

PRACTICE DIRECTION – PROCEEDS OF CRIME ACT 2002 PARTS 5 AND 8: CIVIL RECOVERY

Scope and Interpretation

- 1.1 Section I of this practice direction contains general provisions about proceedings in the High Court under Parts 5 and 8 of the Proceeds of Crime Act 2002.
- 1.2 Section II contains provisions about applications to the High Court under Part 5 of the Act for –
 - (a) a recovery order; and
 - (b) an interim receiving order.
- 1.3 Section III contains provisions about applications to the High Court under Part 8 of the Act for any of the following types of order or warrant in connection with a civil recovery investigation –
 - (a) a production order;
 - (b) a search and seizure warrant;
 - (c) a disclosure order;
 - (d) a customer information order; and
 - (e) an account monitoring order.
- 1.4 Section IV of this practice direction contains further provisions about applications for each of the specific types of order and warrant listed in paragraph 1.3 above.
- 1.5 In this practice direction –
 - (1) ‘the Act’ means the Proceeds of Crime Act 2002;
 - (2) ‘the Director’ means the Director of the Assets Recovery Agency, or any person authorised by him to act on his behalf in accordance with section 1(6) of the Act; and
 - (3) other expressions used have the same meaning as in the Act.

SECTION I – GENERAL PROVISIONS

Venue

- 2.1 A claim or application to the High Court under Part 5 or Part 8 of the 2002 Act must be issued in the Administrative Court.
- 2.2 The Administrative Court will thereupon consider whether to transfer the claim or application to another Division or Court of the High Court.

Use of pseudonyms by Agency staff

- 3.1 If a member of staff of the Assets Recovery Agency gives written or oral evidence in any proceedings using a pseudonym in accordance with section 449 of the Act –
- (1) the court must be informed that the witness is using a pseudonym; and
 - (2) a certificate under section 449(3) of the Act must be filed or produced.

SECTION II – PROCEEDINGS UNDER PART 5 OF THE ACT

Claim for a recovery order

- 4.1 A claim by the Director for a recovery order must be made using the CPR Part 8 procedure.
- 4.2 The claim form must –
- (1) identify the property in relation to which a recovery order is sought;
 - (2) state, in relation to each item or description of property –
 - (a) whether the property is alleged to be recoverable property or associated property; and
 - (b) either –
 - (i) who is alleged to hold the property; or
 - (ii) where the Director is unable to identify who holds the property, the steps that have been taken to try to establish their identity;
 - (3) set out the matters relied upon in support of the claim; and
 - (4) give details of the person nominated by the Director to act as trustee for civil recovery in accordance with section 267 of the Act.
- 4.3 The evidence in support of the claim must include the signed, written consent of the person nominated by the Director to act as trustee for civil recovery if appointed by the court.

Application for an interim receiving order

- 5.1 An application for an interim receiving order must be made –
- (1) to a High Court judge; and
 - (2) in accordance with Part 23.
- 5.2 The application may be made without notice in the circumstances set out in section 246(3) of the Act.
- 5.3 Part 69 (court's power to appoint a receiver) and its practice direction apply to an application for an interim receiving order with the following modifications –

- (1) paragraph 2.1 of the practice direction supplementing Part 69 does not apply;
 - (2) the Director's written evidence must, in addition to the matters required by paragraph 4.1 of that practice direction, also state in relation to each item or description of property in respect of which the order is sought –
 - (a) whether the property is alleged to be –
 - (i) recoverable property; or
 - (ii) associated property,
 and the facts relied upon in support of that allegation; and
 - (b) in the case of any associated property –
 - (i) who is believed to hold the property; or
 - (ii) if the Director is unable to establish who holds the property, the steps that have been taken to establish their identity; and
 - (3) the Director's written evidence must always identify a nominee and include the information in paragraph 4.2 of that practice direction.
- 5.4 There must be filed with the application notice a draft of the order sought. This should if possible also be supplied to the court on disk in a form compatible with the word processing software used by the court.

Application for directions

- 6.1 An application for directions as to the exercise of the interim receiver's functions may, under section 251 of the Act, be made at any time by –
 - (1) the interim receiver;
 - (2) any party to the proceedings; and
 - (3) any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him.
- 6.2 The application must always be made by application notice, which must be served on –
 - (1) the interim receiver (unless he is the applicant);
 - (2) every party to the proceedings; and
 - (3) any other person who may be interested in the application.

Application to vary or discharge an interim receiving order

- 7.1 An application to vary or discharge an interim receiving order may be made at any time by –
 - (1) the Director; or
 - (2) any person affected by the order.

- 7.2 A copy of the application notice must be served on –
- (1) every party to the proceedings;
 - (2) the interim receiver; and
 - (3) any other person who may be affected by the court’s decision.

SECTION III – APPLICATIONS UNDER PART 8 OF THE ACT

How to apply for an order or warrant

- 8.1 An application by the Director for an order or warrant under Part 8 of the Act in connection with a civil recovery investigation must be made –
- (1) to a High Court judge;
 - (2) by filing an application notice.
- 8.2 The application may be made without notice.

