

SCHEDULE 1

Modifications etc. (not altering text)

- C1** Sch. 1, Sch. 2 applied (with modifications) (30.12.2005) by [The Family Procedure \(Adoption\) Rules 2005 \(S.I. 2005/2795\)](#), [rule 5\(5\)](#)
- C1** Sch. 1 applied (with modifications) (6.4.2011) by [The Family Procedure Rules 2010 \(S.I. 2010/2955\)](#), [rule 33.1\(2\)](#) (with [rules 2.1](#), [33.1\(1\)](#))

Commencement Information

- I1** Sch. 1 in force at 26.4.1999, see [Signature](#)

RSC ORDER 115

CONFISCATION AND FORFEITURE IN CONNECTION WITH CRIMINAL PROCEEDINGS

I. Drug Trafficking Act 1994(1) and Criminal Justice (International Co-operation) Act 1990(2)

Interpretation

Rule 1.—(1) In this Part of this Order, “The Act” means the Drug Trafficking Act 1994 and a section referred to by number means the section so numbered in the Act.

(2) Expressions used in this Part of this Order which are used in the Act have the same meanings in this Part of this Order as in the Act and include any extended meaning given by the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

Assignment of proceedings

Rule 2 Subject to rule 12, the jurisdiction of the High Court under the Act shall be exercised by a judge of the Chancery Division or of the [^{F1}King’s] Bench Division ^{F2}....

Textual Amendments

- F1** Word in Sch. 1 RSC Order 115 rule 2 substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), [rules 1\(1\)](#), [41\(c\)\(i\)](#)
- F2** Words in Sch. 1 RSC Order 115 rule 2 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1](#), [62\(j\)](#)

Title of proceedings

Rule 2A An application made in accordance with CPR Part 23, or a claim form issued in relation to proceedings 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.

Application for confiscation order

Rule 2B.—(1) An application by the prosecutor for a confiscation order under section 19 shall be made in accordance with CPR Part 23 where there have been proceedings against the defendant in the High Court, and shall otherwise be made by the issue of a claim form.

(2) The application shall be supported by a witness statement or affidavit giving full particulars of the following matters—

- (a) the grounds for believing that the defendant has died or absconded;
- (b) the date or approximate date on which the defendant died or absconded;
- (c) where the application is made under section 19 (2), the offence or offences of which the defendant was convicted, and the date and place of conviction;
- (d) where the application is made under section 19 (4), the proceedings which have been initiated against the defendant (including particulars of the offence and the date and place of institution of those proceedings); and
- (e) where the defendant is alleged to have absconded, the steps taken to contact him.

(3) The prosecutor’s statement under section 11 shall be exhibited to the witness statement or affidavit and shall include the following particulars—

- (a) the name of the defendant;
- (b) the name of the person by whom the statement is given;
- (c) such information known to the prosecutor as is relevant to the determination whether the defendant has benefited from drug trafficking and to the assessment of the value of his proceeds of drug trafficking.

(4) Unless the Court otherwise orders, a witness statement or affidavit under paragraph (2) may contain statements of information and belief, with their sources and grounds.

(5) The application and the witness statement or affidavit in support shall be served not less than 7 days before the date fixed for the hearing of the application on—

- (a) the defendant (or on the personal representatives of a deceased defendant);
- (b) any person who the prosecutor reasonably believes is likely to be affected by the making of a confiscation order; and
- (c) the receiver, where one has been appointed in the matter.

Application for restraint order or charging order

Rule 3.—(1) An application for a restraint order under section 26 or for a charging order under section 27 (to either of which may be joined an application for the appointment of a receiver) may be made by the prosecutor by the issue of a claim form, notice of which need not be served on any other party.

