

PRACTICE DIRECTION – RESTRAINT ORDERS AND APPOINTMENT OF RECEIVERS IN CONNECTION WITH CRIMINAL PROCEEDINGS AND INVESTIGATIONS

THIS PRACTICE DIRECTION SUPPLEMENTS RSC ORDER 115

Scope and interpretation

- 1.1 This practice direction applies to applications to the High Court for a restraint order or the appointment of a receiver under –
 - (1) Part VI of the Criminal Justice Act 1988 ('the 1988 Act');
 - (2) Part I of the Drug Trafficking Act 1994 ('the 1994 Act'); or
 - (3) Schedule 4 to the Terrorism Act 2000 ('the 2000 Act').

(Part VI of the 1988 Act and Part I of the 1994 Act are repealed by the Proceeds of Crime Act 2002 from a day to be appointed, but will continue to apply to pending and transitional cases. Following their repeal, applications for a restraint order or the appointment of a receiver which would previously have been made under those Acts will instead be made to the Crown Court under Part 2 of the 2002 Act.)
- 1.2 In this practice direction –
 - (1) 'the prosecutor' means the person applying for a restraint order or the appointment of a receiver; and
 - (2) 'the defendant' means the person against whom criminal proceedings have been brought or a criminal investigation is taking place, and against whom a confiscation order or forfeiture order has been or might be made.

SECTION I – RESTRAINT ORDERS

Form of restraint order

2. An example of a restraint order is annexed to this practice direction. This example may be modified as appropriate in any particular case.

Amount under restraint

- 3.1 A restraint order may, where appropriate, apply to –
 - (1) all of the defendant's realisable property;

- (2) the defendant's realisable property up to a specified value; or
- (3) one or more particular specified assets.

3.2 Where –

- (1) a confiscation order or forfeiture order has already been made against the defendant in a particular amount; or
- (2) the prosecutor is able to make a reasonably accurate estimate of the amount of any confiscation order or forfeiture order that might be made against him,

and, in either case, it is clear that the defendant's realisable property is greater in value than the amount or estimated amount of that order, the court will normally limit the application of the restraint order in accordance with paragraph 3.1(2) or (3).

- 3.3 In such cases the prosecutor's draft order should normally either include an appropriate financial limit or specify the particular assets to which the order should apply.

Living expenses and legal fees

- 4. A restraint order will normally, unless it is clear that a person restrained has sufficient assets which are not subject to the order, include an exception to the order permitting that person to spend assets –
 - (1) in the case of an individual, for reasonable living expenses; and
 - (2) in the case of either an individual or a company, to pay reasonable legal fees so that they may take advice in relation to the order and if so advised apply for its variation or discharge.

Restraint orders against third parties

- 5.1 Where a restraint order applies to property held in the name of a person other than the defendant –
 - (1) the order must be addressed to that person in addition to the defendant; and
 - (2) in applying for the order, the prosecutor must consider the guidance given in the matter of G (restraint order) [2001] EWHC Admin 606.
- 5.2 Examples of additional persons to whom an order must, where appropriate, be addressed include –
 - (1) a person who has a joint bank account with the defendant;
 - (2) in proceedings under the 1988 Act or the 1994 Act, a person to whom the defendant is alleged to have made a gift which may be treated as realisable property of the defendant under the provisions of the relevant Act; or

- (3) a company, where the prosecutor alleges that assets apparently belonging to the company are in reality those of the defendant.

5.3 However, an order should not normally be addressed –

- (1) to a bank with whom a defendant has an account; or
- (2) to the business name of a defendant who carries on an unincorporated business (such business not being a separate legal entity from the defendant).

Restraint orders against businesses

- 6. If an application for a restraint order is made against a company, partnership or individual apparently carrying on a legitimate business –
 - (1) the court will take into account the interests of the employees, creditors and customers of the business and, in the case of a company, any shareholders other than the defendant, before making an order which would or might prevent the business from being continued; and
 - (2) any restraint order made against that person will normally contain an exception enabling it to deal with its assets in the ordinary course of business.

Duration of order made on application without notice – rules 4(2) and 27(2)

- 7.1 RSC Order 115 rules 4(2) and 27(2) provide that, unless the court otherwise directs, a restraint order made without notice shall have effect until a day which shall be fixed for a further hearing where all parties may attend ('the return date').
- 7.2 Where a return date is fixed, it will normally be no more than 14 days after the date of the order.
- 7.3 Where no return date is fixed, the court will always include in the order a provision giving the defendant or anyone affected by the order permission to apply to vary or discharge the order (see paragraph 14 of the sample form of order).

SECTION II – APPOINTMENT OF RECEIVER

- 8.1 CPR Part 69, and the practice direction supplementing that Part, apply to the appointment of a receiver under the 1988, 1994 or 2000 Act, subject to the provisions of RSC Order 115 rule 8 and rule 23(e) where applicable.
- 8.2 In particular, CPR rule 69.7, and paragraph 9 of the practice direction supplementing Part 69, apply in relation to the remuneration of the receiver.
- 8.3 Where no confiscation or forfeiture order has been made –

- (1) an application for the appointment of a receiver should not be made without notice, unless the application is urgent or there is some other good reason for not giving notice to the defendant; and
- (2) if the application is made without notice, the prosecutor's written evidence should explain the reasons for doing so.

