointed.

(3) 1995 c. 38.

(4) S.I. 1998/3132; amending instruments relevant to this Part are S.I. 2000/221 and 2001/4015.

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

### **Consent orders**

**61.11.**—(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'; and

(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**

**61.12.**—(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.

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

**61.13.**—(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**

**61.14.**—(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 Proceeds of Crime Act 2002 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**

**61.15.**—(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 61.10.
- (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 seven 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**

- 61.16.**—(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 61.17 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<sup>(5)</sup>; 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<sup>(6)</sup>) and 'LSC funded client' means an individual

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(5) [S.I. 2000/441](#).

(6) [1999 c. 22](#); section 9 was amended by article 8 of, and paragraph 4 of the Schedule to, [S.I. 2003/1887](#).

who receives services funded by the Legal Services Commission as part of the Community Legal Service within the meaning of Part I of the 1999 Act.

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

**61.17.**—(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**

**61.18.**—(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 61.16,

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**

**61.19.**—(1) This rule applies where the Crown Court is deciding whether to make an order for costs 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
- (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 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.

*[Note. See section 52 of the Senior Courts Act 1981(7).]*

### **Assessment of costs**

- 61.20.**—(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 76.11.
- (2) In either case, the Crown Court or the assessing 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 assessing 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 assessing authority must give effect to any orders which have already been made.
- (5) The Crown Court or the assessing 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.

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(7) [1981 c. 54](#); section 52 was amended by section 31 of, and Part II of Schedule 1 to, the Prosecution of Offences Act [1985 \(c. 23\)](#), section 4 of the Courts and Legal Services Act [1990 \(c. 41\)](#), article 3 and paragraphs 11 and 12(a) of the Schedule to [S.I. 2004/2035](#) and section 59 of, and paragraph 26 of Schedule 11 to, the Constitutional Reform Act [2005 \(c. 4\)](#). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act [2005 \(c. 4\)](#).

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

**61.21.** 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 76.11, the date of the assessing authority's decision; or
- (c) in either case, such later date as the Crown Court may specify.

### **Application of costs rules**

**61.22.** Rules 61.19, 61.20 and 61.21 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.