

PART 33

CONFISCATION AND RELATED PROCEEDINGS

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GENERAL RULES

Interpretation**33.1.** In this Part:

- ‘document’ means anything in which information of any description is recorded;
- ‘hearsay evidence’ means evidence consisting of hearsay within the meaning of section 1(2) of the Civil Evidence Act 1995(a);
- ‘restraint proceedings’ means proceedings under sections 42 and 58(2) and (3) of the Proceeds of Crime Act 2002(b);
- ‘receivership proceedings’ means proceedings under sections 48, 49, 50, 51, 54(4), 59(2) and (3), 62 and 63 of the 2002 Act(c);
- ‘witness statement’ means a written statement signed by a person which contains the evidence, and only that evidence, which that person would be allowed to give orally; and
- words and expressions used have the same meaning as in Part 2 of the 2002 Act.

Calculation of time

33.2.—(1) This rule shows how to calculate any period of time for doing any act which is specified by this Part for the purposes of any proceedings under Part 2 of the Proceeds of Crime Act 2002 or by an order of the Crown Court in restraint proceedings or receivership proceedings.

(2) A period of time expressed as a number of days shall be computed as clear days.

(3) In this rule ‘clear days’ means that in computing the number of days—

- (a) the day on which the period begins; and
- (b) if the end of the period is defined by reference to an event, the day on which that event occurs,

are not included.

(4) Where the specified period is 5 days or less and includes a day which is not a business day that day does not count.

Court office closed

33.3. When the period specified by this Part, or by an order of the Crown Court under Part 2 of the Proceeds of Crime Act 2002, for doing any act at the court office falls on a day on which the office is closed, that act shall be in time if done on the next day on which the court office is open.

Application for registration of Scottish or Northern Ireland order

33.4.—(1) This rule applies to an application for registration of an order under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002(d).

(2) The application may be made without notice.

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- (a) 1995 c. 38.
 - (b) 2002 c. 29; section 42 was amended by sections 74(2) and 92 of, and paragraphs 1 and 23 of Schedule 8, and Schedule 14 to, the Serious Crime Act 2007 (c. 27). 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).
 - (c) 2002 c. 29; section 49 was amended by section 82(1) of the Serious Crime Act (c. 27). Section 59(2) was amended by section 62(3) of, and paragraphs 142 and 144 of Schedule 13 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 62 was amended by section 74 of, and paragraphs 1 and 29 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 63 was amended by section 74 of, and paragraphs 1 and 30 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).
 - (d) S.I. 2002/3133.

(3) The application must be in writing and may be supported by a witness statement which must—

- (a) exhibit the order or a certified copy of the order; and
- (b) to the best of the witness's ability, give full details of the realisable property located in England and Wales in respect of which the order was made and specify the person holding that realisable property.

(4) If the court registers the order, the applicant must serve notice of the registration on—

- (a) any person who holds realisable property to which the order applies; and
- (b) any other person whom the applicant knows to be affected by the order.

(5) The permission of the Crown Court under rule 33.10 (Service outside the jurisdiction) is not required to serve the notice outside England and Wales.

Application to vary or set aside registration

33.5.—(1) An application to vary or set aside registration of an order under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002 may be made to the Crown Court by—

- (a) any person who holds realisable property to which the order applies; and
- (b) any other person affected by the 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 must be served on the person who applied for registration at least 7 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(5) No property in England and Wales may be realised in pursuance of the order before the Crown Court has decided the application.

Register of orders

33.6.—(1) The Crown Court must keep, under the direction of the Lord Chancellor, a register of the orders registered under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002.

(2) The register must include details of any variation or setting aside of a registration under rule 33.5 and of any execution issued on a registered order.

(3) If the person who applied for registration of an order which is subsequently registered notifies the Crown Court that the court which made the order has varied or discharged the order, details of the variation or discharge, as the case may be, must be entered in the register.

Statements of truth

33.7.—(1) Any witness statement required to be served by this Part must be verified by a statement of truth contained in the witness statement.

(2) A statement of truth is a declaration by the person making the witness statement to the effect that the witness statement is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true.

(3) The statement of truth must be signed by the person making the witness statement.

(4) If the person making the witness statement fails to verify the witness statement by a statement of truth, the Crown Court may direct that it shall not be admissible as evidence.

Use of witness statements for other purposes

33.8.—(1) Except as provided by this rule, a witness statement served in proceedings under Part 2 of the Proceeds of Crime Act 2002 may be used only for the purpose of the proceedings in which it is served.

(2) Paragraph (1) does not apply if and to the extent that—

- (a) the witness gives consent in writing to some other use of it;
- (b) the Crown Court gives permission for some other use; or
- (c) the witness statement has been put in evidence at a hearing held in public.

Service of documents

33.9.—(1) Rule 49.1 (Notice required to accompany process served outside the United Kingdom and translations) shall not apply in restraint proceedings and receivership proceedings.

(2) An order made in restraint proceedings or receivership proceedings may be enforced against the defendant or any other person affected by it notwithstanding that service of a copy of the order has not been effected in accordance with Part 4 if the Crown Court is satisfied that the person had notice of the order by being present when the order was made.

Service outside the jurisdiction

33.10.—(1) Where this Part requires a document to be served on someone who is outside England and Wales, it may be served outside England and Wales with the permission of the Crown Court.

(2) Where a document is to be served outside England and Wales it may be served by any method permitted by the law of the country in which it is to be served.

(3) Nothing in this rule or in any court order shall authorise or require any person to do anything in the country where the document is to be served which is against the law of that country.

(4) Where this Part requires a document to be served a certain period of time before the date of a hearing and the recipient does not appear at the hearing, the hearing must not take place unless the Crown Court is satisfied that the document has been duly served.

Certificates of service

33.11.—(1) Where this Part requires that the applicant for an order in restraint proceedings or receivership proceedings serve a document on another person, the applicant must lodge a certificate of service with the Crown Court within 7 days of service of the document.

(2) The certificate must state—

- (a) the method of service;
- (b) the date of service; and
- (c) if the document is served under rule 4.9 (Service by another method), such other information as the court may require when making the order permitting service by that method.

(3) Where a document is to be served by the Crown Court in restraint proceedings and receivership proceedings and the court is unable to serve it, the court must send a notice of non-service stating the method attempted to the party who requested service.

External requests and orders

33.12.—(1) The rules in this Part and in Part 42 (Appeal to the Court of Appeal in confiscation and related proceedings) apply with the necessary modifications to proceedings under the

Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(a) in the same way that they apply to corresponding proceedings under Part 2 of the Proceeds of Crime Act 2002(b).

(2) This table shows how provisions of the 2005 Order correspond with provisions of the 2002 Act.

<i>Article of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005</i>	<i>Section of the Proceeds of Crime Act 2002</i>
8	41
9	42
10	43
11	44
15	48
16	49
17	58
23	31
27	50
28	51
41	62
42	63
44	65
45	66

CONFISCATION PROCEEDINGS

Statements in connection with confiscation orders

33.13.—(1) This rule applies where—

- (a) the court can make a confiscation order; and
- (b) the prosecutor asks the court to make such an order, or the court decides to make such an order on its own initiative.

