

SCHEDULE 1

Rule 12

“Part 50

Civil behaviour orders after verdict or finding

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**Contents of this Part**

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When this Part applies	rule 50.1
Behaviour orders: general rules	rule 50.2
Application for behaviour order: special rules	rule 50.3
Evidence to assist the court: special rules	rule 50.4
Application to vary or revoke behaviour order	rule 50.5
Notice of hearsay evidence	rule 50.6
Cross-examination of maker of hearsay statement	rule 50.7
Credibility and consistency of maker of hearsay statement	rule 50.8
Court’s power to vary requirements under this Part	rule 50.9

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*[Note. The rules in this Part derive in part from those contained in rule 114 of The Magistrates' Courts Rules 1981(1), rule 38 of The Crown Court Rules 1982(2), rules 2 to 5 of The Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999(3), rules 5 and 6 of The Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002(4), rules 7, 8 and 9 of The Magistrates' Courts (Parenting Orders) Rules 2004(5) and rule 4 of The Magistrates' Courts (Sexual Offences Prevention Orders) Rules 2004(6).*

*See Part 3 for the court’s general powers to consider an application and to give directions.]*

**When this Part applies**

**50.1.**—(1) This Part applies in magistrates' courts and in the Crown Court where the court could decide to make, vary or revoke a civil order—

- (a) under a power that the court can exercise after reaching a verdict or making a finding, and
- (b) that requires someone to do, or not do, something.

(2) A reference to a “behaviour order” in this Part is a reference to any such order.

(3) A reference to “hearsay evidence” in this Part is a reference to evidence consisting of hearsay within the meaning of section 1(2) of the Civil Evidence Act 1995(7).

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(1) S.I.1981/552, amended by S.I. 1998/2167.  
(2) S.I. 1982/1109, amended by S.I. 2003/639.  
(3) S.I. 1999/681, amended by S.I. 2005/617.  
(4) S.I. 2002/2784, amended by S.I. 2005/617.  
(5) S.I. 2004/247.  
(6) S.I. 2004/1054.  
(7) 1995 c. 38.

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[Note. In the circumstances set out in the Acts listed, the court can make a behaviour order:

(a) on conviction, under—

*Football Spectators Act 1989, section 14A(8) (football banning orders),*  
*Protection from Harassment Act 1997, section 5(9)(restraining orders),*  
*Crime and Disorder Act 1998, sections 1C(10) and 1D(11) (anti-social behaviour orders and interim anti-social behaviour orders),*  
*Crime and Disorder Act 1998, sections 8(12) and 9 (parenting orders),*  
*Sexual Offences Act 2003, section 104(13) (sexual offences prevention orders),*  
*Serious Crime Act 2007, section 19(14) (serious crime prevention orders),*

(b) on acquittal, under—

*Protection from Harassment Act 1997, section 5A(15) (restraining orders on acquittal), and*

(c) on the making of a finding of (i) not guilty by reason of insanity, or (ii) disability, under—

*Sexual Offences Act 2003, section 104 (sexual offences prevention orders).*

*Section 1(2) of the Civil Evidence Act 1995 defines hearsay as meaning “a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated”. Section 13 of that Act defines a statement as meaning “any representation of fact or opinion, however made.”]*

### **Behaviour orders: general rules**

**50.2.—(1)** The court must not make a behaviour order unless the person to whom it is directed has had an opportunity—

- (a) to consider what order is proposed and why; and
- (b) to make representations at a hearing (whether or not that person in fact attends).

(2) That restriction does not apply to making an interim behaviour order.

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- (8) 1989 c. 37; section 14A was amended by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25), section 86(5) of the Anti-Social Behaviour Act 2003 (c. 38), section 139(10) of the Serious Organised Crime and Police Act 2005 (c. 15) and sections 52(2) and 65 of, and paragraphs 1 and 2 of Schedule 3 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38).
  - (9) 1997 c. 40; section 5 was amended by sections 12 and 58 of, and paragraph 43 of Schedule 10 and 11 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28) and by section 125 of the Serious Organised Crime and Police Act 2005 (c. 15).
  - (10) 1998 c. 37; section 1C was inserted by section 64 of the Police Reform Act 2002 (c. 30) and amended by sections 83 and 86 of the Anti-social Behaviour Act 2003 (c. 38) and sections 139, 140, 141 and 174 of, and part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15).
  - (11) 1998, c. 37; section 1D was inserted by section 65 of the Police Reform Act 2002 (c. 30) and amended by section 139 of the Serious Organised Crime and Police Act 2005 (c. 15).
  - (12) 1998 c. 37; section 8 was amended by sections 18, 60 and 64 of, and paragraph 5 of Schedule 2 to, and Schedule 5 to, the Children Act 2004 (c. 31), sections 73 and 74 of, and paragraph 4 of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43), section 165(1) of, and paragraph 194 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 324 and 332 of, and paragraph 1 of Schedule 34 to, the Criminal Justice Act 2003 (c. 44), section 18 of the Anti-social Behaviour Act 2003 (c. 38), section 144 of, and paragraph 3 of Schedule 10 to, the Serious Organised Crime and Police Act 2005 (c. 15), and section 60 of the Violent Crime Reduction Act 2006 (c. 38). It has also been amended by section 144 of, and paragraph 3 of Schedule 10 to, the Serious Organised Crime and Police Act 2005 (c. 15), which is in force in relation to certain specified areas. The date in force for remaining purposes is to be appointed.
  - (13) 2003 c. 42.
  - (14) 2007 c. 27.
  - (15) 1997 c. 40; section 5A was inserted by section 12(5) of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

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- (3) But an interim behaviour order has no effect unless the person to whom it is directed—
- (a) is present when it is made; or
  - (b) is handed a document recording the order not more than 7 days after it is made.

*[Note. The Acts listed in the note to rule 50.1 impose requirements specific to each different type of behaviour order. Not all allow the court to make an interim behaviour order.]*

#### **Application for behaviour order: special rules**

**50.3.**—(1) This rule applies where a prosecutor wants the court to make—

- (a) an anti-social behaviour order; or
- (b) a serious crime prevention order,

if the defendant is convicted.

(2) The prosecutor must serve a notice of intention to apply for such an order on—

- (a) the court officer;
- (b) the defendant against whom the prosecutor wants the court to make the order; and
- (c) any person on whom the order would be likely to have a significant adverse effect,

as soon as practicable (without waiting for the verdict).

