

THE JUDICATURE (SUPREME COURT) ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

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THE JUDICATURE (SUPREME COURT) ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

In exercise of the powers conferred by the Rules Committee by section 4 of the Judicature (Rules of Court) Act, and of every other power hereunto enabling the following Rules are hereby made:—

Citation and commencement.

- 1.1 (1) These Rules may be cited as the Judicature (Supreme Court) (Proceeds of Crime) Rules, 2021.
- (2) These Rules shall come into force on the 7th day of April, 2021.

PART 1—*Application and Interpretation of these Rules*

Application of these Rules.

- 1.2 (1) These Rules shall apply to all proceedings commenced on or after the commencement date, under Parts II, III and IV of the Act, save and except for applications relating to the recovery of cash in summary proceedings under Part IV of the Act and applications made pursuant to sections 50 and 52 of the Act and under the Regulations.
- (2) Where an applicable procedural Rule is contained within these Rules, no other procedural Rules may be applied.
- (3) These Rules apply to all old proceedings from the commencement date.
- (4) Any act or omission prior to the commencement date shall not be rendered invalid because of the commencement of these Rules.
- (5) The Court may, when it is required in the interests of justice, disapply these Rules in old proceedings.
- (6) All applications under these Rules shall be made in the forms provided for in these Rules, where the same are applicable and in cases where such forms are not applicable or where no forms are provided, applications shall be made in such forms that are similar to the forms provided in these Rules.

Application of the Interpretation Act.

1.3 The Interpretation Act applies to the interpretation of these Rules.

The overriding objective

- 1.4 (1) The overriding objective of these Rules is to enable the Court to deal justly with applications brought under the Act.
- (2) Dealing justly with applications brought under the Act and Regulations include—
- (a) dealing with the parties fairly;
 - (b) recognizing the rights of an individual, particularly those rights under the Charter of Fundamental Rights and Freedoms;
 - (c) respecting the interests of third parties, witnesses and victims and keeping them informed of the progress of a case;
 - (d) dealing with a case efficiently and expeditiously;
 - (e) ensuring that appropriate information is available to the Court when making its determinations;
 - (f) dealing with a case in ways that take into account—
 - (i) the gravity of the offence committed or alleged;
 - (ii) the complexity of what is in issue;
 - (iii) the severity of the consequences for the defendant and others affected; and
 - (iv) the needs of other cases.

- (3) The Court shall seek to give effect to the overriding objective when interpreting these Rules or exercising any power under these Rules.

Duty of the parties

- 1.5 It is the duty of the parties to assist the Court in furthering the overriding objectives of these Rules.

Definitions

- 1.6 (1) In these Rules—

“the Act” means the Proceeds of Crime Act 2007, and any Regulations made thereunder;

“attorney-at-law” has the meaning assigned to it in the Legal Profession Act;

“commencement date” means the date on which these Rules come into effect pursuant to rule 1.1 (2);

“the Court” means the Court as defined in the Act;

“document” means anything on, or in which information of any description is recorded;

“expert evidence” means evidence given by an expert witness;

“expert witness” means an expert who has been instructed to prepare or give evidence for the purpose of court proceedings;

“old proceedings” means any proceedings commenced under the Act before the commencement date;

“Registrar” means the person who is responsible for administration at a court which is to hear or has heard any proceedings under these Rules;

“the Regulations” means the Proceeds of Crime Regulations, 2007;

“restraint proceedings” means proceedings under Part III of the Act;

“wasted costs” means any costs incurred by a party—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any attorney-at-law or any employee or such attorney-at-law; or

(b) which, in light of any act or omission occurring after they were incurred, the Court considers it unreasonable to expect that party to pay;

“witness statement” means a written statement signed by a person which contains the evidence which that person intends to give orally.

- (2) Words and expressions used in these Rules shall have the same meaning as in the Act.

Court staff.

- 1.7 Where these Rules refer to an act being performed by a Registrar or require or permit the performance of an act of a formal or an administrative character, that act may be performed by any member of the Court staff authorized generally or individually in writing by the Chief Justice.

Calculation of time.

- 1.8 (1) This rule sets out the manner in which any period of days for doing any act which is specified by these Rules for the purposes of any proceedings under the Act, is to be calculated.
- (2) In this rule “clear days” means that in computing the number of days, the following are not included—
- (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.
- (3) A period of time expressed as a number of days shall be computed as clear days.
- (4) Where the specified period—
- (a) is seven days or less; and
 - (b) includes—
 - (i) a Saturday or Sunday; or
 - (ii) any other day on which the registry is closed, that day does not count.
- (5) Where the period for doing any act at the registry ends on a day on which the registry is closed, the act shall be in time if it is done before close of business on the next day on which the registry is open.

PART 2—How to Commence Proceedings

Starting an Application

Commencing proceedings.

- 2.1 (1) The general rule is that proceedings are started when a party files the relevant form as set out in these Rules with the Court as designated from time to time by the Honourable Chief Justice, the content of which shall comply with any other requirement in these Rules.
- (2) The Court may allow a party to depart from the general rule set out at rule 2.1 (1) if it is in the interests of justice to do so.