(2) Within such periods as the court directs—

- (a) if the court so orders, the defendant must give such information, in such manner, as the court directs;
- (b) the prosecutor must serve a statement of information relevant to confiscation on the court officer and the defendant;
- (c) if the court so directs—
 - (i) the defendant must serve a response notice on the court officer and the prosecutor, and
 - (ii) the parties must identify what is in dispute.

(3) Where it appears to the court that a person other than the defendant holds, or may hold, an interest in property held by the defendant which property is likely to be realised or otherwise used to satisfy a confiscation order—

- (a) the court must not determine the extent of the defendant’s interest in that property unless that other person has had a reasonable opportunity to make representations; and
- (b) the court may order that other person to give such information, in such manner and within such a period, as the court directs.

(4) The court may—

(a) S.I. 2005/3181.
(b) 2002 c. 29.

- (a) shorten or extend a time limit which it has set;
 - (b) vary, discharge or supplement an order which it has made;
 - (c) postpone confiscation proceedings without a hearing.
- (5) A prosecutor's statement of information must—
- (a) identify the maker of the statement and show its date;
 - (b) identify the defendant in respect of whom it is served;
 - (c) specify the conviction which gives the court power to make the confiscation order, or each conviction if more than one;
 - (d) if the prosecutor believes the defendant to have a criminal lifestyle, include such matters as the prosecutor believes to be relevant in connection with deciding—
 - (i) whether the defendant has such a lifestyle,
 - (ii) whether the defendant has benefited from his or her general criminal conduct,
 - (iii) the defendant's benefit from that conduct, and
 - (iv) whether the court should or should not make such assumptions about the defendant's property as legislation permits;
 - (e) if the prosecutor does not believe the defendant to have a criminal lifestyle, include such matters as the prosecutor believes to be relevant in connection with deciding—
 - (i) whether the defendant has benefited from his or her particular criminal conduct, and
 - (ii) the defendant's benefit from that conduct;
 - (f) in any case, include such matters as the prosecutor believes to be relevant in connection with deciding—
 - (i) whether to make a determination about the extent of the defendant's interest in property in which another person holds, or may hold, an interest, and
 - (ii) what determination to make, if the court decides to make one.
- (6) A defendant's response notice must—
- (a) indicate the extent to which the defendant accepts the allegations made in the prosecutor's statement of information; and
 - (b) so far as the defendant does not accept an allegation, give particulars of any matters on which the defendant relies,

in any manner directed by the court.

(7) The court must satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary)—

- (a) that if the defendant accepts to any extent an allegation in a prosecutor's statement of information, then the court may treat that as conclusive for the purposes of deciding whether the defendant has benefited from general or particular criminal conduct, and if so by how much;
- (b) that if the defendant fails in any respect to comply with a direction to serve a response notice, then the court may treat that as acceptance of each allegation to which the defendant has not replied, except the allegation that the defendant has benefited from general or particular criminal conduct; and
- (c) that if the defendant fails without reasonable excuse to comply with an order to give information, then the court may draw such inference as it believes is appropriate.

[Note. Under section 6 of the Proceeds of Crime Act 2002(a), where a defendant is convicted of an offence the Crown Court must (with some exceptions)—

(a) 2002 c. 29; section 6 was amended by paragraph 75 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), section 74(2) of, and paragraphs 1 and 2 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 10 of, and paragraphs 11 and 12 of the Schedule to, the Prevention of Social Housing Fraud Act 2013 (c. 3).

- (a) decide whether the defendant has ‘a criminal lifestyle’, within the meaning of the Act, or has benefited from particular criminal conduct;
- (b) decide the ‘recoverable amount’, within the meaning of the Act; and
- (c) make a confiscation order requiring the defendant to pay that amount.

Under section 14 of the 2002 Act(a), unless exceptional circumstances apply the court may postpone confiscation proceedings for a maximum of 2 years from the date of conviction, or until the end of a period of 3 months following the determination of an appeal by the defendant against conviction, if that is later.

Under section 16 of the 2002 Act(b), where the Crown Court is considering confiscation the prosecutor must give the court a statement of information which the prosecutor believes to be relevant to what the court must decide, within such period as the court directs. Under section 17 of the Act(c), where the prosecutor gives such a statement the court may order the defendant to respond and, if the defendant does not do so, then the court may treat the defendant as accepting the prosecutor’s allegations. Under section 18(d), for the purpose of obtaining information to help it in carrying out its functions the court may at any time order the defendant to give it information specified in the order and, if the defendant does not do so, then the court may draw such inference as it believes appropriate. Under section 18A(e), for the purpose of obtaining information to help it to determine the extent of the defendant’s interest in property the court may at any time order a person who the court thinks may hold an interest in that property to give it information specified in the order and, if that person does not do so, then the court may draw such inference as it believes appropriate.

Under section 27 of the 2002 Act(f), special provisions apply where the defendant absconds.

Under section 97 of the Serious Organised Crime and Police Act 2005(g), the Secretary of State may by order provide for confiscation orders to be made by magistrates’ courts.]

Application for compliance order

33.14.—(1) This rule applies where—

- (a) the prosecutor wants the court to make a compliance order after a confiscation order has been made;
- (b) the prosecutor or a person affected by a compliance order wants the court to vary or discharge the order.

(2) Such a prosecutor or person must—

- (a) apply in writing; and
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) as appropriate, the prosecutor and any person who is affected by the compliance order (or who would be affected if it were made), unless the court otherwise directs.

(3) The application must—

- (a) specify—

(a) 2002 c. 29; section 14 was amended by section 74(2) of, and paragraphs 1 and 4 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(b) 2002 c. 29; section 16 was amended by section 74(2) of, and paragraphs 1 and 5 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 2 of the Serious Crime Act 2015 (c. 9).

(c) 2002 c. 29; section 17 was amended by section 74(2) of, and paragraphs 1 and 6 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(d) 2002 c. 29; section 18 was amended by section 74(2) of, and paragraphs 1 and 7 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(e) 2002 c. 29; section 18A was inserted by section 2 of the Serious Crime Act 2015 (c. 9).

(f) 2002 c. 29; section 27 was amended by paragraph 75 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and section 74 of, and paragraphs 1 and 14 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(g) 2005 c. 15; section 97 was amended by S.I. 2010/976.

- (i) the confiscation order,
- (ii) the compliance order, if it is an application to vary or discharge that order;
- (b) if it is an application for a compliance order—
 - (i) specify each measure that the prosecutor proposes to ensure that the confiscation order is effective, including in particular any restriction or prohibition on the defendant’s travel outside the United Kingdom, and
 - (ii) explain why each such measure is appropriate;
- (c) if it is an application to vary or discharge a compliance order, as appropriate—
 - (i) specify any proposed variation, and
 - (ii) explain why it is appropriate for the order to be varied or discharged;
- (d) attach any material on which the applicant relies;
- (e) propose the terms of the order; and
- (f) ask for a hearing, if the applicant wants one, and explain why it is needed.
- (4) A person who wants to make representations about the application must—
 - (a) serve the representations on—
 - (i) the court officer, and
 - (ii) the applicant;
 - (b) do so as soon as reasonably practicable after service of the application;
 - (c) attach any material on which that person relies; and
 - (d) ask for a hearing, if that person wants one, and explain why it is needed.
- (5) The court—
 - (a) may determine the application at a hearing (which must be in private unless the court otherwise directs), or without a hearing;
 - (b) may dispense with service on any person of a prosecutor’s application for a compliance order if, in particular—
 - (i) the application is urgent, or
 - (ii) there are reasonable grounds for believing that to give notice of the application would cause the dissipation of property that otherwise would be available to satisfy the confiscation order.