(3) The notice must be in the form set out in the Practice Direction and must—

- (a) summarise the relevant facts;
- (b) identify the evidence on which the prosecutor relies in support;
- (c) attach any written statement that the prosecutor has not already served; and
- (d) specify the order that the prosecutor wants the court to make.

(4) The defendant must then—

- (a) serve written notice of any evidence on which the defendant relies on—
  - (i) the court officer, and
  - (ii) the prosecutor,

as soon as practicable (without waiting for the verdict); and

- (b) in the notice, identify that evidence and attach any written statement that has not already been served.

(5) This rule does not apply to an application for an interim anti-social behaviour order.

*[Note. Under section 8 of the Serious Crime Act 2007 a serious crime prevention order may be made only on an application by the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions, or the Director of the Serious Fraud Office. See also paragraphs 2, 7 and 13 of Schedule 2 to the 2007 Act.*

*If a party relies on hearsay evidence, see also rules 50.6, 50.7, and 50.8.]*

#### **Evidence to assist the court: special rules**

**50.4.**—(1) This rule applies where the court indicates that it may make on its own initiative—

- (a) a football banning order;
- (b) a restraining order;
- (c) an anti-social behaviour order; or

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- (d) a drinking banning order.
  - (2) A party who wants the court to take account of any particular evidence before making that decision must—
    - (a) serve notice in writing on—
      - (i) the court officer, and
      - (ii) every other party,as soon as practicable (without waiting for the verdict); and
    - (b) in that notice identify that evidence and attach any written statement that has not already been served.
- [Note. If a party relies on hearsay evidence, see also rules 50.6, 50.7, and 50.8.]*

#### **Application to vary or revoke behaviour order**

- 50.5.**—(1) The court may vary or revoke a behaviour order if—
- (a) the legislation under which it is made allows the court to do so; and
  - (b) one of the following applies—
    - (i) the prosecutor,
    - (ii) the person to whom the order is directed,
    - (iii) any other person mentioned in the order,
    - (iv) the relevant authority or responsible officer,
    - (v) the relevant Chief Officer of Police, or
    - (vi) the Director of Public Prosecutions.
- (2) A person applying under this rule must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, explaining why the order should be varied or revoked; and
  - (b) serve the application, and any notice under paragraph (3), on the court officer and, as appropriate, anyone listed in paragraph (1)(b).
- (3) A party who wants the court to take account of any particular evidence before making its decision must, as soon as practicable—
- (a) serve notice in writing on—
    - (i) the court officer, and
    - (ii) as appropriate, anyone listed in paragraph (1)(b); and
  - (b) in that notice identify the evidence and attach any written statement that has not already been served.
- (4) The court may decide an application under this rule with or without a hearing.
- (5) But the court must not—
- (a) dismiss an application under this rule unless the applicant has had an opportunity to make representations at a hearing (whether or not the applicant in fact attends); or
  - (b) allow an application under this rule unless everyone served with the application has had at least 14 days in which to make representations, including representations about whether there should be a hearing.
- (6) Where a person applies under this rule to a magistrates' court—
- (a) the application must be by complaint; and

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(b) the court officer must give notice by summons of any hearing.

*[Note. The legislation that gives the court power to make a behaviour order may limit the circumstances in which it may be varied or revoked and may require a hearing.*

*If a party relies on hearsay evidence, see also rules 50.6, 50.7 and 50.8.]*

### **Notice of hearsay evidence**

**50.6.**—(1) A party who wants to introduce hearsay evidence must—

(a) serve notice in writing on—

- (i) the court officer, and
- (ii) every other party directly affected; and

(b) in that notice—

- (i) explain that it is a notice of hearsay evidence,
- (ii) identify that evidence,
- (iii) identify the person who made the statement which is hearsay, or explain why if that person is not identified, and
- (iv) explain why that person will not be called to give oral evidence.

(2) A party may serve one notice under this rule in respect of more than one statement and more than one witness.

*[Note. For the time within which to serve a notice of hearsay evidence, see rule 50.3(2) to (4), rule 50.4(2) and rule 50.5(3). See also the requirement in section 2 of the Civil Evidence Act 1995 for reasonable and practicable notice of a proposal to introduce hearsay evidence.*

*Rules 50.6, 50.7 and 50.8 broadly correspond with rules 3, 4 and 5 of The Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999(16), which apply in civil proceedings in magistrates' courts. Rule 3 of the magistrates' courts rules however includes a time limit, which may be varied by the court, or a justices' clerk, of 21 days before the date fixed for the hearing, for service of a hearsay notice.]*

### **Cross-examination of maker of hearsay statement**

**50.7.**—(1) This rule applies where a party wants the court's permission to cross-examine a person who made a statement which another party wants to introduce as hearsay.

(2) The party who wants to cross-examine that person must—

(a) apply in writing, with reasons, not more than 7 days after service of the notice of hearsay evidence; and

(b) serve the application on—

- (i) the court officer,
- (ii) the party who served the hearsay evidence notice, and
- (iii) every party on whom the hearsay evidence notice was served.

(3) The court may decide an application under this rule with or without a hearing.

(4) But the court must not—

(a) dismiss an application under this rule unless the applicant has had an opportunity to make representations at a hearing (whether or not the applicant in fact attends); or

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- (b) allow an application under this rule unless everyone served with the application has had at least 7 days in which to make representations, including representations about whether there should be a hearing.

*[Note. See also section 3 of the Civil Evidence Act 1995.]*

### **Credibility and consistency of maker of hearsay statement**

**50.8.**—(1) This rule applies where a party wants to challenge the credibility or consistency of a person who made a statement which another party wants to introduce as hearsay.

(2) The party who wants to challenge the credibility or consistency of that person must—

(a) serve a written notice of intention to do so on—

(i) the court officer, and

(ii) the party who served the notice of hearsay evidence

not more than 7 days after service of that hearsay evidence notice; and

(b) in the notice, identify any statement or other material on which that party relies.

(3) The party who served the hearsay notice—

(a) may call that person to give oral evidence instead; and

(b) if so, must serve a notice of intention to do so on—

(i) the court officer, and

(ii) every party on whom he served the hearsay notice

not more than 7 days after service of the notice under paragraph (2).