- (3) Where the Court makes an order under rule 2.1(2), the applicant shall file the relevant form within two (2) days unless the Court otherwise directs.

Filing of documents in the Court.

- 2.2 (1) A document may be filed by—
- (a) delivering it;
 - (b) posting it; or
 - (c) sending it by fax, or other electronic means, to the Court registry.
- (2) A document is filed on the day when it is received at the Court or, where it is received at a time when the Court is closed for whatever reason, on the next day on which the Court is open.
- (3) Where a fee is to be paid, a document is not to be treated as filed until—
- (a) the fee is paid; or
 - (b) and undertaking, acceptable to the Registrar, to pay the fee is received.

Service

Personal Service

- 2.3 A document may be served on—
- (a) an individual, by handing it to or leaving it with him or her; or
 - (b) a company, by handing it to or leaving it with any director, officer, receiver, receiver-manager or liquidator of the company.

Service by leaving or posting a document.

- 2.4 (1) A document may be served by addressing it to the person and leaving it at the appropriate address for service under this rule, or by sending it to that address by post or by such other method of service as set out in rule 2.9(1).
- (2) The address for service under this rule on—
- (a) an individual, is an address where it is reasonably believed that he or she will receive it;
 - (b) a company, is its principal office, and if there is no readily identifiable principal office, then, any place where the company carries on its activities or business;
 - (c) an individual or company who is represented by an attorney-at-law, is the office of the attorney-at-law;
 - (d) the enforcing authority, is the office for that agency from which the case is being conducted.

- (3) The address for service may be an alternative address to that in rule 2.5(2) where any enactment allows for service upon that alternative address.

Service on a firm or partnership.

- 2.5 (1) Service on a partnership or firm may be effected—
- (a) by serving the application personally on any partner;
 - (b) by serving the application personally on a manager of the firm at any place of business of the firm or partnership which has a real connection with the application; or
 - (c) in any other way allowed by any enactment.
- (2) Where the applicant knows that a partnership has been dissolved at the time the application is issued, the application shall be served personally on every person within the jurisdiction whom the applicant seeks to make liable.

Service on minors.

- 2.6 Service on a minor is effected—
- (a) by serving on one of the minor's parents or guardians; or
 - (b) if there is no parent or guardian, by serving on the person with whom the minor resides or who has the care and control of the minor.

Service on patients

- 2.7 (1) Where a person is authorized under the Mental Health Act to conduct the proceedings in the name of a patient or on the patient's behalf, an application shall be served on that person.
- (2) Where there is no person so authorized pursuant to sub-rule (1), an application shall be served on the person with whom the patient resides or in whose care the patient is.

Alternative and deemed service on minors and patients.

- 2.8 (1) The Court may make an order permitting an application to be served on a minor or a patient, or on some person other than the person specified in this rule and rule 2.7.
- (2) The Court may order that, although this rule and rules 2.7 and 2.9(1) have not been complied with, the application is to be treated as properly served.
- (3) An application for an order under sub-rule (1) or (2) may be made without notice but shall be made in the form PO CR I and be supported by evidence on affidavit.

Deemed date of service.

- 2.9 (1) A document which is served within the jurisdiction in accordance with these Rules shall be deemed to be served on the day shown in the following table—

<u>Method of Service</u>	<u>Deemed Date of Service</u>
Post	21 days after posting.
Registered Post	21 days after the date indicated on the Post Office receipt.
Courier Delivery	3 business days after the date indicated on the courier receipt.
Leaving document at a permitted address	The business day after leaving the document.
FAX	(i) If it is transmitted on a business day before 4:00 pm: the day of transmission; or (ii) in any other case, the business day after the day of transmission.
Other electronic method	The business day after transmission.

- (2) Any document served after 4 p.m. on a business day or at any time on a day other than a business day is treated as having been served on the next business day.
- (3) In this rule “business day” means any day other than—
- (a) a Saturday, Sunday or Public Holiday; or
 - (b) a day on which the registry is closed.

Proof of service.

- 2.10 (1) Service is proved by an affidavit sworn by a person serving the document, stating where applicable—
- (a) the date and time of service;
 - (b) the place or address at which it was served;
 - (c) the manner by which the person on whom the document was served was identified; and
 - (d) how the document was served.
- (2) Service by fax is proved by an affidavit of service by the person responsible for transmitting the document to the person to be served and the affidavit—
- (a) shall exhibit—
 - (i) a copy of the document served;

- (ii) a copy of any cover sheet to that document; and
 - (iii) a copy of the transmission record; and
- (b) shall state—
- (i) the date and time of transmission; and
 - (ii) the fax number to which it was sent.

Alternative methods of service

2.11 (1) A party may use an alternative method of service to those set out in rules 2.4 to 2.9.