(2) An application under paragraph (1) shall be supported by a witness statement or affidavit, which shall—

- (a) give the grounds for the application; and
- (b) to the best of the witness’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) Unless the Court otherwise directs, a witness statement or affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

Restraint order and charging order

Rule 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 prosecutor 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 where notice of it has not been served on any person shall have effect until a day which shall be fixed for the hearing where all parties may attend on 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 witness statement or 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 serve copies of the order and of the witness statement or 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 [^{F3}specified in CPR rule [^{F4}73.7(7)(e) to (g)]] as shall be appropriate.

Textual Amendments

- F3** Words in Sch. 1 RSC Order 115 rule 4(4) substituted (25.3.2002) by [The Civil Procedure \(Amendment No. 4\) Rules 2001 \(S.I. 2001/2792\)](#), rules 1(c), **11** (with rule 24)
- F4** Words in Sch. 1 RSC Order 155 rule 4(4) substituted (6.4.2016) by [The Civil Procedure \(Amendment\) Rules 2016 \(S.I. 2016/234\)](#), rules 2, **21** (with rule 24)

Discharge or variation of order

Rule 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 make an application in accordance with CPR Part 23 to discharge or vary the order.

(2) The [^{F5}application notice] and any witness statement or 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 [^{F6}application].

(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.

(4) The Court may also discharge a restraint order or a charging order upon receiving notice from the prosecutor that it is no longer appropriate for the restraint order or the charging order to remain in place.

Textual Amendments

- F5** Words in Sch. 1 RSC Order 115 rule 5(2) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **60(a)(i)**
- F6** Word in Sch. 1 RSC Order 115 rule 5(2) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **60(a)(ii)**

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Cross Heading: I. Drug Trafficking Act 1994 and Criminal Justice (International Co-operation) Act 1990. (See end of Document for details)

Further application by prosecutor

Rule 6.—(1) Where a restraint order or a charging order has been made the prosecutor may apply by an application in accordance with CPR Part 23 with notice or, where the case is one of urgency or the giving of notice would cause a reasonable apprehension of dissipation of assets, without notice—

- (a) to 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 a witness statement or affidavit which, where the application is for a restraint order or a charging order, shall to the best of the witness'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 application and witness statement or 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 [F7 application].

(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.

Textual Amendments

- F7 Word in [Sch. 1 RSC Order 115 rule 6\(3\)](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **60(b)**

Realisation of property

Rule 7.—(1) An application by the prosecutor under section 29 shall, where there have been proceedings against the defendant in the High Court, be made by an application in accordance with CPR Part 23 and shall otherwise be made by the issue of a claim form

(2) The application notice or claim form, 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 application or claim 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 a witness statement or affidavit, which shall, to the best of the witness'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 5 (2) and of any charging order made in the matter shall be exhibited to such witness statement or affidavit.

(4) The Court may, on an application under section 29—

- (a) exercise the power conferred by section 30 (2) to direct the making of payments by a receiver;
- (b) give directions in respect of the property interests to which the application relates; and
- (c) make declarations in respect of those interests.

Receivers

Rule 8.—(1) Subject to the provisions of this rule, the provisions of [F8CPR Part 69] shall apply where a receiver is appointed in pursuance of a charging order or under sections 26 or 29.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Act, it shall not be necessary for a witness statement or 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 make an application to the court for directions in accordance with CPR Part 23, as to the distribution of such sums.

(4) An application 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 application on:—

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

(5) A receiver may apply for an order to discharge him from his office by making an application in accordance with CPR Part 23, which shall be served, together with any evidence in support, on all persons affected by his appointment not less than 7 days before the day fixed for the hearing of the application.

Textual Amendments

- F8** Words in [Sch. 1 RSC Order 115 rule 8\(1\)](#) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), [rules 1\(b\)](#), [32](#)

Certificate of inadequacy

Rule 9.—(1) The defendant or a receiver appointed under section 26 or 29 or in pursuance of a charging order may apply in accordance with CPR Part 23 for a certificate under section 17 (1).

(2) An application under paragraph (1) shall be served with any supporting evidence not less than 7 days before the date fixed for the hearing of the application on the prosecutor and, as the case may be, on either the defendant or the receiver (where one has been appointed).

