
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 33

CONFISCATION AND RELATED PROCEEDINGS

RESTRAINT AND RECEIVERSHIP PROCEEDINGS: RULES THAT APPLY GENERALLY

Taking control of goods and forfeiture

33.32.—(1) This rule applies to applications under sections 58(2) and (3) and 59(2) and (3) of the Proceeds of Crime Act 2002(1) for leave of the Crown Court to take control of goods or levy distress against property, or to exercise a right of forfeiture by peaceable re-entry in relation to a tenancy, in circumstances where the property or tenancy is the subject of a restraint order or a receiver has been appointed in respect of the property or tenancy.

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

(3) The application must be served on—

- (a) the person who applied for the restraint order or the order appointing the receiver; and
- (b) any receiver appointed in respect of the property or tenancy,

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

Joining of applications

33.33. An application for the appointment of a management receiver or enforcement receiver under rule 33.56 may be joined with—

- (a) an application for a restraint order under rule 33.51; and
- (b) an application for the conferral of powers on the receiver under rule 33.57.

Applications to be dealt with in writing

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

Business in chambers

33.35. Restraint proceedings and receivership proceedings may be heard in chambers.

(1) [2002 c. 29](#); section 58(2) was amended by section 62(3) of, and paragraphs 142 and 143 of Schedule 13 of the Tribunals, Courts and Enforcement Act [2007 \(c. 15\)](#).

Power of court to control evidence

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

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

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

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

Evidence of witnesses

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

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

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

Witness summons

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

- (a) attend court to give evidence; or
- (b) produce documents to the court.

(2) Rule 17.3 (Application for summons, warrant or order: general rules) applies to an application under this rule as it applies to an application under section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965(2).

Hearsay evidence

33.39. Section 2(1) of the Civil Evidence Act 1995(3) (duty to give notice of intention to rely on hearsay evidence) does not apply to evidence in restraint proceedings and receivership proceedings.

Disclosure and inspection of documents

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

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

(3) Part 31 of the Civil Procedure Rules 1998(4) as amended from time to time shall have effect as if the proceedings were proceedings in the High Court.

(2) 1965 c. 69; section 2 was substituted, together with sections 2 A to 2E, by section 66 of the Criminal Procedure and Investigations Act 1996 (c. 25) and amended by section 119 of, and paragraph 8 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 126 of Schedule 8 to, the Courts Act 2003 (c. 39), paragraph 42 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 169 of the Serious Organised Crime and Police Act 2005 (c. 15) and paragraph 33 of Schedule 17 to the Crime and Courts Act 2013 (c. 22).

(3) 1995 c. 38.

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

Court documents

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

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

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

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

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

Consent orders

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

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

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

(4) Where this rule applies—

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

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

Slips and omissions

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

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

Supply of documents from court records

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

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

Disclosure of documents in criminal proceedings

33.45.—(1) This rule applies where—

- (a) proceedings for an offence have been started in the Crown Court and the defendant has not been either convicted or acquitted on all counts; and
- (b) an application for a restraint order under section 42(1) of the Proceeds of Crime Act 2002 has been made.

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

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

Preparation of documents

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

- (a) the Crown Court orders a party to draw it up;
- (b) a party, with the permission of the Crown Court, agrees to draw it up; or
- (c) the order is made by consent under rule 33.42.

(2) The Crown Court may direct that—

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

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

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

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

Order for costs

33.47.—(1) This rule applies where the Crown Court is deciding whether to make an order for costs in restraint proceedings or receivership proceedings.

(2) The court has discretion as to—

- (a) whether costs are payable by one party to another;
- (b) the amount of those costs; and
- (c) when they are to be paid.

(3) If the court decides to make an order about costs—

- (a) the general rule is that the unsuccessful party must be ordered to pay the costs of the successful party; but
- (b) the court may make a different order.

(4) In deciding what order (if any) to make about costs, the court must have regard to all of the circumstances, including—

- (a) the conduct of all the parties; and
- (b) whether a party has succeeded on part of an application, even if he has not been wholly successful.

(5) The orders which the court may make include an order that a party must pay—

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date only;
- (d) costs incurred before proceedings have begun;

- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating only to a distinct part of the proceedings; and
- (g) interest on costs from or until a certain date, including a date before the making of an order.

(6) Where the court would otherwise consider making an order under paragraph (5)(f), it must instead, if practicable, make an order under paragraph (5)(a) or (c).

(7) Where the court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.

[Note. See section 52 of the Senior Courts Act 1981(5).]

Assessment of costs

33.48.—(1) Where the Crown Court has made an order for costs in restraint proceedings or receivership proceedings it may either—

- (a) make an assessment of the costs itself; or
- (b) order assessment of the costs under rule 45.11.

(2) In either case, the Crown Court or the assessing authority, as the case may be, must—

- (a) only allow costs which are proportionate to the matters in issue; and
- (b) resolve any doubt which it may have as to whether the costs were reasonably incurred or reasonable and proportionate in favour of the paying party.

(3) The Crown Court or the assessing authority, as the case may be, is to have regard to all the circumstances in deciding whether costs were proportionately or reasonably incurred or proportionate and reasonable in amount.

(4) In particular, the Crown Court or the assessing authority must give effect to any orders which have already been made.

(5) The Crown Court or the assessing authority must also have regard to—

- (a) the conduct of all the parties, including in particular, conduct before, as well as during, the proceedings;
- (b) the amount or value of the property involved;
- (c) the importance of the matter to all the parties;
- (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
- (e) the skill, effort, specialised knowledge and responsibility involved;
- (f) the time spent on the application; and
- (g) the place where and the circumstances in which work or any part of it was done.

Time for complying with an order for costs

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

- (a) the date of the order if it states the amount of those costs;
- (b) if the amount of those costs is decided later under rule 45.11, the date of the assessing authority's decision; or

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

(c) in either case, such later date as the Crown Court may specify.

Application of costs rules

33.50. Rules 33.47, 33.48 and 33.49 do not apply to the assessment of costs in proceedings to the extent that section 11 of the Access to Justice Act 1999⁽⁶⁾ applies and provisions made under that Act make different provision.

⁽⁶⁾ 1999 c. 22; section 11 was repealed by section 39 of, and paragraph 51 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) with saving and transitional provisions made by regulations 6, 7 and 8 of S.I. 2013/534.