(2) Where a party—

- (a) chooses an alternative method of service; and
- (b) the court is asked to take any step on the basis that the document has been served,

the party who served the document shall file evidence on affidavit proving that the method of service was sufficient to enable the respondent to ascertain the contents of the document.

(3) An affidavit under sub-rule (2) shall—

- (a) give details of the method of service used;
- (b) show that—
 - (i) the person intended to be served was able to ascertain the contents of the documents; or
 - (ii) it is likely that he or she would have been able to do so;
- (c) state the time when the person served, was or was likely to have been in a position to ascertain the contents of the documents; and
- (d) exhibit a copy of the documents served.

(4) The Court shall—

- (a) consider the evidence; and
- (b) endorse on the affidavit whether it satisfactorily proves service.

(5) Where the Court is not satisfied that the method of service chosen was sufficient to enable the respondent to ascertain the contents of the document, the Court shall fix a date, time and place to consider making an order under rule 2.12 and give at least 3 days notice to the applicant.

(6) An endorsement made pursuant to sub-rule (4)(b) may be set aside on good cause being shown.

Power of Court to make order for service by specified method

- 2.12 (1) The Court may direct that service of a document by a method specified in the Court's order be deemed to be good service.
- (2) An application for an order to serve by a specified method may be made without notice but shall be made in the form POCR 2 and be supported by evidence on affidavit—
- (a) specifying the method of service proposed; and
 - (b) showing that that method of service is likely to enable the person to be served to ascertain the contents of the material which is subject to the application.

Service where the location of a person is known

- 2.13 An application or other document may be served personally upon a person, who is outside of Jamaica, without the permission of the Court, if the location of that person is known to the party seeking to serve the document.

Service where the location of a person is not known

- 2.14 (1) Where the location of a person who is outside Jamaica is unknown, an application for permission to serve outside the jurisdiction is required.
- (2) An application for permission to serve outside the jurisdiction may be made without notice but shall be made in the Form POCR 3 and be supported by an affidavit stating—
- (a) the grounds on which the application is made;
 - (b) that in the deponent's belief there is a serious issue to be tried; and
 - (c) in what place, within what country, the respondent or relevant party may probably be found.
- (3) The Court may not give permission unless satisfied that the person to be served outside the jurisdiction is, or may be, sufficiently connected to the application to be heard.

Service by any method permitted

- 2.15 (1) Where a document is to be served outside the jurisdiction pursuant to Rule 2.14 it may be served by any method permitted by the law of the country in which it is to be served.
- (2) Further or alternatively, the Court may authorize service outside the jurisdiction by means of any form of electronic communication if it is in the interests of justice to do so.
- (3) Nothing in this rule or in any Court order shall authorize 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.

Service on agent of principal who is outside the jurisdiction

- 2.16 (1) Where the conditions specified in sub-rule (2) are satisfied, the Court may make an order for documents to be served on a party's agent within the jurisdiction.
- (2) Pursuant to sub-rule (1), the conditions are as follows—
- (a) the party cannot be served within the jurisdiction;
 - (b) at the time of the application—
 - (i) the agent's authority had not been terminated; or
 - (ii) the agent is still in business relations with the party.
- (3) An application may be made without notice but shall be made in the Form POCR 2 and be supported by an affidavit.
- (4) When the Court makes an order under this rule, the applicant shall serve the agent with—
- (a) the order;
 - (b) the application; an
 - (c) any documents relied upon in support of the application.

Service on an attorney-at-law

- 2.17 Where an attorney-at-law is authorized in writing to accept service on behalf of a party, service of documents may be effected upon that attorney-at-law.

*Service and Proceeding in Absence**Service and proceeding in absence*

- 2.18 (1) Where these Rules require a document to be served within a certain period of time before the date of a hearing, and the recipient does not appear at the hearing, the general rule is that the hearing shall not take place unless the Court is satisfied that the document has been served or has been deemed to be served by the Court within that period.
- (2) Where there is a requirement under the Act to conclude the hearing within a specified period of time, the Court may deem a document to have been served if it is satisfied that reasonable steps were taken to effect service.
- (3) Where the Court proceeded under sub-rule (2), that may be a relevant factor for the Court to take into consideration when deciding upon the weight to attach to any evidence in the application.
- (4) Where the Court proceeded under sub-rule (2), the party that was not served may apply to the Court for any order made at the hearing to be set aside or varied and for the hearing to be dealt with again.

- (5) A party under sub-rule (4) must make the application no more than 14 days after the date on which the order made at the hearing was served on the party.

Responding to an Application

Responding to an application.

- 2.19 (1) The general rules regarding responding to an application are set out in Parts 7 to 11 of these Rules.

PART 3—Minors and Patients

Scope of this Part

- 3.1 (1) This Part—

- (a) contains special provisions which apply in proceedings involving minors and patients; and
- (b) sets out how a person becomes the next friend of a minor or patient.

- (2) In this Part, “the Act” means the Mental Health Act.

Requirement of next friend in proceedings by or against minors or patients.

