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STATUTORY INSTRUMENTS

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**2005 No. 384**

**The Criminal Procedure Rules 2005**

**PART 60**

**PROCEEDS OF CRIME ACT 2002—RULES  
APPLICABLE ONLY TO RECEIVERSHIP PROCEEDINGS**

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**Application for appointment of a management or enforcement receiver**

**60.1.**—(1) This rule applies to an application for the appointment of a management receiver under section 48(1) of the Proceeds of Crime Act 2002<sup>(1)</sup> and an application for the appointment of an enforcement receiver under section 50(1) of the 2002 Act.

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

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

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(1) 2002 c. 29.

- (d) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the 2002 Act; and
  - (e) if the proposed receiver is not a member of staff of the Assets Recovery Agency, the Crown Prosecution Service or the Commissioners of Customs and Excise and the applicant is asking the court to allow the receiver to act—
    - (i) without giving security, or
    - (ii) before he has given security or satisfied the court that he has security in place, explain the reasons why that is necessary.
- (4) Where the application is for the appointment of an enforcement receiver, the applicant must provide the Crown Court with a copy of the confiscation order made against the defendant.
- (5) The application and witness statement must be lodged with the Crown Court.
- (6) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be lodged with the Crown Court and served on—
- (a) the defendant;
  - (b) any person who holds realisable property to which the application relates; and
  - (c) any other person whom the applicant knows to be affected by the application,
- at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.
- (7) If the court makes an order for the appointment of a receiver, the applicant must serve copies of the order and of the witness statement made in support of the application on—
- (a) the defendant;
  - (b) any person who holds realisable property to which the order applies; and
  - (c) any other person whom the applicant knows to be affected by the order.

*[Note. Formerly rule 21 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003(2).]*

### **Application for conferral of powers on management receiver, enforcement receiver or Director's receiver**

**60.2.**—(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, an enforcement receiver under section 51(1) of the 2002 Act or a Director's receiver under section 53(1) of the 2002 Act.

- (2) The application may be made without notice if the application is to give the receiver power to take possession of property and—
- (a) the application is joined with an application for a restraint order under rule 59.1;
  - (b) the application is urgent; or
  - (c) there are reasonable grounds for believing that giving notice would cause the dissipation of the property which is the subject of the application.
- (3) The application must be made in writing and supported by a witness statement which must—
- (a) give the grounds for the application;
  - (b) give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property; and

- (c) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the 2002 Act.
- (4) Where the application is for the conferral of powers on an enforcement receiver or Director's receiver, the applicant must provide the Crown Court with a copy of the confiscation order made against the defendant.
- (5) The application and witness statement must be lodged with the Crown Court.
- (6) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be served on—
  - (a) the defendant;
  - (b) any person who holds realisable property in respect of which a receiver has been appointed or in respect of which an application for a receiver has been made;
  - (c) any other person whom the applicant knows to be affected by the application; and
  - (d) the receiver (if one has already been appointed), at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.
- (7) If the court makes an order for the conferral of powers on a receiver, the applicant must serve copies of the order on—
  - (a) the defendant;
  - (b) any person who holds realisable property in respect of which the receiver has been appointed; and
  - (c) any other person whom the applicant knows to be affected by the order.

*[Note. Formerly rule 22 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

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

- 60.3.**—(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 for the discharge or variation of orders relating to receivers.
- (2) The application must be made in writing and lodged with the Crown Court.
  - (3) The application must be served on the following persons (except where they are the person making the application)—
    - (a) the person who applied for appointment of the receiver;
    - (b) the defendant;
    - (c) any person who holds realisable property in respect of which the receiver has been appointed;
    - (d) the receiver; and
    - (e) any other person whom the applicant knows to be affected by the application, at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.
  - (4) If the court makes an order for the discharge or variation of an order relating to a receiver under section 63(2) of the 2002 Act, the applicant must serve copies of the order on any persons whom he knows to be affected by the order.

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

### Sums in the hands of receivers

**60.4.**—(1) This rule applies where the amount payable under a confiscation order has been fully paid and any sums remain in the hands of an enforcement receiver or Director’s receiver.

(2) The receiver must make an application to the Crown Court for directions as to the distribution of the sums in his hands.

(3) The application and any evidence which the receiver intends to rely on in support of the application must be served on—

(a) the defendant; and

(b) any other person who held (or holds) interests in any property realised by the receiver, at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(4) If any of the provisions listed in paragraph (5) (provisions as to the vesting of funds in a trustee in bankruptcy) apply, then the Crown Court must make a declaration to that effect.