*[Note. Section 5(2) of the Civil Evidence Act 1995 describes the procedure for challenging the credibility of the maker of a statement of which hearsay evidence is introduced. See also section 6 of that Act. The 1995 Act does not allow the introduction of evidence of a previous inconsistent statement otherwise than in accordance with sections 5, 6 and 7 of the Criminal Procedure Act 1865(17).]*

### **Court's power to vary requirements under this Part**

**50.9** The court may—

(a) shorten a time limit or extend it (even after it has expired);

(b) allow a notice or application to be given in a different form, or presented orally.”

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(17) 1865 c. 18; section 6 was amended by section 10 of the Decimal Currency Act 1969 (c. 19), section 119 of, and schedule 7 to, the Police and Criminal Evidence Act 1984 (c. 60), section 90 of, and paragraph 3 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 109 of, and paragraph 47 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 331 and 332 of, and paragraph 79 of Schedule 36 to, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

SCHEDULE 2

Rule 17

“Part 58

Proceeds of Crime Act 2002—rules applicable only to confiscation proceedings

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**Contents of this Part**

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Statements in connection with confiscation orders	rule 58.1
Postponement of confiscation proceedings	rule 58.2
Application for reconsideration	rule 58.3
Application for new calculation of available amount	rule 58.4
Variation of confiscation order due to inadequacy of available amount	rule 58.5
Application by magistrates' court officer to discharge confiscation order	rule 58.6
Application for variation of confiscation order made against an absconder	rule 58.7
Application for discharge of confiscation order made against an absconder	rule 58.8
Application for increase in term of imprisonment in default	rule 58.9
Compensation—general	rule 58.10
Compensation—confiscation order made against absconder	rule 58.11
Payment of money in bank or building society account in satisfaction of confiscation order	rule 58.12

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**Statements in connection with confiscation orders**

**58.1.**—(1) When the prosecutor is required, under section 16 of the Proceeds of Crime Act 2002(18), to give a statement to the Crown Court, the prosecutor 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 under section 16 of the 2002 Act must, in addition to the information required by the 2002 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; and

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(18) 2002 c. 29; section 16 was amended by paragraph 5 of Schedule 8 to the Serious Crime Act 2007 (c. 27).

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(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 2002 Act, the Crown Court orders the defendant to indicate the extent to which he accepts each allegation in a statement given by the prosecutor, the defendant must indicate this in writing to the prosecutor 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 2002 Act, the defendant must provide the information in writing and must, as soon as practicable, serve a copy of it on the prosecutor.

*[Note. This rule derives from rule 5 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003(19).]*

### **Postponement of confiscation proceedings**

**58.2** The Crown Court may grant a postponement under section 14(1)(b) of the Proceeds of Crime Act 2002 without a hearing.

*[Note. Formerly rule 6 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Application for reconsideration**

**58.3.—**(1) This rule applies where the prosecutor makes an application under section 19, 20 or 21 of the Proceeds of Crime Act 2002(20).

(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 seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

*[Note. This rule derives from rule 7 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Application for new calculation of available amount**

**58.4.—**(1) This rule applies where the prosecutor or a receiver makes an application under section 22 of the Proceeds of Crime Act 2002(21) 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—

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(19) S.I. 2003/421.

(20) 2002 c. 29; sections 19, 20 and 21 were amended by section 74(2) of, and paragraphs 8, 9 and 10 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(21) 2002 c. 29; section 22 was amended by section 74(2) of, and paragraph 11 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).



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- (a) the defendant;
- (b) the receiver, if the prosecutor is making the application and a receiver has been appointed under section 50 of the 2002 Act; and
- (c) the prosecutor, if the receiver is making the application,

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

*[Note. This rule derives from rule 8 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

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

**58.5.**—(1) This rule applies where the defendant or a receiver makes an application under section 23 of the Proceeds of Crime Act 2002<sup>(22)</sup> 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;
- (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 of the 2002 Act,

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

*[Note. This rule derives from rule 9 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Application by magistrates' court officer to discharge confiscation order**

**58.6.**—(1) This rule applies where a magistrates' court officer makes an application under section 24 or 25 of the Proceeds of Crime Act 2002<sup>(23)</sup> 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 2002 Act.

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

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<sup>(22)</sup> 2002 c. 29; section 23 was amended by section 74(2) of, and paragraph 12 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).  
<sup>(23)</sup> 2002 c. 29; sections 24 and 25 were amended by section 109(1) of, and paragraphs 406(a) and (b) of Schedule 8 to, the Courts Act 2003 (c. 39).

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(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 magistrates' court officer who applied for the order;
- (b) the defendant;
- (c) the prosecutor; and
- (d) any receiver appointed under section 50 of the 2002 Act.

*[Note. Formerly rule 10 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

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

**58.7.**—(1) This rule applies where the defendant makes an application under section 29 of the Proceeds of Crime Act 2002 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 2002 Act as applied by section 28 of the 2002 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 at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

*[Note. This rule derives from rule 11 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

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

**58.8.**—(1) This rule applies if the defendant makes an application under section 30 of the Proceeds of Crime Act 2002 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 2002 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.

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(4) The application and witness statement must be served on the prosecutor at least seven 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.

*[Note. This rule derives from rule 12 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

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

**58.9.**—(1) This rule applies where the prosecutor makes an application under section 39(5) of the Proceeds of Crime Act 2002<sup>(24)</sup> 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 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) the magistrates' court responsible for enforcing the order.

*[Note. This rule derives from rule 13 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Compensation—general**

**58.10.**—(1) This rule applies to an application for compensation under section 72 of the Proceeds of Crime Act 2002.

(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

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<sup>(24)</sup> 2002 c. 29; section 39(5) was amended by section 74(2) of, and paragraph 21(2) of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

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- (b) the person by whom the compensation would be payable under section 72(9) of the 2002 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 seven days before the date fixed by the court for hearing the application, unless the Crown Court directs otherwise.