Certificate under section 16

Rule 9A An application under section 16 (2) (increase in realisable property) shall be served with any supporting evidence not less than 7 days before the date fixed for the hearing of the application on the defendant and, as the case may be, on either the prosecutor or (where one has been appointed in the matter) on the receiver.

Compensation

Rule 10 An application for an order under section 18 shall be made in accordance with CPR Part 23, which shall be served, with any supporting evidence, on the person alleged to be in default and on the relevant authority under section 18 (5) not less than 7 days before the date fixed for the hearing of the application.

Disclosure of information

Rule 11.—(1) An application by the prosecutor under section 59 shall be made in accordance with CPR Part 23 and the application notice shall state the nature of the order sought and whether

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Cross Heading: I. Drug Trafficking Act 1994 and Criminal Justice (International Co-operation) Act 1990. (See end of Document for details)

material sought to be disclosed is to be disclosed to a receiver appointed under section 26 or 29 or in pursuance of a charging order or to a person mentioned in section 59 (8).

(2) The application notice and witness statement or 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 application.

(3) The witness statement or affidavit in support of an application under paragraph (1) shall state the grounds for believing that the conditions in section 59 (4) and, if appropriate, section 59 (7) are fulfilled.

Compensation for, discharge and variation of confiscation order

Rule 11A.—(1) An application under section 21, 22 or 23 shall be made in accordance with CPR Part 23 which, together with any evidence in support, shall be lodged with the Court and served on the prosecutor not less than 7 days before the day fixed for the hearing of the application.

(2) Notice shall also be served on any receiver appointed in pursuance of a charging order or under section 26 or 29.

(3) An application for an order under section 22 shall be supported by a witness statement or affidavit giving details of—

- (a) the confiscation order made under section 19 (4);
- (b) the acquittal of the defendant;
- (c) the realisable property held by the defendant; and
- (d) the loss suffered by the applicant as a result of the confiscation order.

(4) An application for an order under section 23 shall be supported by a witness statement or affidavit giving details of—

- (a) the confiscation order made under section 19 (4);
- (b) the date on which the defendant ceased to be an absconder;
- (c) the date on which proceedings against the defendant were instituted and a summary of the steps taken in the proceedings since then; and
- (d) any indication given by the prosecutor that he does not intend to proceed against the defendant.

(5) An application made under section 21 shall be supported by a witness statement or affidavit giving details of—

- (a) the confiscation order made under section 19(4);
- (b) the circumstances in which the defendant ceased to be an absconder; and
- (c) the amounts referred to in section 21 (2).

(6) Where an application is made for an order under section 23 (3) or 24 (2)(b), the witness statement or affidavit shall also include—

- (a) details of the realisable property to which the application relates; and
- (b) details of the loss suffered by the applicant as a result of the confiscation order.

(7) Unless the Court otherwise orders, a witness statement or affidavit under paragraphs (3) to (6) may contain statements of information and belief, with the sources and grounds thereof.

Exercise of powers under sections 37 and 40

Rule 12 The powers conferred on the High Court by sections 37 and 40 may be exercised by a judge [^{F9}or] a master of the [^{F10}King's] Bench Division.

Textual Amendments

- F9** Word in Sch. 1 RSC Order 115 rule 12 substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **60(c)**
- F10** Word in Sch. 1 RSC Order 115 rule 12 substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **41(c)(ii)**

Application for registration

Rule 13 An application for registration of an order specified in an Order in Council made under section 37 or of an external confiscation order under section 40 (1) must be made in accordance with CPR Part 23, and may be made without notice.

Evidence in support of application under section 37

Rule 14 An application for registration of an order specified in an Order in Council made under section 37 must be made in accordance with CPR Part 23, and be supported by a witness statement or affidavit—

- (i) exhibiting the order or a certified copy thereof, and
- (ii) stating, to the best of the witness's knowledge, particulars of what property the person against whom the order was made holds in England and Wales, giving the source of the witness's knowledge.