- 3.2 (1) A minor or patient must have a next friend to conduct proceedings on his or her behalf.
- (2) However, on the application of a minor, the court may make an order permitting the minor to conduct proceedings without a next friend.
- (3) An application for an order under sub-rule (2)—
- (a) if the minor has a next friend, must be on notice to that next friend; and
 - (b) if there is no next friend, may be made without notice.
- (4) Where—
- (a) the court has made an order under sub-rule (2); and
 - (b) it subsequently appears to the court that it is desirable for a next friend to conduct the proceedings on behalf of the minor, the court may appoint a person to be the minor’s next friend.
- (5) The next friend must sign a certificate of truth on behalf of the minor or patient where same is required under these Rules.

Stage of proceedings at which next friend becomes necessary

- 3.3 (1) A minor or patient must have a next friend in order to (commence proceedings) except where the court has made an order under rule 3.2(2).

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- (2) A person may not—
- (a) make any application against a minor or patient before proceedings have started; or
 - (b) take any step in proceedings except—
 - (i) issuing and serving a document against a minor or patient; or
 - (ii) applying for the appointment of a next friend under rule 3.8, until the minor or patient has a next friend.
- (3) Where a person, other than a minor, becomes a patient during proceedings no party may take any step in the proceedings, apart from applying to the court for the appointment of a next friend, until the patient has a next friend.
- (4) Any step other than an application—
- (a) under rule 3.2(2);
 - (b) for the appointment of a next friend under sub-rule (2)(b) or (3), taken before a minor or patient has a next friend is of no effect unless the court otherwise orders.

Who may be minor's next friend

- 3.4 A person who satisfies the conditions set out in rule 3.6 may act as a minor's next friend without a court order, unless—
- (a) the court has already appointed a next friend; or
 - (b) the court makes or has made an order under rule 3.9 (court's power to change next friend or to prevent a person acting as a next friend).

Who may be patient's next friend

- 3.5 (1) Unless the court appoints some other person, a person authorized under the Act to conduct legal proceedings in the name of the patient or on the patient's behalf is entitled to be the next friend of the patient in any proceedings to which the authority extends.
- (2) Where a person has been appointed by the court or authorized under the Act, a person who satisfies the conditions set out in rule 3.6 may be a patient's next friend without a court order.

Conditions for being next friend

- 3.6 A person may act as a next friend if that person—
- (a) can fairly and competently conduct proceedings on behalf of the minor or patient; and
 - (b) has no interest adverse to that of the minor or patient.

How person becomes next friend without court order

- 3.7 (1) Where the court has not appointed a next friend, a person who wishes to act as next friend must follow the procedure set out in this rule.
- (2) A person authorized under the Act must file an official copy of the order or other document which constitutes that person's authorization to act.
- (3) Any other person must file a certificate that that person satisfies the conditions specified in rule 3.6.
- (4) A person who is to act as a next friend for a claimant must file—
- (a) the authorization; or
 - (b) the certificate under sub-rule (3),
- at the time when the claim is made.
- (5) A person who is to act as a next friend for a defendant must file—
- (a) the authorization; or
 - (b) the certificate under sub-rule (3),
- at the time when the next friend first takes a step in the proceedings on behalf of the defendant.
- (6) The next friend must—
- (a) serve a copy of the certificate under sub-rule (3) on all parties; and
 - (b) file an affidavit of service.

How person becomes next friend by court order.

- 3.8 (1) The court may make an order appointing a next friend with or without an application.
- (2) An application for an order appointing a next friend may be made by—
- (a) a person who wishes to be a next friend; or
 - (b) a party.
- (3) Where—
- (a) the enforcing authority commences proceeding against a minor or patient;
 - (b) the minor or patient has no next friend; and
 - (c) either—
 - (i) someone who is not entitled to be a next friend files a document on behalf of a minor or patient; or
 - (ii) the enforcing authority wishes to take some step in the proceedings,

the enforcing authority must apply to the court for an order appointing a next friend for the minor or patient.

- (4) An application for an order appointing a next friend must be supported by evidence on affidavit.
- (5) The court may not appoint a next friend under this rule unless it is satisfied that the person to be appointed fulfils the conditions specified in rule 3.6.

Court's power to change next friend or to prevent a person acting as a next friend

3.9 (1) The court may—

- (a) direct that a person may not act as a next friend;
 - (b) terminate a next friend's authority to act; or
 - (c) appoint a new next friend in substitution for an existing one.
- (2) The court may make an order under sub-rule (1) with or without an application.
 - (3) An application for an order under sub-rule (1) must be supported by evidence on affidavit.
 - (4) The court may not appoint a next friend under this rule unless it is satisfied that the person to be appointed fulfils the conditions specified in rule 3.6.

Appointment of next friend by court order—supplementary

- 3.10 (1) An application for an order under rule 3.8 or 3.9 must be served on every person on whom, in accordance with rules 2.6 and 2.7 (service on minors; service on patients) an application should be served.
- (2) An application for an order under rule 3.9 (substitution of next friend) must also be served on—
 - (a) the person who is, or who purports to act as, next friend; and
 - (b) the person who it is proposed should act as next friend if that person is not the applicant.
- (3) On an application for an order under rule 3.8 or 3.9, the court may appoint the person proposed or any other person.