*[Note. Formerly rule 14 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

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

**58.11.**—(1) This rule applies to an application for compensation under section 73 of the Proceeds of Crime Act 2002.

(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 2002 Act;
- (b) the variation or discharge of the confiscation order under section 29 or 30 of the 2002 Act;
- (c) the realisable property to which the application relates; and
- (d) the loss suffered by the applicant as a 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 at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

*[Note. This rule derives from rule 15 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Payment of money in bank or building society account in satisfaction of confiscation order**

**58.12.**—(1) An order under section 67 of the Proceeds of Crime Act 2002(25) requiring a bank or building society to pay money to a magistrates' court officer (“a payment order”) shall—

- (a) be directed to the bank or building society in respect of which the payment order is made;
- (b) name the person against whom the confiscation order has been made;
- (c) state the amount which remains to be paid under the confiscation order;
- (d) state the name and address of the branch at which the account in which the money ordered to be paid is held and the sort code of that branch, if the sort code is known;
- (e) state the name in which the account in which the money ordered to be paid is held and the account number of that account, if the account number is known;
- (f) state the amount which the bank or building society is required to pay to the court officer under the payment order;
- (g) give the name and address of the court officer to whom payment is to be made; and

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(25) 2002 c. 29; section 67 was amended by section 109(1) of, and paragraph 409 of Schedule 8 to, the Courts Act 2003 (c. 39) and is to be amended by section 74(2) of, and paragraph 33 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), with effect from 6th April 2008.

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(h) require the bank or building society to make payment within a period of seven days beginning on the day on which the payment order is made, unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances.

(2) The payment order shall be served on the bank or building society in respect of which it is made by leaving it at, or sending it by first class post to, the principal office of the bank or building society.

(3) A payment order which is served by first class post shall, unless the contrary is proved, be deemed to have been served on the second business day after posting.

(4) In this rule “confiscation order” has the meaning given to it by section 88(6) of the Proceeds of Crime Act 2002.

*[Note. Formerly rule 57A of The Magistrates' Courts Rules 1981(26).]*”

### SCHEDULE 3

Rule 20

## “Part 60

### Proceeds of Crime Act 2002—rules applicable only to receivership proceedings

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#### Contents of this Part

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Application for appointment of a management or an enforcement receiver	rule 60.1
Application for conferral of powers on management receiver or enforcement receiver	rule 60.2
Applications for discharge or variation of receivership orders and applications for other orders	rule 60.3
Sums in the hands of receivers	rule 60.4
Security	rule 60.5
Remuneration	rule 60.6
Accounts	rule 60.7
Non-compliance by receiver	rule 60.8

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

##### 60.1

(1) This rule applies to an application for the appointment of a management receiver under section 48(1) of the Proceeds of Crime Act 2002(27) and an application for the appointment of an enforcement receiver under section 50(1) of the 2002 Act.

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

(a) the application is joined with an application for a restraint order under rule 59.1;

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(26) S.I. 1981/552; amended by S.I. 2003/423. There are other amending instruments but none is relevant.

(27) 2002 c. 29.

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- (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' 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 2002 Act; and
  - (e) if the proposed receiver is not a member of staff of the Crown Prosecution Service or the Revenue and Customs Prosecutions Office 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 seven 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.

*[Note. This rule derives from rule 21 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003(28).]*

## **Application for conferral of powers on management receiver or enforcement receiver**

### **60.2**

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(1) This rule applies to an application for the conferral of powers on a management receiver under section 49(1) of the Proceeds of Crime Act 2002 or an enforcement receiver under section 51(1) of the 2002 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 59.1;
- (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 2002 Act.

(4) Where the application is for the conferral of powers on 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 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 seven 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.

*[Note. This rule derives from rule 22 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

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

### **60.3**

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(1) This rule applies to applications under section 62(3) of the Proceeds of Crime Act 2002 for orders (by persons affected by the action of receivers) and applications under section 63(1) of the 2002 Act<sup>(29)</sup> 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 seven 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) of the 2002 Act, the applicant must serve copies of the order on any persons whom he knows to be affected by the order.

*[Note. Formerly rule 23 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

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

### **60.4**

(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.

(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 seven 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<sup>(30)</sup>;
- (b) section 306B of the Insolvency Act 1986<sup>(31)</sup>; and

<sup>(29)</sup> 2002, c. 29; section 63(1) was amended by section 74(2) of, and paragraph 30 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

<sup>(30)</sup> 1985 c. 66; section 31B was inserted by section 456 of, and paragraphs 1 and 15 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29) and amended by section 226 of, and Schedule 6 to, the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

<sup>(31)</sup> 1986 c. 45; section 306B was inserted by section 456 of, and paragraphs 1 and 16(1) and (3) of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).



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(c) article 279B of The Insolvency (Northern Ireland) Order 1989<sup>(32)</sup>.

*[Note. This rule derives from rule 24 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

## Security

### 60.5

(1) This rule applies where the Crown Court appoints a receiver under section 48 or 50 of the Proceeds of Crime Act 2002 and the receiver is not a member of staff of the Crown Prosecution Service or the Revenue and Customs Prosecutions Office (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.

*[Note. This rule derives in part from rule 25 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

## Remuneration

### 60.6

(1) This rule applies where the Crown Court appoints a receiver under section 48 or 50 of the Proceeds of Crime Act 2002 and the receiver is not a member of staff of the Crown Prosecution Service or of the Revenue and Customs Prosecutions Office (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

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<sup>(32)</sup> S.I. 1989/2405 (N.I. 19); article 279B was inserted by section 456 of, and paragraph 20(3) of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).

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

(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 78.4 to 78.7 shall have effect as if the taxing authority was ascertaining costs.

(5) A receiver appointed under section 48 of the 2002 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 2002 Act.

(6) A receiver appointed under section 50 of the 2002 Act is to receive his remuneration by applying to the magistrates' court officer for payment under section 55(4)(b) of the 2002 Act<sup>(33)</sup>.

*[Note. This rule derives from rule 26 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

## Accounts

### 60.7

(1) The Crown Court may order a receiver appointed under section 48 or 50 of the Proceeds of Crime Act 2002 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 section of the 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.

*[Note. This rule derives from rule 27 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

## Non-compliance by receiver

### 60.8

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<sup>(33)</sup> 2002 c. 29; section 55(4)(b) was amended by section 109 of, and paragraph 408 of Schedule 8 to, the Courts Act 2003 (c. 39).

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(1) If a receiver appointed under section 48 or 50 of the Proceeds of Crime Act 2002 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.

*[Note. This rule derives from rule 28 of The Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*”

SCHEDULE 4

Rule 23

“Part 62

Proceeds of Crime Act 2002—rules applicable to investigations

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**Contents of this Part**

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Account monitoring orders under the Terrorism Act 2000 and the Proceeds of Crime Act 2002	rule 62.1
Customer information orders under the Proceeds of Crime Act 2002	rule 62.2
Proof of identity and accreditation	rule 62.3

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**Account monitoring orders under the Terrorism Act 2000 and the Proceeds of Crime Act 2002**

**62.1**

(1) Where a circuit judge makes an account monitoring order under paragraph 2(1) of Schedule 6A to the Terrorism Act 2000<sup>(34)</sup> the court officer shall give a copy of the order to the financial institution specified in the application for the order.