[Note. See section 13A of the Proceeds of Crime Act 2002(a).]

Application for reconsideration

- 33.15.**—(1) This rule applies where the prosecutor wants the court, in view of fresh evidence—
- (a) to consider making a confiscation order where the defendant was convicted but no such order was considered;
 - (b) to reconsider a decision that the defendant had not benefited from criminal conduct;
 - (c) to reconsider a decision about the amount of the defendant’s benefit.
- (2) The application must—
- (a) be in writing and give—
 - (i) the name of the defendant,
 - (ii) the date on which and the place where any relevant conviction occurred,
 - (iii) the date on which and the place where any relevant confiscation order was made or varied,

(a) 2002 c. 29; section 13A was inserted by section 7 of the Serious Crime Act 2015 (c. 9).

- (iv) details of any slavery and trafficking reparation order made by virtue of any relevant confiscation order,
 - (v) the grounds for the application, and
 - (vi) an indication of the evidence available to support the application; and
- (b) where the parties are agreed on the terms of the proposed order include, in one or more documents—
- (i) a draft order in the terms proposed, and
 - (ii) evidence of the parties' agreement.
- (3) The application must be served on—
- (a) the court officer; and
 - (b) the defendant.
- (4) The court—
- (a) may determine the application without a hearing where the parties are agreed on the terms of the proposed order;
 - (b) must determine the application at a hearing in any other case.
- (5) Where this rule or the court requires the application to be heard, the court officer must arrange for the court to hear it no sooner than the eighth day after it was served unless the court otherwise directs.

[Note. See sections 19, 20 and 21 of the Proceeds of Crime Act 2002(a) and section 10 of the Modern Slavery Act 2015(b).]

Application for new calculation of available amount

33.16.—(1) This rule applies where the prosecutor or a receiver wants the court to make a new calculation of the amount available for confiscation.

- (2) The application—
- (a) must be in writing and may be supported by a witness statement;
 - (b) must identify any slavery and trafficking reparation order made by virtue of the confiscation order; and
 - (c) where the parties are agreed on the terms of the proposed order, must include in one or more documents—
 - (i) a draft order in the terms proposed, and
 - (ii) evidence of the parties' agreement.
- (3) The application and any witness statement must be served on the court officer.
- (4) The application and any witness statement must be served on—
- (a) the defendant;
 - (b) the receiver, if the prosecutor is making the application and a receiver has been appointed; and
 - (c) the prosecutor, if the receiver is making the application.
- (5) The court—
- (a) may determine the application without a hearing where the parties are agreed on the terms of the proposed order;
 - (b) must determine the application at a hearing in any other case.

(a) 2002 c. 29; sections 19, 20 and 21 were amended by section 74(2) of, and paragraph 1 and paragraphs 8, 9 and 10 respectively, of Schedule 8 to, the Serious Crime Act 2007 (c. 27). Sections 19 and 20 are further amended by paragraphs 16 and 17 of Schedule 5 to the Modern Slavery Act 2015 (c. 30), with effect from a date to be appointed.

(b) 2015 c. 30; section 10 comes into force on a date to be appointed.

(6) Where this rule or the court requires the application to be heard, the court officer must arrange for the court to hear it no sooner than the eighth day after it was served unless the court otherwise directs.

[Note. See section 22 of the Proceeds of Crime Act 2002(a) and section 10 of the Modern Slavery Act 2015.]

Variation of confiscation order due to inadequacy of available amount

33.17.—(1) This rule applies where the defendant, the prosecutor or a receiver wants the court to vary a confiscation order because the amount available is inadequate.

(2) The application—

- (a) must be in writing and may be supported by a witness statement;
- (b) must identify any slavery and trafficking reparation order made by virtue of the confiscation order; and
- (c) where the parties are agreed on the terms of the proposed order, must include in one or more documents—
 - (i) a draft order in the terms proposed, and
 - (ii) evidence of the parties' agreement.

(3) The application and any witness statement must be served on the court officer.

(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.

(5) The court—

- (a) may determine the application without a hearing where the parties are agreed on the terms of the proposed order;
- (b) must determine the application at a hearing in any other case.

(6) Where this rule or the court requires the application to be heard, the court officer must arrange for the court to hear it no sooner than the eighth day after it was served unless the court otherwise directs.

[Note. See section 23 of the Proceeds of Crime Act 2002(b) and section 10 of the Modern Slavery Act 2015.]

Application by magistrates' court officer to discharge confiscation order

33.18.—(1) This rule applies where a magistrates' court officer wants the court to discharge a confiscation order because the amount available is inadequate or the sum outstanding is very small.

(2) The application must be in writing and give details of—

- (a) the confiscation order;
- (b) any slavery and trafficking reparation order made by virtue of the confiscation order;
- (c) the amount outstanding under the order; and
- (d) the grounds for the application.

(3) The application must be served on—

(a) 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).
(b) 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) and section 8 of the Serious Crime Act 2015 (c. 9).

- (a) the defendant;
- (b) the prosecutor; and
- (c) any receiver.

(4) The court may determine the application without a hearing unless a person listed in paragraph (3) indicates, within 7 days after the application was served, that he or she would like to make representations.

(5) If the court makes an order discharging the confiscation order, the court officer 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.

[Note. See sections 24 and 25 of the Proceeds of Crime Act 2002(a) and section 10 of the Modern Slavery Act 2015.]

Application for variation of confiscation order made against an absconder

33.19.—(1) This rule applies where the defendant wants the court to vary a confiscation order made while the defendant was an absconder.

(2) The application must be in writing and supported by a witness statement which must give details of—

- (a) the confiscation order;
- (b) any slavery and trafficking reparation order made by virtue of the confiscation order;
- (c) the circumstances in which the defendant ceased to be an absconder;
- (d) the defendant's conviction of the offence or offences concerned; and
- (e) the reason why the defendant believes the amount required to be paid under the confiscation order was too large.

(3) The application and witness statement must be served on the court officer.

(4) The application and witness statement must be served on the prosecutor at least 7 days before the date fixed by the court for hearing the application, unless the court specifies a shorter period.

[Note. See section 29 of the Proceeds of Crime Act 2002(b) and section 10 of the Modern Slavery Act 2015.]

Application for discharge of confiscation order made against an absconder

33.20.—(1) This rule applies where the defendant wants the court to discharge a confiscation order made while the defendant was an absconder and—

- (a) the defendant since has been tried and acquitted of each offence concerned; or
- (b) the prosecution has not concluded or is not to proceed.