Procedure where appointment as next friend ceases

- 3.11 (1) The appointment of a minor's next friend ceases when a minor who is not a patient reaches the age of majority.
- (2) When a party, other than a minor, ceases to be a patient during the course of proceedings, the next friend's appointment continues until it is ended by court order.
- (3) An application for an order under sub-rule (2) may be made by—
 - (a) the former patient;
 - (b) the next friend; or
 - (c) a party,

and must be supported by evidence on affidavit.

- (4) The minor or patient in respect of whom the appointment to act has ceased must serve notice on the other parties—
 - (a) stating that the appointment of the next friend has ceased;
 - (b) giving an address for service; and
 - (c) stating whether or not he or she chooses to carry on the proceedings.
- (5) Where the notice is not served within 28 days after the appointment of the next friend ceases, the court may, on application, strike out any document or proceedings filed or brought by the minor or patient.
- (6) The liability of a next friend for costs continues until—
 - (a) the minor or patient serves the notice referred to in sub-rule (4); or
 - (b) the next friend serves notice on the other parties that the appointment has ceased.

Compromise, etc., by or on behalf of minor or patient.

3.12 (1) Where proceedings are commenced—

- (a) by or on behalf of a minor or patient; or
- (b) against a minor or patient,

no settlement, compromise or payment and no acceptance of money paid into court shall be valid, so far as it relates to the proceedings by, on behalf of, or against the minor or patient, without the approval of the court.

(2) Where—

- (a) before proceedings made by or on behalf of a minor or patient (whether alone or with any other person) are begun, an agreement is reached for the settlement of the same; and
- (b) the sole purpose of the proceedings is to obtain the approval of the court to a settlement or compromise, the proceedings may be commenced on the relevant form which may—
 - (i) include a request to the court for approval of the settlement; and
 - (ii) be filed jointly by the parties.

Control of money recovered by or on behalf of minor or patient

3.13 (1) Where in any proceedings—

- (a) money is recovered by or on behalf of or for the benefit of a minor or patient; or
- (b) money paid into court is accepted by or on behalf of a minor or patient,

that money must be dealt with in accordance with directions given by the court under this rule and not otherwise.

- (2) Directions given under this rule may provide that the money must be wholly or partly paid into court and invested or otherwise dealt with.

PART 4—*Case Management*

The duty of the Court

- 4.1 (1) The Court shall further the overriding objective of these Rules by actively managing the case.
- (2) Actively managing the case includes—
 - (a) the early identification of the real issues;
 - (b) the early identification of the needs of witnesses;
 - (c) achieving certainty as to what shall be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
 - (d) monitoring the progress of the case and compliance with directions;
 - (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
 - (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
 - (g) encouraging the participants to co-operate in the progression of the case; and
 - (h) making use of technology.

The duty of the parties

- 4.2 Each party shall—
 - (a) actively assist the Court in fulfilling its duty under rule 3.1, without or if necessary with a direction; and
 - (b) apply for a direction, if needed, to further the overriding objective.

The Court's case management powers

- 4.3 (1) In fulfilling its duty under rule 4.1, the Court may give any direction and take any step actively to manage a case.
- (2) A judge may be assigned to manage the case.
- (3) In particular, the Court may—
 - (a) nominate a judge to manage the case;

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- (b) give a direction on its own initiative or on application by a party—
 - (i) at a hearing in open Court or in chambers; or
 - (ii) without a hearing.
 - (c) ask or allow a party to propose a direction;
 - (d) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;
 - (e) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
 - (f) extend or shorten the time for compliance with any Rule, order or direction of the Court, even if the application for an extension is made after the time for compliance has passed.
 - (g) require that issues in the case should be—
 - (i) identified in writing;
 - (ii) determined separately or together, and decide in what order they will be determined; and
 - (iii) specify the consequences of failing to comply with a direction.
- (4) Any power to give a direction under this Part includes a power to vary or revoke that direction.

Directions hearing

- 4.4 (1) Upon receipt of an application under the Act, save and except for a civil recovery claim form, the Registrar shall set a date for a directions hearing in Chambers.
- (2) That date shall not be less than four weeks nor more than eight weeks from the date on which the application was filed.
- (3) At the directions hearing the judge shall give any directions that may be required to ensure the expeditious and just resolution of the case.
- (4) In particular, for the purpose of proceedings relating to forfeiture orders and pecuniary penalty orders under section 5 of the Act, the judge may make orders for—
- (a) statements of information under section 17 of the Act to be filed and served;
 - (b) defendant's response to statement of information under section 18 of the Act to be filed and served; and
 - (c) any further statements of information as required.