(2) Where any person other than the person who applied for the account monitoring order proposes to make an application under paragraph 4(1) of Schedule 6A to the 2000 Act or section 375(2) of the Proceeds of Crime Act 2002<sup>(35)</sup> for the discharge or variation of an account monitoring order, he shall give a copy of the proposed application, not later than 48 hours before the application is to be made—

- (a) to a police officer at the police station specified in the account monitoring order; or
- (b) where the application for the account monitoring order was made under the 2002 Act and was not made by a constable, to the office of the appropriate officer who made the application, as specified in the account monitoring order,

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<sup>(34)</sup> 2000 c. 11; Schedule 6A was inserted by section 3 of, and paragraph 1 of Schedule 2 to, the Anti-Terrorism, Crime and Security Act 2001 (c. 24).

<sup>(35)</sup> 2002 c. 29.

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in either case together with a notice indicating the time and place at which the application for discharge or variation is to be made.

(3) In this rule—

“appropriate officer” has the meaning given to it by section 378 of the 2002 Act<sup>(36)</sup>; and references to the person who applied for an account monitoring order must be construed in accordance with section 375(4) and (5) of the 2002 Act<sup>(37)</sup>.

*[Note. Formerly rule 25C of The Crown Court Rules 1982<sup>(38)</sup>.]*

## Customer information orders under the Proceeds of Crime Act 2002

### 62.2

(1) Where any person other than the person who applied for the customer information order proposes to make an application under section 369(3) of the Proceeds of Crime Act 2002 for the discharge or variation of a customer information order, he shall, not later than 48 hours before the application is to be made, give a copy of the proposed application—

- (a) to a police officer at the police station specified in the customer information order; or
- (b) where the application for the customer information order was not made by a constable, to the office of the appropriate officer who made the application, as specified in the customer information order,

in either case together with a notice indicating the time and place at which the application for a discharge or variation is to be made.

(2) In this rule—

“appropriate officer” has the meaning given to it by section 378 of the 2002 Act; and references to the person who applied for the customer information order must be construed in accordance with section 369(5) and (6) of the 2002 Act<sup>(39)</sup>.

*[Note. Formerly rule 25D of The Crown Court Rules 1982.]*

## Proof of identity and accreditation

### 62.3

(1) This rule applies where—

- (a) an appropriate officer makes an application under section 345<sup>(40)</sup> (production orders), section 363<sup>(41)</sup> (customer information orders) or section 370<sup>(42)</sup> (account monitoring orders) of the Proceeds of Crime Act 2002 for the purposes of a confiscation investigation or a money laundering investigation; or

<sup>(36)</sup> 2002 c. 29; section 378 was amended by section 74(2) of, and paragraph 116 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

<sup>(37)</sup> 2002 c. 29; section 375(4) was amended by section 74(2) of, and paragraph 112 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

<sup>(38)</sup> S.I. 1982/1109; amended by S.I. 2001/4012 and S.I. 2003/422.

<sup>(39)</sup> 2002 c. 29; section 369(5) was amended by section 74(2) of, and paragraph 111 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

<sup>(40)</sup> 2002 c. 29; section 345 is to be amended by section 75(2) of the Serious Crime Act 2007 (c. 27), with effect from 6th April 2008.

<sup>(41)</sup> 2002 c. 29; section 363 is to be amended by section 77 of, and paragraph 11 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), with effect from 6th April 2008.

<sup>(42)</sup> 2002 c. 29; section 370 is to be amended by section 77 of, and paragraph 12 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), with effect from 6th April 2008.

- (b) a prosecutor makes an application under section 357(43) of the 2002 Act (disclosure orders) for the purposes of a confiscation investigation.
- (2) Subject to sections 449(44) and 449A(45) of the 2002 Act (which make provision for a member of—
- (a) the Serious Organised Crime Agency’s staff; and
  - (b) the staff of the relevant Director,
- to use pseudonyms),
- the appropriate officer or an authorised person, as the case may be, must provide the judge with proof of his identity and, if he is an accredited financial investigator, his accreditation under section 3 of the 2002 Act(46).
- (3) In this rule—
- “appropriate officer” has the meaning given to it by section 378 of the 2002 Act; and
- “confiscation investigation” and “money laundering investigation” have the meanings given to them by section 341 of the 2002 Act(47).
- [Note. This rule derives in part from rule 25E of The Crown Court Rules 1982. For applications to discharge or vary a production order see also Part 56.4.]*

## SCHEDULE 5

Rule 32

### “Part 71

#### Appeal to the Court of Appeal under the Proceeds of Crime Act 2002—general rules

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<b>Contents of this Part</b>	
Extension of time	rule 71.1
Other applications	rule 71.2
Examination of witness by court	rule 71.3
Supply of documentary and other exhibits	rule 71.4
Registrar’s power to require information from court of trial	rule 71.5
Hearing by single judge	rule 71.6
Determination by full court	rule 71.7
Notice of determination	rule 71.8
Record of proceedings and transcripts	rule 71.9
Appeal to House of Lords	rule 71.10

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(43) 2002 c. 29; section 357 was amended by section 77 of, and paragraph 10 of Schedule 10 to, the Serious Crime Act 2007 (c. 27).

(44) 2002 c. 29; section 449 was amended by section 74 of, and paragraphs 121 and 140 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(45) 2002 c. 29; section 449A was inserted by section 74 of, and paragraphs 103 and 118 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(46) 2002 c. 29; section 3 was amended by section 74 of, and paragraph 120 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(47) 2002 c. 29; section 341 was amended by section 75 of the Serious Crime Act 2007 (c. 27).

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## Extension of time

### 71.1

(1) An application to extend the time limit for giving notice of application for leave to appeal under Part 2 of the Proceeds of Crime Act 2002(48) must—

- (a) be included in the notice of appeal; and
- (b) state the grounds for the application.

(2) The parties may not agree to extend any date or time limit set by this Part, Part 72 or Part 73, or by The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(49).