8.4 Where the court appoints a receiver on an application without notice in the circumstances set out in paragraph 8.3, the order will normally limit the receiver's powers to manage, deal with or sell property (other than with the defendant's consent) to the extent that is shown to be urgently necessary. If the receiver seeks further powers, he should apply on notice for further directions.

**RESTRAINT ORDER PROHIBITING
DISPOSAL OF ASSETS****IN THE HIGH COURT OF JUSTICE
QUEEN’S BENCH DIVISION
[ADMINISTRATIVE COURT]****Before The Honourable Mr Justice [****] sitting in private****Claim No.****Dated**

IN THE MATTER OF [

] (Defendant)

AND IN THE MATTER OF THE [CRIMINAL JUSTICE ACT 1988]
[DRUG TRAFFICKING ACT 1994] [TERRORISM ACT 2000]TO: [(1)] [*the Defendant*]
[(2)] [Y]
[(3)] [Z LIMITED]**PENAL NOTICE**

If you [] disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized.

Any other person who knows of this order and does anything which helps or permits the Defendant [or Y or Z Ltd] to breach the terms of this order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS ORDER

1. This is a Restraint Order made against [] (“the Defendant”) [and Y and Z Ltd] on [] by Mr Justice [] on the application of [] (“the Prosecutor”). The Judge read the witness statements listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this order.
2. This order was made at a hearing without notice to the Defendant [or to Y and Z Ltd]. The Defendant [and Y and Z Ltd] has a right to apply to the court to vary or discharge the order – see paragraph 15 below.
- [3. There will be a further hearing of this matter on [insert date] (“the return date”) when the Prosecutor will apply for the continuation of this order. The Defendant [and Y and Z Ltd] and any other person affected by this order are entitled to appear and to object to the continuation of this order or to ask for it to be varied.]¹

¹ Include this paragraph if the court fixes a return date.

DISPOSAL OF OR DEALING WITH ASSETS

4. The Defendant must not [until further order of the court]-
 - (1) remove from England and Wales¹ any of his assets which are in England and Wales [up to the value of £]; or
 - (2) in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside England and Wales [up to the same value].
5. Paragraph 4 applies to all the Defendant's assets whether or not they are in his own name and whether they are solely or jointly owned. For the purpose of this order the Defendant's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Defendant is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.
6. This prohibition includes the following assets in particular-
 - (a) the property known as *[title/address]* or the net sale money after payment of any mortgages if it has been sold;
 - (b) the property and assets of the Defendant's business [known as *[name]*] [carried on at *[address]*] or the sale money if any of them have been sold; and
 - (c) any money in the account numbered *[account number]* at *[title/address]*.
- [7. (1) If the total value free of charges or other securities ("unencumbered value") of the Defendant's assets in England and Wales exceeds £ , the Defendant may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of the Respondent's assets still in England and Wales remains above £ .
- (2) If the total unencumbered value of the Defendant's assets in England and Wales does not exceed £ , the Defendant must not remove any of those assets from England and Wales and must not dispose of or deal with any of them. If the Defendant has other assets outside England and Wales, he may dispose of or deal with those assets outside England and Wales so long as the total unencumbered value of all his assets

¹ In orders made under Schedule 4 to the Terrorism Act 2000, this paragraph should be amended by substituting a prohibition on removing assets from Great Britain.

whether in or outside England and Wales remains above £
.]

8. [Y must not in any way dispose of or deal with or diminish the value of *[insert description of property]*.]¹
9. [Z Ltd must not in any way dispose of or deal with or diminish the value of any of its property or assets.]

PROVISION OF INFORMATION²

10. The Defendant must serve a witness statement certified by a statement of truth on the Prosecutor within [] days after this order has been served on him setting out all his assets and all assets under his control whether in or outside England and Wales and whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. The witness statement must include:
 - (1) the name and address of all persons including financial institutions holding any such assets;
 - (2) details of the Defendant's current salary or other form of income, identifying the amounts paid, by whom they are paid and the account or accounts into which such sums are paid;
 - (3) the names and numbers of all accounts held by or under the control of the Defendant, together with the name and address of the place where the account is held and the sums in the account;
 - (4) details (including addresses) of any real property in which the Defendant has any interest, including an interest in any of the net sale money if the property were to be sold. These details must include details of any mortgage or charge on the property;
 - (5) details of all National Savings Certificates, unit trusts, shares or debentures in any company or corporation, wherever incorporated in the world, owned or controlled by the Defendant or in which he has an interest;
 - (6) details of all trusts of which the Defendant is a beneficiary, including the name and address of every trustee;
 - (7) particulars of any income or debt due to the Defendant including the name and address of the debtor;

¹ It may, depending on the circumstances, be appropriate for the order to include more detailed provisions restraining a third party, corresponding with paragraphs 4 to 7 above.