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- (5) The judge may also make orders for—
 - (a) witness statements or affidavits to be served;
 - (b) disclosure and inspection of documents;
 - (c) service of skeleton arguments.
 - (6) The Court may dispense with a directions hearing if it is satisfied that—
 - (a) the case should be dealt with as a matter of urgency; or
 - (b) the case may be dealt with justly without a directions hearing.
 - (7) If a date for a directions hearing is set, the Court shall give all parties not less than seven days' notice of the date, time and place of the directions hearing.
 - (8) Notwithstanding sub-rule (7), the Court may, with or without an application, direct that shorter notice be given—
 - (a) if the parties agree; or
 - (b) in urgent cases.
 - (9) Where the Court dispenses with a directions hearing, it may—
 - (a) give directions in writing about the preparation of the case;
 - (b) set a timetable for steps to be taken between the giving of directions and the trial or final determination;
 - (c) fix a date, or period within which the trial or final determination is to take place;
 - (d) give any other directions the Court considers appropriate.
 - (10) The Court may make an order for service of any directions made under this rule on all parties.
 - (11) The general rule is that costs incurred in attending a directions hearing are costs in the case.
 - (12) The Court may make some other order where the directions hearing has to be adjourned due to the failure of one or more parties to—
 - (a) attend the hearing; or
 - (b) co-operate in achieving the objective of the directions hearing.

Determining the case summarily

- 4.5 The Court may determine an application at any first or subsequent hearing if it is not contested, or the Court considers that the case can be dealt with summarily.

Failure to comply.

- 4.6 (1) If a party fails to comply with a rule or a direction, the Court may—
- (a) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
 - (b) exercise any powers to make a costs order; and
 - (c) impose such other sanction as may be appropriate, subject to sub-rule (2).
- (2) An error of procedure or failure to comply with a rule, practice direction or Court order does not invalidate any step taken in the proceedings, unless the Court so orders.

Court's discretion to conduct hearings remotely

- 4.7 (1) The Court may order that any hearing be conducted in whole or in part by means of a telephone conference call, video-conference or any other form of electronic communication.
- (2) The Court may give directions to facilitate the conduct of a hearing by the use of any electronic or digital means of communication or storage or retrieval of information, or any other technology it considers appropriate.

Hearings in chambers or open Court

- 4.8 (1) Save in respect of a directions hearing, the general rule is that, if a hearing is required, it shall be conducted in open Court. The general rule may be dispensed with if it is in the interests of justice to do so.
- (2) Without notice applications shall be heard in chambers.
- (3) Where a hearing is to be conducted without notice—
- (a) the applicant shall provide the Court with a written skeleton argument, prior to commencement of the hearing;
 - (b) if an order is granted, the applicant shall serve the order on any party who was not present;
 - (c) If proceedings at Court have been recorded by electronic means, the Registrar shall, upon the request of a party who was not present at the hearing, take reasonable steps to facilitate access to the recording.

Adjournments or postponements

- 4.9 (1) Where a date has been set for a hearing, an application to postpone the commencement of that hearing beyond that date or to adjourn that hearing shall only be granted in exceptional circumstances.
- (2) An application pursuant to sub-rule (1) shall be made in the Form POCR 4 and be supported by an affidavit which should—
- (a) set out the reason for the application for a postponement or adjournment;

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- (b) set out why the circumstances requiring the postponement or adjournment are exceptional;
 - (c) exhibit any relevant documentation; and
 - (d) contain a chronology of events.
- (2) An application for postponement or adjournment of a hearing shall be filed with the Court and served on all other parties to the hearing at least three days prior to the hearing of the application.
- (4) Failure to comply with sub-rules (2) and (3) shall be determinative of the application against the applicant, unless the applicant can demonstrate good reason for the failure to comply.
- (5) For the purposes of sub-rule (4), an administrative failure on the part of the party will not amount to a good reason.
- (6) A postponement or adjournment shall not be granted for more than twenty-eight days unless there is a good reason for such longer postponement or adjournment.
- (7) Subject to sub-rule (8), a judge may grant a postponement or an adjournment for up to twenty-eight days without hearing representations.
- (8) If a postponement or an adjournment has been granted pursuant to sub-rule (7), a consecutive adjournment may not be granted without hearing representations.

PART 5—Disclosure and Evidence

Applications for disclosure

- 5.1 (1) Where a party wants to request disclosure of any document:
- (a) an application shall be made in the Form POCR 5 and be supported by an affidavit; and
 - (b) Form POCR 5 and the supporting affidavit shall be filed with the Court and served upon the party from whom disclosure is sought.
- (2) The affidavit shall—
- (a) describe the document requested to be disclosed;
 - (b) explain why there is reasonable cause to believe that—
 - (i) the other party has that document, and
 - (ii) it is a document that is directly relevant.
 - (c) ask for a hearing, if the party wants one, and explain why it is needed.
- (3) Upon being satisfied as to service, the Court may determine an application under this rule—
- (a) at a hearing, in open court or in chambers; or

- (b) without a hearing.
- (4) The Court shall not require a party to disclose any document unless the party—
 - (a) is present; or
 - (b) has had at least fourteen days' notice of the application.
- (5) For the purposes of this Part, a document is "directly relevant" only if—
 - (a) the party with control of the document intends to rely on it;
 - (b) it tends to adversely affect that party's case; or
 - (c) it tends to support another party's case.