*[Note. Formerly rule 13 of The Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003(50).]*

## Other applications

71.2 Rule 68.3(2)(h) (form of appeal notice) applies in relation to an application—

- (a) by a party to an appeal under Part 2 of the Proceeds of Crime Act 2002 that, under article 7 of The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, a witness be ordered to attend or that the evidence of a witness be received by the Court of Appeal; or
- (b) by the defendant to be given leave by the court to be present at proceedings for which leave is required under article 6 of the 2003 Order,

as it applies in relation to applications under Part I of the Criminal Appeal Act 1968(51) and the form in which rule 68.3 requires notice to be given may be modified as necessary.

*[Note. This rule derives from rule 14 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

## Examination of witness by court

71.3 Rule 65.7 (notice of hearings and decisions) applies in relation to an order of the court under article 7 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 to require a person to attend for examination as it applies in relation to such an order of the court under Part I of the Criminal Appeal Act 1968.

*[Note. This rule derives from rule 15 of The Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

## Supply of documentary and other exhibits

71.4 Rule 65.11 (Registrar's duty to provide copy documents for appeal or reference) applies in relation to an appellant or respondent under Part 2 of the Proceeds of Crime Act 2002 as it applies in relation to an appellant and respondent under Part I of the Criminal Appeal Act 1968.

*[Note. This rule derives from rule 16 of The Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

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(48) 2002 c. 29; section 31 was amended by section 74 of, and paragraph 16 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 33 was amended by section 74 of, and paragraph 17 of Schedule 8 to, the Serious Crime Act 2007 (c. 27). Section 33 is to be amended by section 40 of, and paragraph 77 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), from a date to be appointed.

(49) S.I. 2003/82.

(50) S.I. 2003/428.

(51) 1968 c. 19.

### **Registrar's power to require information from court of trial**

**71.5** The Registrar may require the Crown Court to provide the Court of Appeal with any assistance or information which they may require for the purposes of exercising their jurisdiction under Part 2 of the Proceeds of Crime Act 2002, The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, this Part or Parts 72 and 73.

*[Note. Formerly rule 17 of The Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Hearing by single judge**

**71.6** Rule 65.6(4) (hearings) applies in relation to a judge exercising any of the powers referred to in article 8 of The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003<sup>(52)</sup> or the powers in rules 72.2(3) and (4) (respondent's notice), 73.2(2) (notice of appeal) and 73.3(6) (respondent's notice), as it applies in relation to a judge exercising the powers referred to in section 31(2) of the Criminal Appeal Act 1968<sup>(53)</sup>.

*[Note. This rule derives from rule 18 of The Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Determination by full court**

**71.7** Rule 65.5 (renewing an application refused by a judge or the registrar) shall apply where a single judge has refused an application by a party to exercise in his favour any of the powers listed in article 8 of The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, or the power in rule 72.2(3) or (4) as it applies where the judge has refused to exercise the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

*[Note. This rule derives from rule 19 of The Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Notice of determination**

#### **71.8**

(1) This rule applies where a single judge or the Court of Appeal has determined an application or appeal under The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 or under Part 2 of the Proceeds of Crime Act 2002.

(2) The Registrar must, as soon as practicable, serve notice of the determination on all of the parties to the proceedings.

(3) Where a single judge or the Court of Appeal has disposed of an application for leave to appeal or an appeal under section 31 of the 2002 Act<sup>(54)</sup>, the registrar must also, as soon as practicable, serve the order on a court officer of the court of trial and any magistrates' court responsible for enforcing any confiscation order which the Crown Court has made.

*[Note. Formerly rule 20 of The Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

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(52) S.I. 2003/82.

(53) 1968 c. 19; section 31 was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20 and 29 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 87 of the Courts Act 2003 (c. 39) and section 48 of the Police and Justice Act 2006 (c. 48).

(54) 2002 c. 29; section 31 was amended by section 74(2) of, and paragraph 16 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## **Record of proceedings and transcripts**

**71.9** Rule 65.8(2)(a) and (b) (duty of Crown Court officer—arranging recording of proceedings in Crown Court and arranging transcription) and rule 65.9 (duty of person transcribing proceedings in the Crown Court) apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part 2 of the Proceeds of Crime Act 2002 as they apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part I of the Criminal Appeal Act 1968.

*[Note. This rule derives from rule 21 of The Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

## **Appeal to House of Lords**

### **71.10**

(1) An application to the Court of Appeal for leave to appeal to the House of Lords under Part 2 of the Proceeds of Crime Act 2002 must be made—

- (a) orally after the decision of the Court of Appeal from which an appeal lies to the House of Lords; or
- (b) in the form set out in the Practice Direction, in accordance with article 12 of The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 and served on the Registrar.

(2) The application may be abandoned at any time before it is heard by the Court of Appeal by serving notice in writing on the Registrar.

(3) Rule 65.6(5) (hearings) applies in relation to a single judge exercising any of the powers referred to in article 15 of the 2003 Order, as it applies in relation to a single judge exercising the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

(4) Rule 65.5 (renewing an application refused by a judge or the Registrar) applies where a single judge has refused an application by a party to exercise in his favour any of the powers listed in article 15 of the 2003 Order as they apply where the judge has refused to exercise the powers referred to in section 31(2) of the 1968 Act.

(5) The form in which rule 65.5(2) requires an application to be made may be modified as necessary.

*[Note. This rule derives from rule 22 of The Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

## SCHEDULE 6

Rule 33

### “Part 74

#### Appeal or reference to the House of Lords

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#### **Contents of this Part**

When this Part applies	rule 74.1
Application for permission or reference	rule 74.2
Determination of detention pending appeal, etc.	rule 74.3



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## Contents of this Part

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Bail pending appeal rule 74.4

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### When this Part applies

#### 74.1

(1) This Part applies where—

- (a) a party wants to appeal to the House of Lords after—
  - (i) an application to the Court of Appeal to which Part 41 applies (retrial following acquittal for serious offence), or
  - (ii) an appeal to the Court of Appeal to which applies Part 66 (appeal to the Court of Appeal against ruling at preparatory hearing), Part 67 (appeal to the Court of Appeal against ruling adverse to prosecution), or Part 68 (appeal to the Court of Appeal about conviction or sentence); or
- (b) a party wants to refer a case to the House of Lords after a reference to the Court of Appeal to which Part 70 applies (reference to the Court of Appeal of point of law or unduly lenient sentencing).

(2) A reference to an “appellant” in this Part is a reference to such a party.