² This section of the order is optional, although it will usually be included in orders made under the 1988 or 1994 Acts.

- (8) details of all assets over £1,000 in value transferred by the Defendant, or anyone on his behalf, to others since [date], identifying the name and address of all persons to whom such property was transferred.
11. (1) Subject to any further order of the court any information given in compliance with this order shall only be used-
- (a) for the purpose of these proceedings;
 - (b) if the Defendant is convicted, for the purposes of any confiscation hearing that may take place; and
 - (c) if a confiscation order is made, for the purposes of enforcing that order, including any receivership proceedings.
- (2) There shall be no disclosure of any material disclosed in compliance with this order to any co-defendant in the criminal proceedings.
- (3) However, nothing in this paragraph shall make inadmissible any disclosure made by the Defendant in any proceedings for perjury relating to that disclosure.

EXCEPTIONS TO THIS ORDER

12. (1) This order does not prohibit the Defendant [or Y] from spending up to £ a week towards his ordinary living expenses and up to £ [or a reasonable sum] on legal advice and representation in connection with this order. But before spending any money the Defendant [or Y] must tell the Prosecutor where the money is to come from.
- [(2) This order does not prohibit the Defendant [or Y] from spending any money they may receive by way of state benefit from the Department of Social Security.]
- [(3) This order does not prohibit the Defendant from spending towards his ordinary living expenses any sum earned by him whilst he is in prison.]
- [(4) This order does not prohibit Z Ltd from spending up to £ [or a reasonable sum] on legal advice and representation. But before spending any money Z Ltd must tell the Prosecutor where the money is to come from.]
- (5) The Defendant [or Y or Z Ltd] may agree with the Prosecutor that the above spending limits be varied or that this Order be

varied in any other respect in relation to them, but any such agreement must be in writing.

- (6) This order does not prevent-
 - (a) any person from paying any money in satisfaction of the whole or part of any confiscation order which may be made against the Defendant; or
 - (b) the levy of distress upon any goods subject to this order for the purpose of enforcement of any confiscation order which may be made against the Defendant.

COSTS

- 13. The costs of this order are reserved.

VARIATION OR DISCHARGE OF THIS ORDER

- 14. Anyone affected by this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Prosecutor and the Defendant [and Y and Z Ltd] giving two clear days' notice. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Prosecutor in advance.

INTERPRETATION OF THIS ORDER

- 15. A person who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
- 16. A person which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

PARTIES OTHER THAN THE DEFENDANT

- 17. **Effect of this order**

It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized. He is also at risk of prosecution for a money laundering offence.

- 18. **Set off by banks**

This order does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the Defendant before it was notified of this order.

19. Withdrawals by the Defendant

No bank need enquire as to the application or proposed application of any money withdrawn by the Defendant if the withdrawal appears to be permitted by this order.

20. Persons outside England, Wales and Scotland

- (1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court or Scotland.
- (2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court or Scotland-
 - (a) a person to whom this order is addressed or the officer or agent appointed by power of attorney of such a person;
 - (b) any person who-
 - (i) is subject to the jurisdiction of this court or Scotland;
 - (ii) has been given written notice of this order at his residence or place of business within the jurisdiction of this court or Scotland; and
 - (iii) is able to prevent acts or omissions outside the jurisdiction of this court or Scotland which constitute or assist in a breach of the terms of this order; and
 - (c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

21. Enforcement in Scotland

This order shall have effect in the law of Scotland, and may be enforced there, if it is registered under section 35 of the Proceeds of Crime (Scotland) Act 1995.

[22. Assets located outside England and Wales

Nothing in this order shall, in respect of assets located outside England and Wales, prevent any third party from complying with-

- (1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Respondent; and
- (2) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's solicitors;

unless those assets are situated in Scotland and this order has been registered there, in which case this order must be obeyed there.]

COMMUNICATIONS WITH THE COURT

All communications to the court about this order should be sent to-

The Administrative Court Office, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The office is open between 10 a.m. and 4.30 p.m. Monday to Friday. The telephone number is 0207 947 6653.

SCHEDULE A

WITNESS STATEMENTS

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT BY THE PROSECUTOR

- (1) The Prosecutor will serve upon the Defendant [and Y and Z Ltd] -
 - (a) a copy of this order; and
 - (b) a copy of the witness statement containing the evidence relied upon by the Prosecutor, and any other documents provided to the court on the making of the application;
- (2) Anyone notified of this order will be given a copy of it by the Prosecutor.
- (3) The Prosecutor will pay the reasonable costs of anyone other than the Defendant [and Y and Z Ltd] which are incurred as a result of this order including the costs of finding out whether that person holds any of the Defendant's assets, save that the Prosecutor will not without an order of the court be obliged to pay any legal or accountancy costs so incurred unless the Prosecutor first gives its consent in writing.

ADDRESS OF THE PROSECUTOR FOR SERVICE AND ANY COMMUNICATION IN RESPECT OF THESE PROCEEDINGS

[Address, reference, fax and telephone numbers]"