Power of the Court to control evidence

- 5.2 (1) The Court may control the evidence to be given at any trial or hearing by giving appropriate 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.

Evidence—general rule

- 5.3 (1) The general rule is that, irrespective of whether an affidavit or other document has been prepared in contemplation of proceedings, any fact which needs to be proved by the evidence of witnesses is to be proved—
- (a) at any hearing which makes a final determination affecting rights in property, by their oral evidence given in open court; and
 - (b) at any other hearing, by affidavit.
- (2) The general rule is subject—
- (a) to any provision to the contrary contained in these Rules; and
 - (b) to any order of the Court.

Use of witness statement or affidavit for other purposes

- 5.4 (1) Except as provided by this rule or any other provision of these Rules, a witness statement or affidavit served may be used only for the purpose of the proceedings in which it is served.

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- (2) Sub-rule (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 Court gives permission for some other use; or
 - (c) the witness statement or affidavit has been put in evidence at a hearing held in open court.

Witness Statements

Requirement to serve a witness statement

- 5.5 (1) The Court may order a party to serve on any other party, witness statements, setting out the evidence on which that party intends to rely at the trial or other hearing.
- (2) A party's obligation to serve a witness statement is independent of any other party's obligation to serve such a statement.

Form of witness statement

- 5.6 (1) A witness statement shall—
- (a) give the name, address and occupation of the witness;
 - (b) so far as reasonably practicable, be in the intended witness' own words;
 - (c) sufficiently identify any document or object to which the statement refers without repeating its contents, unless this is necessary in order to identify the document;
 - (d) not include any matters of information or belief which are not admissible and, where admissible, state the source of any matters of information or belief;
 - (e) be dated;
 - (f) be signed or otherwise authenticated by the intended witness; and
 - (g) include a statement by the witness that he/she believes the statements of fact in it to be true.
- (2) The Court may order that any inadmissible, scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement.
- (3) If the person making the witness statement fails to verify the witness statement in the manner prescribed by rule 5.6(1)(g), the Court may direct that it shall not be admissible as evidence.
- (4) Where the person making the witness statement is illiterate or blind, the witness statement shall be made in the presence of a witness, who shall certify that—
- (a) the witness statement was read to the person making the statement in the presence of the witness; and

- (b) the person making the witness statement—
 - (i) appeared to understand it; and
 - (ii) signed the witness statement or made his or her mark in the presence of the witness.

Use at hearing of witness statements which have been served

5.7 (1) Where a party—

- (a) has served a witness statement; and
 - (b) wishes to rely on the evidence of the witness who made the statement, that party shall call the witness to give evidence unless—
 - (i) the parties confirm that the evidence is not contested; or
 - (ii) the evidence is admissible pursuant to any Rule of law or statutory provision.
- (2) Where a witness is called to give oral evidence under sub-rule (1)(b), his witness statement shall stand as evidence in chief unless the Court orders otherwise.
- (3) Where a party who has served a witness statement does not intend to rely upon the evidence of that witness any other party may rely upon the evidence pursuant to sub-rule (1)(b) or as hearsay evidence.

Amplifying witness statements at hearing

5.8 (1) A witness giving oral evidence may, with the permission of the Court —

- (a) amplify the evidence as set out in his or her witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify;
 - (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties; or
 - (c) comment on evidence given by other witnesses.
- (2) The Court will give permission under sub-rule (1) only if it considers that there is good reason not to confine the evidence of the witness to the contents of the witness statement.

Cross-examination on witness statement

- 5.9 Where a witness is called to give evidence, he or she may be cross-examined on the evidence set out in that witness' statement, whether or not the statement or any part of it was referred to during the witness' evidence in chief.

Failure to serve a witness statement

- 5.10 (1) Where a witness statement is not served in respect of an intended witness, within any time period specified by the Court, then, the witness may not be called to give evidence, unless the Court permits.
- (2) The Court may not give permission under sub-rule (1) unless the party requesting permission has a good reason for not having served the witness statement within the time specified.

*Affidavits**Contents of affidavit and cross-examination*

- 5.11 (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.
- (2) Notwithstanding sub-rule (1), an affidavit may contain statements of information and belief, provided that the affidavit indicates—
- (a) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and
 - (b) the source for any matters of information and belief.
- (3) The Court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit.
- (4) An affidavit containing any alteration may not be used in evidence unless all such alterations have been initialled both by the deponent and by the person before whom the affidavit was sworn.
- (5) Whenever an affidavit is to be used in evidence, any party may apply to the court for an order requiring the deponent to attend to be cross-examined.
- (6) Such an application must be made not less than—
- (a) in the case of a trial or final determination, 21 days; or
 - (b) in the case of any other hearing, 7 days, before the date of the hearing at which it is intended to cross-examine the deponent.
- (7) Where the deponent does not attend as required by the court order, the affidavit may not be used as evidence unless the court permits.