*[Note. Under section 33 of the Criminal Appeal Act 1968(55) a party may appeal to the House of Lords from a decision of the Court of Appeal on—*

- (a) *an application to the court under section 76 of the Criminal Justice Act 2003(56) (prosecutor’s application for retrial after acquittal for serious offence). See also Part 41.*
- (b) *an appeal to the court under—*
  - (i) *section 9 of the Criminal Justice Act 1987(57) or section 35 of the Criminal Procedure and Investigations Act 1996(58) (appeal against order at preparatory hearing). See also Part 66.*
  - (ii) *section 47 of the Criminal Justice Act 2003(59) (appeal against order for non-jury trial after jury tampering.) See also Part 66.*
  - (iii) *Part 9 of the Criminal Justice Act 2003(60)(prosecutor’s appeal against adverse ruling). See also Part 67.*
  - (iv) *Part 1 of the Criminal Appeal Act 1968(61)(defendant’s appeal against conviction, sentence, etc.). See also Part 68.*

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(55) 1968 c. 19; section 33 was amended by section 152(1) of, and Schedule 5 to, the Supreme Court Act 1981 (c. 54), section 15 of, and paragraph 3 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 36(1)(a) of the Criminal Procedure and Investigations Act 1996 (c. 25), section 456 of, and paragraphs 1, 4(1) and (2) of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29), sections 47(6), 68(1) and 81(1), (2) and (3) of the Criminal Justice Act 2003 (c. 44) and is to be amended by section 40(4) of, and paragraph 16 (1) and (3)(a) and (b) of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), from a date to be appointed.

(56) 2003 c. 44.

(57) 1987 c. 38; section 9(11) was amended by section 45(1) and (5) of the Criminal Justice Act 2003 (c. 44). The amendment is in force for certain purposes; for remaining purposes it has effect from a date to be appointed.

(58) 1996 c. 25; section 35(1) was amended by section 45(1) and (9) of the Criminal Justice Act 2003 (c. 44). The amendment is in force for certain purposes; for remaining purposes it has effect from a date to be appointed.

(59) 2003 c. 44; section 47(5) is to be amended by section 59(5) of, and paragraph 1(2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), from a date to be appointed.

(60) 2003 c. 44; section 58 is amended by section 30(1) and (2) of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(61) 1968 c. 19.

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*Under section 13 of the Administration of Justice Act 1960(62) a person found to be in contempt of court may appeal to the House of Lords from a decision of the Court of Appeal on an appeal to the court under that section. See also Part 68.*

*Under article 12 of The Criminal Justice Act 2003 (Mandatory Life Sentence: Appeals in Transitional Cases) Order 2005(63) a party may appeal to the House of Lords from a decision of the Court of Appeal on an appeal to the court under paragraph 14 of Schedule 22 to the Criminal Justice Act 2003(64) (appeal against minimum term review decision). See also Part 68.*

*Under article 15 of The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(65) a party may appeal to the House of Lords from a decision of the Court of Appeal on an appeal to the court under section 74 of the Serious Organised Crime and Police Act 2005(66)(appeal against sentence review decision). See also Part 68.*

*Under section 24 of the Serious Crime Act 2007(67) a party may appeal to the House of Lords from a decision of the Court of Appeal on an appeal to that court under that section (appeal about a serious crime prevention order). See also Part 68.*

*Under section 36(3) of the Criminal Justice Act 1972(68) the Court of Appeal may refer to the House of Lords a point of law referred by the Attorney General to the court. See also Part 70.*

*Under section 36(5) of the Criminal Justice Act 1988(69) a party may refer to the House of Lords a sentencing decision referred by the Attorney General to the court. See also Part 70.*

*When section 40 of the Constitutional Reform Act 2005(70) and Schedule 9, paragraphs 16, 23 and 48 of that Act come into force the Supreme Court will take over the jurisdiction of the House of Lords under the provisions listed above. When that happens, references in this Part to the House of Lords must be read as references to the Supreme Court.*

*Under section 33(3) of the Criminal Appeal Act 1968 there is no appeal to the House of Lords—*

- (a) *from a decision of the Court of Appeal on an appeal under section 14A(5A) of the Football Spectators Act 1989(71) (prosecutor's appeal against failure to make football banning order). See Part 68.*

(62) 1960 c. 65; section 13 was amended by section 56 of, and paragraph 40 of Schedule 8 to, the Courts Act 1971 (c. 23), section 122 of, and Schedule 7 to, the Judicature (Northern Ireland) Act 1978 (c. 23), section 52 of, and Schedule 5 to, the Criminal Appeal Act 1968 (c. 19), section 154 of, and paragraph 36 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), section 152 of, and Schedule 7 to, the Supreme Court Act 1981 (c. 54), section 148 of, and paragraph 25 of Schedule 2 to, the County Courts Act 1984 (c. 28) and sections 64 and 106 of, and Schedule 15 to, the Access to Justice Act 1999 (c. 22). It is further amended by section 378 of, and paragraph 45 of Schedule 16 to, the Armed Forces Act 2006 (c. 52) and section 40 of, and paragraph 13 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), with effect from dates to be appointed.

(63) S.I. 2005/2798.

(64) 2003 c. 44; paragraph 14 of Schedule 22 is to be amended by sections 40(4) and 59(5) of, and paragraph 82(1) and (6) of Schedule 9 to, and paragraph 1(2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), from a date to be appointed.

(65) S.I. 2006/2135.

(66) 2005 c. 15.

(67) 2007 c. 27.

(68) 1972 c. 71; section 36(3) is to be amended by section 40(4) of, and paragraph 23(a) of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), from a date to be appointed.

(69) 1988 c. 33; section 36(5) is to be amended by section 40(4) of, and paragraph 48(1) and (2) of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), from a date to be appointed.

(70) 2005 c. 4.