(2) The application must be in writing and supported by a witness statement which must give details of—

- (a) the confiscation order;
- (b) the date on which the defendant ceased to be an absconder;

(a) 2002 c. 29; sections 24 and 25 were amended by section 109(1) of, and paragraphs 406(a) and 406(b), respectively, of Schedule 8 to, the Courts Act 2003 (c. 39).

(b) 2002 c. 29.

- (c) the acquittal of the defendant if he or she 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 that the prosecutor does not intend to proceed against the defendant.
- (3) The application and witness statement must be served on the court officer.
- (4) The application and witness statement must be served on the prosecutor at least 7 days before the date fixed by the court for hearing the application, unless the court specifies a shorter period.
- (5) If the court orders the discharge of the confiscation order, the court officer must serve notice on any other court responsible for enforcing the order.

[Note. See section 30 of the Proceeds of Crime Act 2002(a).]

Application for increase in term of imprisonment in default

- 33.21.**—(1) This rule applies where—
- (a) a court varies a confiscation order; and
 - (b) the prosecutor wants the court in consequence to increase the term of imprisonment to be served in default of payment.
- (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 officer must—
- (a) at once, send to the defendant and any other 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 court makes an order increasing the term of imprisonment in default, the court officer 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) any other court responsible for enforcing the order.

[Note. See section 39(5) of the Proceeds of Crime Act 2002(b).]

(a) 2002 c. 29.

(b) 2002 c. 29; section 39(5) was amended by section 74(2) of, and paragraphs 1 and 21(2) of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

Compensation – general

33.22.—(1) This rule applies where a person who held realisable property wants the court to award compensation for loss suffered in consequence of anything done in relation to that property in connection with confiscation proceedings.

(2) The application must be in writing and may be supported by a witness statement.

(3) The application and any witness statement must be served on the court officer.

(4) The application and any witness statement must be served on—

(a) the person alleged to be in default; and

(b) the person or authority by whom the compensation would be payable,

at least 7 days before the date fixed by the court for hearing the application, unless the court directs otherwise.

[Note. See section 72 of the Proceeds of Crime Act 2002(a).]

Compensation – confiscation order made against absconder

33.23.—(1) This rule applies where—

(a) the court varies or discharges a confiscation order made against an absconder;

(b) a person who held realisable property suffered loss as a result of the making of that confiscation order; and

(c) that person wants the court to award compensation for that loss.

(2) The application must be in writing and supported by a witness statement which must give details of—

(a) the confiscation order;

(b) the variation or discharge of the confiscation order;

(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 served on the court officer.

(4) The application and witness statement must be served on the prosecutor at least 7 days before the date fixed by the court for hearing the application, unless the court specifies a shorter period.

[Note. See section 73 of the Proceeds of Crime Act 2002(b).]

Payment of money held or detained in satisfaction of confiscation order

33.24.—(1) An order under section 67 of the Proceeds of Crime Act 2002(c) requiring the payment of money to a magistrates' court officer ('a payment order') shall—

(a) be directed to—

(i) the bank or building society concerned, where the money is held in an account maintained with that bank or building society, or

(ii) the person on whose authority the money is detained, in any other case;

(a) 2002 c. 29; section 72 was amended by section 50(6) of, and paragraph 97 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), section 61 of the Policing and Crime Act 2009 (c. 26) and sections 15 and 55 of, and paragraphs 108 and 114 of Schedule 8 and paragraphs 14 and 19 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22).

(b) 2002 c. 29.

(c) 2002 c. 29; section 67 was amended by section 109 of, and paragraph 409 of Schedule 8 to, the Courts Act 2003 (c. 39), section 74 of, and paragraph 33 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 14 of the Serious Crime Act 2015 (c. 9). It is further amended by section 26 of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

- (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
- (h) require the bank or building society to make payment within a period of 7 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) In this rule ‘confiscation order’ has the meaning given to it by section 88(6) of the Proceeds of Crime Act 2002.

Application to realise seized property

33.25.—(1) This rule applies where—

- (a) property is held by a defendant against whom a confiscation order has been made;
- (b) the property has been seized by or produced to an officer; and
- (c) an officer who is entitled to apply wants a magistrates’ court—
 - (i) to make an order under section 67A of the Proceeds of Crime Act 2002(a) authorising the realisation of the property towards satisfaction of the confiscation order, or
 - (ii) to determine any storage, insurance or realisation costs in respect of the property which may be recovered under section 67B of the 2002 Act(b).

(2) Such an officer must—

- (a) apply in writing; and
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) any person whom the applicant believes would be affected by an order.

(3) The application must—

- (a) specify the property;
- (b) explain—
 - (i) the applicant’s entitlement to apply,
 - (ii) how the proposed realisation meets the conditions prescribed by section 67A of the 2002 Act, and
 - (iii) how any storage, etc. costs have been calculated;
- (c) attach any material on which the applicant relies; and
- (d) propose the terms of the order.

(4) The court may—

- (a) determine the application at a hearing, or without a hearing;
- (b) consider an application made orally instead of in writing;

(a) 2002 c. 29; section 67A was inserted by section 58 of the Policing and Crime Act 2009 (c. 26) and amended by section 14 of the Serious Crime Act 2015 (c. 9).

(b) 2002 c. 29; section 67B was inserted by section 58 of the Policing and Crime Act 2009 (c. 26).

- (c) consider an application which has not been served on a person likely to be affected by an order.
- (5) If the court authorises the realisation of the property, the applicant must—
 - (a) notify any person affected by the order who was absent when it was made; and
 - (b) serve on the court officer a list of those so notified.

[Note. Under section 67A of the Proceeds of Crime Act 2002, one of the officers listed in section 41A of the Act may apply to a magistrates' court for authority to realise property seized by such an officer if—

- (a) a confiscation order has been made against the owner of the property;*
- (b) no receiver has been appointed in relation to that property; and*
- (c) any period allowed for payment of the confiscation order has expired.*

Under section 67B of the 2002 Act, if a magistrates' court makes an order under section 67A then on the same or a subsequent occasion the court may determine an amount which may be recovered by the applicant in respect of reasonable costs incurred in storing or insuring the property, or realising it.]

Appeal about decision on application to realise seized property

33.26.—(1) This rule applies where on an application under rule 33.25 for an order authorising the realisation of property—

- (a) a magistrates' court decides not to make such an order and an officer who is entitled to apply wants to appeal against that decision to the Crown Court, under section 67C(1) of the Proceeds of Crime Act 2002(a);
- (b) a magistrates' court makes such an order and a person who is affected by that decision, other than the defendant against whom the confiscation order was made, wants to appeal against it to the Crown Court, under section 67C(2) of the 2002 Act;
- (c) a magistrates' court makes a decision about storage, etc. costs and an officer who is entitled to apply wants to appeal against that decision to the Crown Court, under section 67C(4) of the 2002 Act.

(2) The appellant must serve an appeal notice—

- (a) on the Crown Court officer and on any other party;
- (b) not more than 21 days after the magistrates' court's decision, or, if applicable, service of notice under rule 33.25(5).