Confidentiality of court documents

- 9.1 CPR rule 5.4 does not apply to an application under Part 8 of the Act, and paragraphs 9.2 and 9.3 below have effect in its place.
- 9.2 When an application is issued, the court file will be marked ‘Not for disclosure’ and, unless a High Court judge grants permission, the court records relating to the application (including the application notice, documents filed in support, and any order or warrant that is made) will not be made available by the court for any person to inspect or copy, either before or after the hearing of the application.
- 9.3 An application for permission under paragraph 9.2 must be made on notice to the Director in accordance with Part 23.
- (Rule 23.7(1) requires a copy of the application notice to be served as soon as practicable after it is filed, and in any event at least 3 days before the court is to deal with the application.)

Application notice and evidence

- 10.1 The application must be supported by written evidence, which must be filed with the application notice.
- 10.2 The evidence must set out all the matters on which the Director relies in support of the application, including any matters required to be stated by the relevant sections of the Act, and all material facts of which the court should be made aware.

- 10.3 There must also be filed with the application notice a draft of the order sought. This should if possible also be supplied to the court on disk in a form compatible with the word processing software used by the court.

Hearing of the application

- 11.1 The application will be heard and determined in private, unless the judge hearing it directs otherwise.

Variation or discharge of order or warrant

- 12.1 An application to vary or discharge an order or warrant may be made by –
- (1) the Director; or
 - (2) any person affected by the order or warrant.
- 12.2 An application under paragraph 12.1 to stop an order or warrant from being executed must be made immediately upon it being served.
- 12.3 A person applying to vary or discharge a warrant must first inform the Director that he is making the application.
- 12.4 The application should be made to the judge who made the order or issued the warrant or, if he is not available, to another High Court judge.

SECTION IV – FURTHER PROVISIONS ABOUT SPECIFIC APPLICATIONS UNDER PART 8 OF THE ACT

Production order

- 13.1 The application notice must name as a respondent the person believed to be in possession or control of the material in relation to which a production order is sought.
- 13.2 The application notice must specify –
- (1) whether the application is for an order under paragraph (a) or (b) of section 345(4) of the Act;
 - (2) the material, or description of material, in relation to which the order is sought; and
 - (3) the person who is believed to be in possession or control of the material.
- 13.3 An application under section 347 of the Act for an order to grant entry may be made either –
- (1) together with an application for a production order; or
 - (2) by separate application, after a production order has been made.
- 13.4 An application notice for an order to grant entry must –

- (1) specify the premises in relation to which the order is sought; and
 - (2) be supported by written evidence explaining why the order is needed.
- 13.5 A production order, or an order to grant entry, must contain a statement of the right of any person affected by the order to apply to vary or discharge the order.

Search and seizure warrant

- 14.1 The application notice should name as respondent the occupier of the premises to be subject to the warrant, if known.
- 14.2 The evidence in support of the application must state –
- (1) the matters relied on by the Director to show that one of the requirements in section 352(6) of the Act for the issue of a warrant is satisfied;
 - (2) details of the premises to be subject to the warrant, and of the possible occupier or occupiers of those premises;
 - (3) the name and position of the member of the staff of the Agency who it is intended will execute the warrant.
- 14.3 There must be filed with the application notice drafts of –
- (1) the warrant; and
 - (2) a written undertaking by the person who is to execute the warrant to comply with paragraph 13.8 of this practice direction.
- 14.4 A search and seizure warrant must –
- (1) specify the statutory power under which it is issued and, unless the court orders otherwise, give an indication of the nature of the investigation in respect of which it is issued;
 - (2) state the address or other identification of the premises to be subject to the warrant;
 - (3) state the name of the member of staff of the Agency who is authorised to execute the warrant;
 - (4) set out the action which the warrant authorises the person executing it to take under the relevant sections of the Act;
 - (5) give the date on which the warrant is issued;
 - (6) include a statement that the warrant continues in force until the end of the period of one month beginning with the day on which it is issued;
 - (7) contain a statement of the right of any person affected by the order to apply to discharge or vary the order.
- 14.5 An example of a search and seizure warrant is annexed to this practice direction. This example may be modified as appropriate in any particular case.

- 14.6 Rule 40.2 applies to a search and seizure warrant.
(Rule 40.2 requires every judgment or order to state the name and judicial title of the person making it, to bear the date on which it is given or made, and to be sealed by the court.)
- 14.7 Upon the issue of a warrant the court will provide to the Director –
- (1) the sealed warrant; and
 - (2) a copy of it for service on the occupier or person in charge of the premises subject to the warrant.
- 14.8 A person attending premises to execute a warrant must, if the premises are occupied produce the warrant on arrival at the premises, and as soon as possible thereafter personally serve a copy of the warrant and an explanatory notice on the occupier or the person appearing to him to be in charge of the premises.
- 14.9 The person executing the warrant must also comply with any order which the court may make for service of any other documents relating to the application.