(71) 1989 c. 37; section 14A(5A) was inserted by section 52(2) of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

- (b) *from a decision of the Court of Appeal on an appeal under section 159(1) of the Criminal Justice Act 1988(72) (appeal about reporting or public access restriction). See Part 69.*

*The rules in Part 65 also apply where this Part applies.]*

## **Application for permission or reference**

### **74.2**

- (1) An appellant must—
  - (a) apply orally to the Court of Appeal—
    - (i) for permission to appeal or to refer a sentencing case, or
    - (ii) to refer a point of lawimmediately after the court gives the reasons for its decision; or
  - (b) apply in writing and serve the application on the Registrar and every other party not more than—
    - (i) 14 days after the court gives the reasons for its decision if that decision was on a sentencing reference to which Part 70 applies (Attorney General’s reference of sentencing case), or
    - (ii) 28 days after the court gives those reasons in any other case.
- (2) An application for permission to appeal or to refer a sentencing case must—
  - (a) identify the point of law of general public importance that the appellant wants the court to certify is involved in the decision; and
  - (b) give reasons why—
    - (i) that point of law ought to be considered by the House of Lords, and
    - (ii) the court ought to give permission to appeal.
- (3) An application to refer a point of law must give reasons why that point ought to be considered by the House of Lords.
- (4) An application must include or attach any application for the following, with reasons—
  - (a) an extension of time within which to make the application for permission or for a reference,
  - (b) bail pending appeal,
  - (c) permission to attend any hearing in the House of Lords, if the appellant is in custody.
- (5) A written application must be in the form set out in the Practice Direction.

*[Note. In some legislation, including the Criminal Appeal Act 1968, permission to appeal is described as “leave to appeal”.*

*Under the provisions listed in the note to rule 74.1, except section 36(3) of the Criminal Justice Act 1972 (Attorney General’s reference of point of law), an appellant needs permission to appeal or to refer a sentencing case. Under those provisions the Court of Appeal must not give permission unless it first certifies that—*

- (a) *a point of law of general public importance is involved in the decision, and*
- (b) *it appears to the court that the point is one which the House of Lords ought to consider.*

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(72) 1988 c. 33; section 159(1) was amended by section 61(6) of the Criminal Procedure and Investigations Act 1996 (c. 25).

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*If the Court of Appeal gives such a certificate but refuses permission, an appellant may apply for such permission to the House of Lords.*

*Under section 36(3) of the Criminal Justice Act 1972 an appellant needs no such permission. The Court of Appeal may refer the point of law to the House of Lords or may refuse to do so.*

*For the power of the court or the Registrar to shorten or extend a time limit, see rule 65.3. The time limit in this rule—*

- (a) *for applying for permission to appeal under section 33 of the Criminal Appeal Act 1968 (28 days) is prescribed by section 34 of that Act(73). That time limit may be extended but not shortened by the court. But it may be extended on an application by a prosecutor only after an application to which Part 41 applies (retrial after acquittal for serious offence).*
- (b) *for applying for permission to refer a case under section 36(5) of the Criminal Justice Act 1988 (Attorney General's reference of sentencing decision: 14 days) is prescribed by paragraph 4 of Schedule 3 to that Act. That time limit may be neither extended nor shortened.*
- (c) *for applying for permission to appeal under article 12 of The Criminal Justice Act 2003 (Mandatory Life Sentence: Appeals in Transitional Cases) Order 2005 (28 days) is prescribed by article 13 of that Order. That time limit may be extended but not shortened.*
- (d) *for applying for permission to appeal under article 15 of The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006 (28 days) is prescribed by article 16 of that Order. That time limit may be extended but not shortened.*

*For the power of the Court of Appeal to grant bail pending appeal to the House of Lords, see—*

- (a) *section 36 of the Criminal Appeal Act 1968(74).*
- (b) *article 18 of The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(75).*

*For the right of an appellant in custody to attend a hearing in the House of Lords, see—*

- (a) *section 38 of the Criminal Appeal Act 1968(76).*
- (b) *paragraph 9 of Schedule 3 to the Criminal Justice Act 1988(77).*
- (c) *article 15 of The Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(78).*
- (d) *article 20 of The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(79).]*

(73) 1968 c. 19; section 34 was amended by section 88 of the Courts Act 2003 (c. 39), section 81 of the Criminal Justice Act 2003 (c. 44), and is to be amended by section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), from a date to be appointed.

(74) 1968 c. 19; section 36 was amended by section 168(2) of, and paragraph 23 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), and is to be amended by section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), from a date to be appointed.

(75) S.I. 2006/2135.

(76) 1968 c. 19; section 38 was amended by section 81 of the Criminal Justice Act 2003 (c. 44), and is to be amended by section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), from a date to be appointed.

(77) 1988 c. 33; paragraph 9 of Schedule 3 is to be amended by section 40(4) of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), from a date to be appointed.

(78) S.I. 2005/2798.

(79) S.I. 2006/2135.

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### **Determination of detention pending appeal, etc.**

**74.3** On an application for permission to appeal the Court of Appeal must—

- (a) decide whether to order the detention of a defendant who would have been liable to be detained but for the decision of the court; and
- (b) determine any application for—
  - (i) bail pending appeal,
  - (ii) permission to attend any hearing in the House of Lords, or
  - (iii) a representation order.

*[Note. For the liability of a defendant to be detained pending a prosecutor's appeal to the House of Lords and afterwards, see—*

- (a) *section 37 of the Criminal Appeal Act 1968*(**80**).
- (b) *article 19 of The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006*(**81**).

*For the grant of a representation order for proceedings in the House of Lords, see—*

- (a) *Access to Justice Act 1999, sections 12 and 14 and Schedule 3*(**82**), and
- (b) *The Criminal Defence Service (General) (No. 2) Regulations 2001*(**83**).]

### **Bail pending appeal**

**74.4** Rules 68.8 (Application for bail pending appeal or retrial), 68.9 (Conditions of bail pending appeal or re-trial) and 68.10 (Forfeiture of a recognizance given as a condition of bail) apply.”

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(80) 1968 c. 19; section 37 was amended by section 65(1) of, and paragraph 39 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 23 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 58(1) of, and paragraph 5 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), and is to be amended by section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), from a date to be appointed.

(81) S.I. 2006/2135.

(82) 1999 c. 22; section 12 was amended by section 182 of the Extradition Act 2003 (c. 41) and article 8 of, and paragraph 4 of the Schedule to, S.I. 2005/3429; section 14 was amended by article 8 of, and paragraph 4 of the Schedule to, S.I. 2005/3429; and Schedule 3 was amended by article 3 of, and paragraph 38 of the Schedule to, S.I. 2004/2035, article 8 of, and paragraph 4 of the Schedule to, S.I. 2005/3429, and sections 1 and 2 of the Criminal Defence Service Act 2006 (c. 9).

(83) S.I. 2001/1437; amended by S.I. 2002/712, 2004/1196, 2006/2490 and S.I. 2007/2936.