(3) The appeal notice must—

- (a) specify the decision under appeal;
- (b) where paragraph (1)(a) applies, explain why the property should be realised;
- (c) in any other case, propose the order that the appellant wants the court to make, and explain why.

(4) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.

[Note. Under section 67C of the Proceeds of Crime Act 2002, an officer entitled to apply for an order under section 67A or 67B of that Act (authority to realise seized property towards satisfaction of a confiscation order; determination of storage, etc. costs) may appeal against a refusal to make an order, or against a costs determination; and a person affected by an order, other than the owner, may appeal against the order.]

(a) 2002 c. 29; section 67C was inserted by section 58 of the Policing and Crime Act 2009 (c. 26).

Application for direction about surplus proceeds

33.27.—(1) This rule applies where—

- (a) on an application under rule 33.25, a magistrates' court has made an order authorising an officer to realise property;
- (b) an officer so authorised holds proceeds of that realisation;
- (c) the confiscation order has been fully paid; and
- (d) the officer, or a person who had or has an interest in the property represented by the proceeds, wants a magistrates' court or the Crown Court to determine under section 67D of the Proceeds of Crime Act 2002(a)—
 - (i) to whom the remaining proceeds should be paid, and
 - (ii) in what amount or amounts.

(2) Such a person must—

- (a) apply in writing; and
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) as appropriate, the officer holding the proceeds, or any person to whom such proceeds might be paid.

(3) The application must—

- (a) specify the property which was realised;
- (b) explain the applicant's entitlement to apply;
- (c) describe the distribution proposed by the applicant and explain why that is proposed;
- (d) attach any material on which the applicant relies; and
- (e) ask for a hearing, if the applicant wants one, and explain why it is needed.

(4) A person who wants to make representations about the application must—

- (a) serve the representations on—
 - (i) the court officer,
 - (ii) the applicant, and
 - (iii) any other person to whom proceeds might be paid;
- (b) do so as soon as reasonably practicable after service of the application;
- (c) attach any material on which that person relies; and
- (d) ask for a hearing, if that person wants one, and explain why it is needed.

(5) The court—

- (a) must not determine the application unless the applicant and each person on whom it was served—
 - (i) is present, or
 - (ii) has had an opportunity to attend or to make representations;
- (b) subject to that, may determine the application—
 - (i) at a hearing (which must be in private unless the court otherwise directs), or without a hearing,
 - (ii) in the absence of any party to the application.

[Note. Under section 67D of the Proceeds of Crime Act 2002, a magistrates' court or the Crown Court may determine to whom, and in what proportions, any surplus proceeds of realisation must

(a) 2002 c. 29; section 67D was inserted by section 58 of the Policing and Crime Act 2009 (c. 26).

be distributed. Once a magistrates' court has made such a determination, the Crown Court may not do so, and vice versa.]

SEIZURE AND DETENTION PROCEEDINGS

Application for approval to seize property or to search

33.28.—(1) This rule applies where an officer who is entitled to apply wants the approval of a magistrates' court, under section 47G of the Proceeds of Crime Act 2002(a)—

- (a) to seize property, under section 47C of that Act(b);
- (b) to search premises or a person or vehicle for property to be seized, under section 47D, 47E or 47F of that Act(c).

(2) Such an officer must—

- (a) apply in writing; and
- (b) serve the application on the court officer.

(3) The application must—

- (a) explain—
 - (i) the applicant's entitlement to apply, and
 - (ii) how the proposed seizure meets the conditions prescribed by sections 47B, 47C and, if applicable, 47D, 47E or 47F of the 2002 Act(d);
- (b) if applicable, specify any premises, person or vehicle to be searched;
- (c) attach any material on which the applicant relies; and
- (d) propose the terms in which the applicant wants the court to give its approval.

(4) The court—

- (a) must determine the application—
 - (i) at a hearing, which must be in private unless the court otherwise directs, and
 - (ii) in the applicant's presence;
- (b) may consider an application made orally instead of in writing.

[Note. Under section 47C of the Proceeds of Crime Act 2002, if any of the conditions listed in section 47B of the Act are met then one of the officers listed in section 47A may seize property other than cash or exempt property, as defined in the section, if that officer has reasonable grounds for suspecting that—

- (a) *the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against a defendant; or*
- (b) *the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.*

Under sections 47D, 47E and 47F of the 2002 Act, such an officer may search premises, a person or a vehicle, respectively, for such property, on the conditions listed in those sections.

By sections 47C(6), 47D(2), 47E(4), 47F(6) and 47G of the 2002 Act, such an officer may seize property, and may search for it, only with the approval of a magistrates' court or, if that is

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- (a) 2002 c. 29; section 47G was inserted by section 55 of the Policing and Crime Act 2009 (c. 26) and amended by section 55 of, and paragraphs 14 and 17 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22). It is further amended by section 13 of the Serious Crime Act 2015 (c. 9), with effect from a date to be appointed.
 - (b) 2002 c. 29; section 47C was inserted by section 55 of the Policing and Crime Act 2009 (c. 26) and amended by section 55 of, and paragraphs 14 and 16 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22).
 - (c) 2002 c. 29; sections 47D, 47E and 47F were inserted by section 55 of the Policing and Crime Act 2009 (c. 26).
 - (d) 2002 c. 29; section 47B was inserted by section 55 of the Policing and Crime Act 2009 (c. 26) It is amended by section 13 of the Serious Crime Act 2015 (c. 9), with effect from a date to be appointed.

impracticable, the approval of a senior officer (as defined by section 47G), unless in the circumstances it is not practicable to obtain the approval of either.]

Application to extend detention period

33.29.—(1) This rule applies where an officer who is entitled to apply, or the prosecutor, wants a magistrates' court to make an order, under section 47M of the Proceeds of Crime Act 2002(a), extending the period for which seized property may be detained.

(2) Such an officer or prosecutor must—

- (a) apply in writing; and
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) any person whom the applicant believes would be affected by an order.

(3) The application must—

- (a) specify—
 - (i) the property to be detained, and
 - (ii) whether the applicant wants it to be detained for a specified period or indefinitely;
- (b) explain—
 - (i) the applicant's entitlement to apply, and
 - (ii) how the proposed detention meets the conditions prescribed by section 47M of the 2002 Act;
- (c) attach any material on which the applicant relies; and
- (d) propose the terms of the order.

(4) The court—

- (a) must determine the application—
 - (i) at a hearing, which must be in private unless the court otherwise directs, and
 - (ii) in the applicant's presence;
- (b) may—
 - (i) consider an application made orally instead of in writing,
 - (ii) require service of the application on the court officer after it has been heard, instead of before.

(5) If the court extends the period for which the property may be detained, the applicant must—

- (a) notify any person affected by the order who was absent when it was made; and
- (b) serve on the court officer a list of those so notified.

[Note. Under section 47M of the Proceeds of Crime Act 2002, one of the officers listed in that section, or the prosecutor, may apply to a magistrates' court for an order extending the period of 48 hours for which, under section 47J of the Act(b), property seized under section 47C may be detained.