Disclosure order

- 15.1 The application notice should normally name as respondents the persons on whom the Director intends to serve notices under the disclosure order sought.
- 15.2 A disclosure order must –
- (1) give an indication of the nature of the investigation for the purposes of which the order is made;
 - (2) set out the action which the order authorises the Director to take in accordance with section 357(4) of the Act;
 - (3) contain a statement of –
 - (a) the offences relating to disclosure orders under section 359 of the Act; and
 - (b) the right of any person affected by the order to apply to discharge or vary the order.
- 15.3 Where, pursuant to a disclosure order, the Director gives to any person a notice under section 357(4) of the Act, he must also at the same time serve on that person a copy of the disclosure order.

Customer information order

- 16.1 The application notice should normally (unless it is impracticable to do so because they are too numerous) name as respondents the financial institution or institutions to which it is proposed that an order should apply.
- 16.2 A customer information order must –

- (1) specify the financial institution, or description of financial institutions, to which it applies;
- (2) state the name of the person in relation to whom customer information is to be given, and any other details to identify that person;
- (3) contain a statement of –
 - (a) the offences relating to disclosure orders under section 366 of the Act; and
 - (b) the right of any person affected by the order to apply to discharge or vary the order.

16.3 Where, pursuant to a customer information order, the Director gives to a financial institution a notice to provide customer information, he must also at the same time serve a copy of the order on that institution.

Account monitoring order

- 17.1 The application notice must name as a respondent the financial institution against which an account monitoring order is sought.
- 17.2 The application notice must –
 - (1) state the matters required by section 370(2) and (3) of the Act; and
 - (2) give details of –
 - (a) the person whose account or accounts the application relates to;
 - (b) each account or description of accounts in relation to which the order is sought, including if known the number of each account and the branch at which it is held;
 - (c) the information sought about the account or accounts;
 - (d) the period for which the order is sought;
 - (e) the manner in which, and the frequency with which, it is proposed that the financial institution should provide account information during that period.
- 17.3 An account monitoring order must contain a statement of the right of any person affected by the order to apply to vary or discharge the order.

IN THE HIGH COURT OF JUSTICE
DIVISION

CLAIM No. _____ of 20__

CLAIMANT:

DIRECTOR OF THE ASSETS RECOVERY AGENCY

[insert address]

PREMISES TO WHICH THIS WARRANT RELATES:

[insert address]

WARRANT TO ENTER PREMISES AND EXERCISE POWERS UNDER
SECTIONS 352-354 AND 356 OF THE PROCEEDS OF CRIME ACT 2002

To *[insert name of person/organisation]*, who is believed to be the occupier of the premises described above (“the premises”) and to any person in charge of, or operating at or from, the premises:

You should read the terms of this warrant and the accompanying notice very carefully. You are advised to consult a solicitor as soon as possible. If you intentionally obstruct or fail to comply with any requirement of a member of staff of the Assets Recovery Agency exercising his or her powers under the warrant, you may be committing a contempt of court for which you may be imprisoned or fined.

An application was made on *[insert date]* by Counsel for the Director of the Assets Recovery Agency (“the Director”) to The Honourable Mr Justice *[insert name]* (“the Judge”) for a warrant under section 352 of the Proceeds of Crime Act 2002 (“the Act”).

The Judge read the evidence in support of the application and was satisfied that the requirement for the issue of a warrant in section 352(6)[(a)][(b)] of the Act has been met.

As a result of the application, this warrant in relation to the premises was issued by the Judge on *[insert date]*.

1. This warrant is issued in respect of a civil recovery investigation by the Assets Recovery Agency in relation to *[indicate the property subject to the investigation]* (“the investigation”).
2. This warrant continues in force until the end of the period of one month starting with the day on which it is issued and may be executed on any one or more days within that period.
3. By this warrant *[insert name]*, a member of staff of the Assets Recovery Agency, is authorised to produce the warrant [at any time] *[insert any restriction on times or days of the week]* and on producing the warrant:
 - (a) to enter and search the premises;
 - (b) to seize any material found there which in their opinion is likely to be of substantial value (whether or not by itself) to the investigation;
 - (c) to require any information which is held in a computer and is accessible from the premises, and which they believe relates to any matter relevant to the investigation, to be produced in a form-
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible;
 - (d) to take copies of any material seized;
 - (e) to retain material seized under the warrant for so long as it is necessary to retain it in connection with the investigation.
4. In this warrant, the term “premises” includes any place and, in particular includes-
 - (a) any vehicle, vessel, aircraft or hovercraft;
 - (b) any offshore installation; and
 - (c) any tent or movable structure.

You are entitled to apply to the court to vary or discharge this warrant. If you intend to make such an application, you must first inform the [Assets Recovery Agency] [person named in paragraph 3]. An application to stop the warrant from being executed must be made immediately upon it being served.

DATED this [] day of [] 20 “
THE HONOURABLE