Evidence in support of application under section 40 (1)

Rule 15.—(1) An application for registration of an external confiscation order must be made in accordance with CPR Part 23, and be supported by a witness statement or affidavit—

- (a) exhibiting the order or a verified or certified or otherwise duly authenticated copy thereof and, where the order is not in the English language, a translation thereof into English certified by a notary public or authenticated by witness statement or affidavit, and
- (b) stating—
 - (i) that the order is in force and is not subject to appeal,
 - (ii) where the person against whom the order was made did not appear in the proceedings, that he received notice thereof in sufficient time to enable him to defend them,
 - (iii) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered, and
 - (iv) to the best of the witness's knowledge, particulars of what property the person against whom the order was made holds in England and Wales, giving the source of the witness's knowledge.

(2) Unless the Court otherwise directs, a witness statement or affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Cross Heading: I. Drug Trafficking Act 1994 and Criminal Justice (International Co-operation) Act 1990. (See end of Document for details)

Register of orders

Rule 16.—(1) There [^{F11}will] be kept in the Central Office [^{F12}at the Royal Courts of Justice in London] under the direction of the Master of the [^{F13}Administrative Court] a register of the orders registered under the Act.

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

Textual Amendments

- F11** Word in Sch. 1 RSC Order 115 rule 16(1) substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **14(a)(i)**
- F12** Words in Sch. 1 RSC Order 115 rule 16(1) inserted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **14(a)(ii)**
- F13** Words in Sch. 1 RSC Order 115 rule 16(1) substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **14(a)(iii)**

Notice of registration

Rule 17.—(1) Notice of the registration of an order must be served on the person against whom it was obtained by [^{F14}delivering it to that person] personally or by sending it [^{F15}to that person's] usual or last known address or place of business or in such other manner as the Court may direct.

[^{F16}(2) Permission is not required to serve such a notice out of the jurisdiction and CPR rules [^{F17}6.40, 6.42 and 6.46] apply in relation to such notice as they apply in relation to a claim form.]

Textual Amendments

- F14** Words in Sch. 1 RSC Order 115 rule 17(1) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **39(a)(i)(aa)**
- F15** Words in Sch. 1 RSC Order 115 rule 17(1) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **39(a)(i)(bb)**
- F16** Sch. 1 RSC Order 115 rule 17(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **31**
- F17** Words in Sch. 1 RSC Order 115 rule 17(2) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **39(a)(ii)**

Application to vary or set aside registration

Rule 18 An application made in accordance with CPR Part 23 by the person against whom an order was made to vary or set aside the registration of an order must be made to a judge and be supported by witness statement or affidavit.

Enforcement of order

Rule 19.—(2) If an application is made under rule 18, an order shall not be enforced until after such application is determined.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Cross Heading: I. Drug Trafficking Act 1994 and Criminal Justice (International Co-operation) Act 1990. (See end of Document for details)

Variation, satisfaction and discharge of registered order

Rule 20 Upon the court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge, as the case may be, shall be entered in the register.

Rules to have effect subject to Orders in Council

Rule 21 Rules 12 to 20 shall have effect subject to the provisions of the Order in Council made under section 37 or, as the case may be, of the Order in Council made under section 39.

Criminal Justice (International Co-operation) Act 1990: external forfeiture orders

Rule 21A The provisions of this Part of this Order shall, with such modifications as are necessary and subject to the provisions of any Order in Council made under section 9 of the Criminal Justice (International Co-operation) Act 1990(3), apply to proceedings for the registration and enforcement of external forfeiture orders as they apply to such proceedings in relation to external confiscation orders.

For the purposes of this rule, an external forfeiture order is an order made by a court in a country or territory outside the United Kingdom which is enforceable in the United Kingdom by virtue of any such Order in Council.

(3) 1990 c. 5.

Changes to legislation:

There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Cross Heading: I. Drug Trafficking Act 1994 and Criminal Justice (International Co-operation) Act 1990.