On an application to which this rule applies, hearsay evidence within the meaning of section 1(2) of the Civil Evidence Act 1995 is admissible: see section 47Q of the 2002 Act(c).]

(a) 2002 c. 29; section 47M was inserted by section 55 of the Policing and Crime Act 2009 (c. 26) and amended by section 55 of, and paragraphs 14 and 18 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22).

(b) 2002 c. 29; section 47J was inserted by section 55 of the Policing and Crime Act 2009 (c. 26).

(c) 2002 c. 29; section 47Q was inserted by section 55 of the Policing and Crime Act 2009 (c. 26).

Application to vary or discharge order for extended detention

33.30.—(1) This rule applies where an officer who is entitled to apply, the prosecutor, or a person affected by an order to which rule 33.29 applies, wants a magistrates' court to vary or discharge that order, under section 47N of the Proceeds of Crime Act 2002(a).

- (2) Such a person must—
- (a) apply in writing; and
 - (b) serve the application on—
 - (i) the court officer, and
 - (ii) as appropriate, the applicant for the order, or any person affected by the order.
- (3) The application must—
- (a) specify the order and the property detained;
 - (b) explain—
 - (i) the applicant's entitlement to apply,
 - (ii) why it is appropriate for the order to be varied or discharged,
 - (iii) if applicable, on what grounds the court must discharge the order;
 - (c) attach any material on which the applicant relies;
 - (d) if applicable, propose the terms of any variation; and
 - (e) ask for a hearing, if the applicant wants one, and explain why it is needed.
- (4) A person who wants to make representations about the application must—
- (a) serve the representations on—
 - (i) the court officer, and
 - (ii) the applicant;
 - (b) do so as soon as reasonably practicable after service of the application;
 - (c) attach any material on which that person relies; and
 - (d) ask for a hearing, if that person wants one, and explain why it is needed.
- (5) The court—
- (a) must not determine the application unless the applicant and each person on whom it was served—
 - (i) is present, or
 - (ii) has had an opportunity to attend or to make representations;
 - (b) subject to that, may determine the application—
 - (i) at a hearing (which must be in private unless the court otherwise directs), or without a hearing,
 - (ii) in the absence of any party to the application.

[Note. Under section 47N of the Proceeds of Crime Act 2002, one of the officers listed in section 47M of the Act, the prosecutor, or a person affected by an order under section 47M, may apply to a magistrates' court for the order to be varied or discharged. Section 47N(3) lists the circumstances in which the court must discharge such an order.]

On an application to which this rule applies, hearsay evidence within the meaning of section 1(2) of the Civil Evidence Act 1995 is admissible: see section 47Q of the 2002 Act.]

(a) 2002 c. 29; section 47N was inserted by section 55 of the Policing and Crime Act 2009 (c. 26).

Appeal about property detention decision

33.31.—(1) This rule applies where—

- (a) on an application under rule 33.29 for an order extending the period for which property may be detained—
 - (i) a magistrates’ court decides not to make such an order, and
 - (ii) an officer who is entitled to apply for such an order, or the prosecutor, wants to appeal against that decision to the Crown Court under section 47O(1) of the Proceeds of Crime Act 2002(a);
- (b) on an application under rule 33.30 to vary or discharge an order under rule 33.29—
 - (i) a magistrates’ court determines the application, and
 - (ii) a person who is entitled to apply under that rule wants to appeal against that decision to the Crown Court under section 47O(2) of the 2002 Act.

(2) The appellant must serve an appeal notice—

- (a) on the Crown Court officer and on any other party;
- (b) not more than 21 days after the magistrates’ court’s decision, or, if applicable, service of notice under rule 33.29(5).

(3) The appeal notice must—

- (a) specify the decision under appeal;
- (b) where paragraph (1)(a) applies, explain why the detention period should be extended;
- (c) where paragraph (1)(b) applies, propose the order that the appellant wants the court to make, and explain why.

(4) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.

[Note. Under section 47O of the Proceeds of Crime Act 2002, one of those entitled to apply for an order under section 47M of that Act (extension of detention of property) may appeal against a refusal to make an order, and one of those entitled to apply for the variation or discharge of such an order, under section 47N of that Act, may appeal against the decision on such an application.

On an appeal to which this rule applies, hearsay evidence within the meaning of section 1(2) of the Civil Evidence Act 1995 is admissible: see section 47Q of the 2002 Act.]

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(b) 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.

(a) 2002 c. 29; section 47O was inserted by section 55 of the Policing and Crime Act 2009 (c. 26).

(b) 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).

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.

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(a).

(a) 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).

Hearsay evidence

33.39. Section 2(1) of the Civil Evidence Act 1995(a) (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(b) as amended from time to time shall have effect as if the proceedings were proceedings in the High Court.

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.

(a) 1995 c. 38.

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

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(a).]

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;

(a) 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).

- (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
- (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^(a) applies and provisions made under that Act make different provision.

RESTRAINT PROCEEDINGS

Application for restraint order or ancillary order

33.51.—(1) This rule applies where the prosecutor, or an accredited financial investigator, makes an application under section 42 of the Proceeds of Crime Act 2002^(b) for—

- (a) a restraint order, under section 41(1) of the 2002 Act; or
- (b) an ancillary order, under section 41(7) of that Act, for the purpose of ensuring that a restraint order is effective.

(2) The application may be made without notice if the application is urgent or if there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application.

(3) An application for a restraint order must be in writing and supported by a witness statement which must—

- (a) give the grounds for the application;
- (b) 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;
- (c) include the proposed terms of the order.

(4) An application for an ancillary order must be in writing and supported by a witness statement which must—

- (a) give the grounds for, and full details of, the application;
- (b) include, if appropriate—
 - (i) any request for an order for disclosure of documents to which rule 33.40 applies (Disclosure and inspection of documents),
 - (ii) the identity of any person whom the applicant wants the court to examine about the extent or whereabouts of realisable property,

(a) 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.

(b) 2002 c. 29; section 42 was amended by sections 74(2) and 92 of, and paragraphs 1 and 23 of Schedule 8, and Schedule 14 to, the Serious Crime Act 2007 (c. 27) and section 12 of the Serious Crime Act 2015 (c. 9).

- (iii) a list of the main questions that the applicant wants to ask any such person, and
 - (iv) a list of any documents to which the applicant wants to refer such a person; and
- (c) include the proposed terms of the order.
- (5) An application for a restraint order and an application for an ancillary order may (but need not) be made at the same time and contained in the same documents.
- (6) An application by an accredited financial investigator must include a statement that, under section 68 of the 2002 Act(a), the applicant has authority to apply.

Restraint and ancillary orders

33.52.—(1) The Crown Court may make a restraint order subject to exceptions, including, but not limited to, exceptions for reasonable living expenses and reasonable legal expenses, and for the purpose of enabling any person to carry on any trade, business or occupation.

(2) But the Crown Court must not make an exception for legal expenses where this is prohibited by section 41(4) of the Proceeds of Crime Act 2002.

(3) An exception to a restraint order may be made subject to conditions.