(5) These are the provisions—

(a) section 31B of the Bankruptcy (Scotland) Act 1985(3);

(b) section 306B of the Insolvency Act 1986(4); and

(c) article 279B of the Insolvency (Northern Ireland) Order 1989(5).

*[Note. Formerly rule 24 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### Security

**60.5.**—(1) This rule applies where the Crown Court appoints a receiver under section 48, 50 or 52 of the Proceeds of Crime Act 2002 and the receiver is not a member of staff of the Assets Recovery Agency, the Crown Prosecution Service or of the Commissioners of Customs and Excise (and it is immaterial whether the receiver is a permanent or temporary member or he is on secondment from elsewhere).

(2) The Crown Court may direct that before the receiver begins to act, or within a specified time, he must either—

(a) give such security as the Crown Court may determine; or

(b) file with the Crown Court and serve on all parties to any receivership proceedings evidence that he already has in force sufficient security,

to cover his liability for his acts and omissions as a receiver.

(3) The Crown Court may terminate the appointment of a receiver if he fails to—

(a) give the security; or

(b) satisfy the court as to the security he has in force, by the date specified.

*[Note. Formerly rule 25 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### Remuneration

**60.6.**—(1) This rule applies where the Crown Court appoints a receiver under section 48, 50 or 52 of the Proceeds of Crime Act 2002 and the receiver is not a member of staff of the Assets Recovery

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(3) 1985 c. 66; section 31B was inserted by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1 and 15(1), (4).

(4) 1986 c. 45; section 306B was inserted by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1 and 16(1), (3).

(5) S.I. 1989/2405; article 279B was inserted by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1 and 20(3).

Agency, the Crown Prosecution Service or of the Commissioners of Customs and Excise (and it is immaterial whether the receiver is a permanent or temporary member or he is on secondment from elsewhere).

(2) The receiver may only charge for his services if the Crown Court—

- (a) so directs; and
- (b) specifies the basis on which the receiver is to be remunerated.

(3) Unless the Crown Court orders otherwise, in determining the remuneration of the receiver, the Crown Court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account—

- (a) the time properly given by him and his staff to the receivership;
- (b) the complexity of the receivership;
- (c) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;
- (d) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and
- (e) the value and nature of the subject matter of the receivership.

(4) The Crown Court may refer the determination of a receiver's remuneration to be ascertained by the taxing authority of the Crown Court and rules 78.4 to 78.7 shall have effect as if the taxing authority was ascertaining costs.

(5) A receiver appointed under section 48 of the 2002 Act is to receive his remuneration by realising property in respect of which he is appointed, in accordance with section 49(2)(d) of the 2002 Act.

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

(7) A receiver appointed under section 52 of the 2002 Act is to receive his remuneration by applying to the Director for payment under section 57(4)(b) of the 2002 Act.

*[Note. Formerly rule 26 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

## **Accounts**

**60.7.**—(1) The Crown Court may order a receiver appointed under section 48, 50 or 52 of the Proceeds of Crime Act 2002 to prepare and serve accounts.

(2) A party to receivership proceedings served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts.

(3) Any party to receivership proceedings may, within 14 days of being served with the accounts, serve notice on the receiver—

- (a) specifying any item in the accounts to which he objects;
- (b) giving the reason for such objection; and
- (c) requiring the receiver within 14 days of receipt of the notice, either—
  - (i) to notify all the parties who were served with the accounts that he accepts the objection, or
  - (ii) if he does not accept the objection, to apply for an examination of the accounts in relation to the contested item.

(4) When the receiver applies for the examination of the accounts he must at the same time lodge with the Crown Court—

- (a) the accounts; and
- (b) a copy of the notice served on him under this section of the rule.

(5) If the receiver fails to comply with paragraph (3)(c) of this rule, any party to receivership proceedings may apply to the Crown Court for an examination of the accounts in relation to the contested item.

(6) At the conclusion of its examination of the accounts the court will certify the result.

*[Note. Formerly rule 27 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Non-compliance by receiver**

**60.8.**—(1) If a receiver appointed under section 48, 50 or 52 of the Proceeds of Crime Act 2002 fails to comply with any rule, practice direction or direction of the Crown Court, the Crown Court may order him to attend a hearing to explain his non-compliance.

- (2) At the hearing, the Crown Court may make any order it considers appropriate, including—
- (a) terminating the appointment of the receiver;
  - (b) reducing the receiver’s remuneration or disallowing it altogether; and
  - (c) ordering the receiver to pay the costs of any party.

*[Note. Formerly rule 28 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*