(4) The Crown Court must not require the applicant for a restraint order to give any undertaking relating to damages sustained as a result of the restraint order by a person who is prohibited from dealing with realisable property by the restraint order.

(5) The Crown Court may require the applicant for a restraint order to give an undertaking to pay the reasonable expenses of any person, other than a person who is prohibited from dealing with realisable property by the restraint order, which are incurred in complying with the restraint order.

(6) An order must include a statement that disobedience of the order, either by a person to whom the order is addressed, or by another person, may be contempt of court and the order must include details of the possible consequences of being held in contempt of court.

(7) Unless the Crown Court otherwise directs, an order made without notice has effect until the court makes an order varying or discharging it.

(8) The applicant for an order must—

- (a) serve copies of the order and of the witness statement made in support of the application on the defendant and any person who is prohibited by the order from dealing with realisable property; and
- (b) notify any person whom the applicant knows to be affected by the order of its terms.

Application for discharge or variation of restraint or ancillary order by a person affected by the order

33.53.—(1) This rule applies where a person affected by a restraint order makes an application to the Crown Court under section 42(3) of the Proceeds of Crime Act 2002 to discharge or vary the restraint order or any ancillary order made under section 41(7) of the Act.

(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 the person who applied for the restraint order and any person who is prohibited from dealing with realisable property by the restraint order (if he is not the person making the application) at least 2 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(a) 2002 c. 29; section 68 was amended by section 50 of the Commissioners for Revenue and Customs Act 2005 (c. 11).

Application for variation of restraint or ancillary order by the person who applied for the order

33.54.—(1) This rule applies where the applicant for a restraint order makes an application under section 42(3) of the Proceeds of Crime Act 2002 to the Crown Court to vary the restraint order or any ancillary order made under section 41(7) of the 2002 Act (including where the court has already made a restraint order and the applicant is seeking to vary the order in order to restrain further realisable property).

(2) The application may be made without notice if the application is urgent or if 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) where the application is for the inclusion of further realisable property in a restraint order give full details, to the best of the witness's ability, of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;
- (c) where the application is to vary an ancillary order, include, if appropriate—
 - (i) any request for an order for disclosure of documents to which rule 33.40 applies (Disclosure and inspection of documents),
 - (ii) the identity of any person whom the applicant wants the court to examine about the extent or whereabouts of realisable property,
 - (iii) a list of the main questions that the applicant wants to ask any such person, and
 - (iv) a list of any documents to which the applicant wants to refer such a person; and
- (d) include the proposed terms of the variation.

(4) An application by an accredited financial investigator must include a statement that, under section 68 of the 2002 Act, the applicant has authority to apply.

(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 any person who is prohibited from dealing with realisable property by the restraint order at least 2 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 variation of a restraint or ancillary order, 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 is prohibited from dealing with realisable property by the restraint order (whether before or after the variation); and
- (c) any other person whom the applicant knows to be affected by the order.

Application for discharge of restraint or ancillary order by the person who applied for the order

33.55.—(1) This rule applies where the applicant for a restraint order makes an application under section 42(3) of the Proceeds of Crime Act 2002 to discharge the order or any ancillary order made under section 41(7) of the 2002 Act.

(2) The application may be made without notice.

(3) The application must be in writing and must state the grounds for the application.

(4) If the court makes an order for the discharge of a restraint or ancillary order, the applicant must serve copies of the order on—

- (a) the defendant;
- (b) any person who is prohibited from dealing with realisable property by the restraint order (whether before or after the discharge); and
- (c) any other person whom the applicant knows to be affected by the order.

RECEIVERSHIP PROCEEDINGS

Application for appointment of a management or an enforcement receiver

33.56.—(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^(a) 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 33.51 (Application for restraint order or ancillary order);
- (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, under section 68 of the 2002 Act, the applicant has authority to apply; and
- (e) if the proposed receiver is not a person falling within section 55(8) of the 2002 Act^(b) 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 7 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;

(a) 2002 c. 29.

(b) 2002 c. 29; section 55(8) was amended by section 51(1) and (2) of the Policing and Crime Act 2009 (c. 26).

- (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.

Application for conferral of powers on a management receiver or an enforcement receiver

33.57.—(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 33.51 (Application for restraint order or ancillary order);
- (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;
- (c) where the application is made by an accredited financial investigator, include a statement that, under section 68 of the 2002 Act, the applicant has authority to apply; and
- (d) where the application is for power to start, carry on or defend legal proceedings in respect of the property, explain—
 - (i) what proceedings are concerned, in what court, and
 - (ii) what powers the receiver will ask that court to exercise.

(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 7 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.

Applications for discharge or variation of receivership orders, and applications for other orders

33.58.—(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(a) 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 7 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.

Sums in the hands of receivers

33.59.—(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 7 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(b);
- (b) section 306B of the Insolvency Act 1986(c); and
- (c) article 279B of the Insolvency (Northern Ireland) Order 1989(d).

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

(b) 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).

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

(d) 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).

Security

33.60.—(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 person falling within section 55(8) of the 2002 Act^(a) (and it is immaterial whether the receiver is a permanent or temporary member of staff or 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.

Remuneration

33.61.—(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 person falling within section 55(8) of the 2002 Act (and it is immaterial whether the receiver is a permanent or temporary member of staff or 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
- (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 45.11 (Assessment and re-assessment) to 45.14 (Application for an extension of time) 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^(b).

(a) 2002 c. 29; section 55(8) was amended by section 51(1) and (2) of the Policing and Crime Act 2009 (c. 26).

(b) 2002 c. 29; section 55(4)(b) was amended by paragraph 408 of Schedule 8 to, the Courts Act 2003 (c. 39).

Accounts

33.62.—(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 must certify the result.

Non-compliance by receiver

33.63.—(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.

PROCEEDINGS UNDER THE CRIMINAL JUSTICE ACT 1988 AND THE DRUG TRAFFICKING ACT 1994

[Note. The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003, but they continue to have effect in respect of proceedings for offences committed before that date.]

Statements, etc. relevant to making confiscation orders

33.64.—(1) Where a prosecutor or defendant—

- (a) serves on the magistrates’ court officer any statement or other document under section 73 of the Criminal Justice Act 1988(a) in any proceedings in respect of an offence listed in Schedule 4 to that Act; or

(a) 1988 c. 33; section 73 and Schedule 4 were repealed, with savings, by paragraphs 1 and 17 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

- (b) serves on the Crown Court officer any statement or other document under section 11 of the Drug Trafficking Act 1994(a) or section 73 of the 1988 Act in any proceedings in respect of a drug trafficking offence or in respect of an offence to which Part VI of the 1988 Act applies,

that party must serve a copy as soon as practicable on the defendant or the prosecutor, as the case may be.

(2) Any statement tendered by the prosecutor to the magistrates' court under section 73 of the 1988 Act or to the Crown Court under section 11(1) of the 1994 Act or section 73(1A) of the 1988 Act must include the following particulars—

- (a) the name of the defendant;
- (b) the name of the person by whom the statement is made and the date on which it was made;
- (c) where the statement is not tendered immediately after the defendant has been convicted, the date on which and the place where the relevant conviction occurred; and
- (d) such information known to the prosecutor as is relevant to the determination as to whether or not the defendant has benefited from drug trafficking or relevant criminal conduct and to the assessment of the value of any proceeds of drug trafficking or, as the case may be, benefit from relevant criminal conduct.

(3) Where, in accordance with section 11(7) of the 1994 Act or section 73(1C) of the 1988 Act, the defendant indicates in writing the extent to which he or she accepts any allegation contained within the prosecutor's statement, the defendant must serve a copy of that reply on the court officer.

(4) Expressions used in this rule have the same meanings as in the 1994 Act or, where appropriate, the 1988 Act.

Postponed determinations

33.65.—(1) Where an application is made by the defendant or the prosecutor –

- (a) to a magistrates' court under section 72A(5)(a) of the Criminal Justice Act 1988(b) asking the court to exercise its powers under section 72A(4) of that Act; or
- (b) to the Crown Court under section 3(5)(a) of the Drug Trafficking Act 1994(c) asking the court to exercise its powers under section 3(4) of that Act, or under section 72A(5)(a) of the 1988 Act asking the court to exercise its powers under section 72A(4) of the 1988 Act,

the application must be in writing and the applicant must serve a copy on the prosecutor or the defendant, as the case may be.

(2) A party served with a copy of an application under paragraph (1) must, within 28 days of the date of service, notify the applicant and the court officer, in writing, whether or not that party opposes the application, giving reasons for any opposition.

(3) After the expiry of the period referred to in paragraph (2), the court may determine an application under paragraph (1)—

- (a) without a hearing; or
- (b) at a hearing at which the parties may be represented.

(a) 1994 c. 37; section 11 was repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

(b) 1988 c. 33; section 72A was inserted by section 28 of the Criminal Justice Act 1993 (c. 36) and repealed, with savings, by sections 456 and 457 of, and paragraphs 1 and 17 of Schedule 11, and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

(c) 1994 c. 37; section 3 was repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

Confiscation orders - revised assessments

33.66.—(1) Where the prosecutor makes an application under section 13, 14 or 15 of the Drug Trafficking Act 1994(a) or section 74A, 74B or 74C of the Criminal Justice Act 1988(b), the application must be in writing and a copy must be served on the defendant.

(2) The application must include the following particulars—

- (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, as the case may be, varied;
- (d) the grounds on which the application is made; and
- (e) an indication of the evidence available to support the application.

Application to the Crown Court to discharge or vary order to make material available

33.67.—(1) Where an order under section 93H of the Criminal Justice Act 1988(c) (order to make material available) or section 55 of the Drug Trafficking Act 1994(d) (order to make material available) has been made by the Crown Court, any person affected by it may apply in writing to the court officer for the order to be discharged or varied, and on hearing such an application the court may discharge the order or make such variations to it as the court thinks fit.

(2) Subject to paragraph (3), where a person proposes to make an application under paragraph (1) for the discharge or variation of an order, that person must give a copy of the application, not later than 48 hours before the making of the application—

- (a) to a constable at the police station specified in the order; or
- (b) to the office of the appropriate officer who made the application, as specified in the order,

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) The court may direct that paragraph (2) need not be complied with if satisfied that the person making the application has good reason to seek a discharge or variation of the order as soon as possible and it is not practicable to comply with that paragraph.

(4) In this rule:

‘constable’ includes a person commissioned by the Commissioners for Her Majesty’s Revenue and Customs;

‘police station’ includes a place for the time being occupied by Her Majesty’s Revenue and Customs.

Application to the Crown Court for increase in term of imprisonment in default of payment

33.68.—(1) This rule applies to applications made, or that have effect as made, to the Crown Court under section 10 of the Drug Trafficking Act 1994(e) and section 75A of the Criminal Justice Act 1988(f) (interest on sums unpaid under confiscation orders).

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- (a) 1994 c. 37; sections 13, 14 and 15 were repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).
 - (b) 1988 c. 33; sections 74A, 74B and 74C were inserted by the Proceeds of Crime Act 1995 (c. 11), sections 5, 6 and 7 respectively, and repealed, with savings by paragraphs 1 and 17 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).
 - (c) 1988 c. 33; section 93H was inserted by section 11 of the Proceeds of Crime Act 1995 (c. 11) and repealed, with savings, by paragraphs 1 and 17 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).
 - (d) 1994 c. 37; section 55 was amended by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29) and by paragraph 364 of Schedule 8 to the Courts Act 2003 (c. 39).
 - (e) 1994 c. 37; section 10 was repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).
 - (f) 1988 c. 33; section 75A was inserted by section 9 of the Proceeds of Crime Act 1995 (c. 11) and repealed, with savings, by paragraphs 1 and 17 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

(2) Notice of an application to which this rule applies to increase the term of imprisonment or detention fixed in default of payment of a confiscation order by a person ('the defendant') must be made by the prosecutor in writing to the court officer.

(3) A notice under paragraph (2) shall—

- (a) state the name and address of the defendant;
- (b) specify the grounds for the application;
- (c) give details of the enforcement measures taken, if any; and
- (d) include a copy of the confiscation order.

(4) On receiving a notice under paragraph (2), the court officer must—

- (a) forthwith send to the defendant and the magistrates' court required to enforce payment of the confiscation order under section 140(1) of the Powers of Criminal Courts (Sentencing) Act 2000(a), a copy of the said notice; and
- (b) notify in writing the applicant and the defendant of the date, time and place appointed for the hearing of the application.

(5) Where the Crown Court makes an order pursuant to an application mentioned in paragraph (1) above, the court officer must send forthwith a copy of the order—

- (a) to the applicant;
- (b) to the defendant;
- (c) where the defendant is at the time of the making of the order in custody, to the person having custody of him or her; and
- (d) to the magistrates' court mentioned in paragraph (4)(a).

Drug trafficking – compensation on acquittal in the Crown Court

33.69. Where the Crown Court cancels a confiscation order under section 22(2) of the Drug Trafficking Act 1994(b), the Crown Court officer must serve notice to that effect on the High Court officer and on the court officer of the magistrates' court which has responsibility for enforcing the order.

CONTEMPT PROCEEDINGS

Application to punish for contempt of court

33.70.—(1) This rule applies where a person is accused of disobeying—

- (a) a compliance order made for the purpose of ensuring that a confiscation order is effective;
- (b) a restraint order; or
- (c) an ancillary order made for the purpose of ensuring that a restraint order is effective.

(2) An applicant who wants the Crown Court to exercise its power to punish that person for contempt of court must comply with the rules in Part 48 (Contempt of court).

[Note. The Crown Court has inherent power to punish for contempt of court a person who disobeys its order: see section 45 of the Senior Courts Act 1981(c).]

(a) 2000 c. 6; section 140 was amended by paragraphs 74 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 40(4) of, and paragraph 69 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4). It is further amended by sections 74 and 75 of, and paragraphs 160 and 194 of Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.

(b) 1994 c. 37; section 22 was repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

(c) 1981 c. 54. 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).