Making of affidavit

- 5.12 (1) An affidavit shall—
- (a) be signed by each deponent;
 - (b) be sworn or affirmed by each deponent;
 - (c) be completed and signed by the person before whom the affidavit is sworn or affirmed; and

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- (d) contain the full name of the person before whom it was sworn or affirmed.
 - (2) The statement authenticating the affidavit ("the jurat") shall follow immediately from the text and not be on a separate page.
 - (3) An affidavit shall not be admitted into evidence, if sworn or affirmed before the attorney-at-law of the party on whose behalf it is to be used or before any agent, partner, employee or associate of such attorney-at-law.
 - (4) Where it appears that the deponent is illiterate or blind, the person before whom the affidavit is sworn or affirmed shall certify in the jurat that—
 - (a) the affidavit was read to the deponent by him or her or in his or her presence;
 - (b) the deponent appeared to understand it; and
 - (c) the deponent signed or made his or her mark in his presence.
 - (5) A person may make an affidavit outside the jurisdiction in accordance with—
 - (a) this Part; or
 - (b) the law of the place where the affidavit is made.
 - (6) Subject to section 22(4) of the Judicature (Supreme Court) Act, any affidavit which purports to have been sworn or affirmed in accordance with the law and procedure of any place outside the jurisdiction is presumed to have been so sworn.

Documents to be used in conjunction with affidavit

- 5.13 (1) Any document that is to be used in conjunction with an affidavit shall be exhibited with it.
- (2) Where there are two or more such documents, those documents may be included in a bundle which is in chronological or some other convenient order and is properly paginated.
 - (3) Clearly legible photocopies of original documents may be exhibited, provided that the originals are made available for inspection by other parties before the hearing and by the Court at the hearing.
 - (4) Each exhibit or bundle of exhibits shall be—
 - (a) accurately identified by an endorsement on the exhibit or on a certificate attached to it signed by the person before whom the affidavit is sworn or affirmed; and
 - (b) marked prominently with the exhibit mark referred to in the affidavit.

Expert Evidence

General duty of the Court and parties

5.14 Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings justly.

Expert witness' overriding duty to the Court

5.15 (1) It is the duty of an expert witness to help the Court impartially on the matters relevant to his or her expertise.

(2) This duty overrides any obligations to the person by whom he or she is instructed or paid.

Way in which expert witness' duty to Court is to be carried out.

5.16 (1) Expert evidence presented to the Court shall be, and should be seen to be, the independent product of the expert witness uninfluenced as to form or content by the demands of the litigation.

(2) An expert witness shall provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within the expert witness' expertise.

(3) An expert witness shall state the facts or assumptions upon which his or her opinion is based. The expert witness shall not omit to consider material facts which could detract from his or her concluded view.

(4) An expert witness shall state if a particular matter or issue falls outside his expertise.

(5) Where the opinion of an expert witness is not properly researched, then this shall be stated with an indication that the opinion is no more than a provisional one.

(6) Where the expert witness cannot assert that his report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification shall be stated in the report.

(7) Where, after service of an expert report, an expert witness changes his or her opinion on a material matter, such change of view shall be communicated to all parties.

Expert witness' right to apply to Court for directions

5.17 (1) An expert witness may apply in writing to the Court for directions to assist him in carrying out his—

(a) functions as an expert witness; or

(b) duty to the Court.

(2) Subject to sub-rule (3), an expert witness who applies for directions under sub-rule (1) need not give notice of the application to any party.

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- (3) The Court may direct that—
 - (a) notice of the application be given to any party; or
 - (b) a copy of the application and any directions given, be sent to any party.
 - (4) An application under this rule may be made using form POCR 6.

Court's power to restrict expert evidence

- 5.18 (1) A party shall not call an expert witness or put into evidence an expert witness' report without the Court's permission.
- (2) The general rule is that the Court's permission is to be given at a directions hearing.
 - (3) When a party applies for permission under this rule—
 - (a) that party shall name the expert witness and identify the nature of the expert witness' expertise; and
 - (b) any permission granted shall be in relation to that expert witness only.
 - (4) An application under sub-rule (3) shall be made on Form POCR 6 and shall be supported by affidavit.
 - (5) Oral or written evidence from an expert witness may not be called or put in unless the party wishing to call or put into evidence that evidence has served a report of the evidence which the expert witness intends to give.
 - (6) The Court shall direct by which date such report shall be served.
 - (7) The Court may direct that only part of an expert witness' report may be disclosed.

General requirement for written report

5.19 Expert evidence is to be given in a written report unless the Court directs otherwise.

Written questions to expert witnesses

- 5.20 (1) A party may put written questions to an expert witness instructed by another party or jointly about his report.
- (2) Written questions under sub-rule (1)—
 - (a) may be put once only;
 - (b) shall only be put in order to clarify the report; and
 - (c) shall be put within twenty-eight days of service of that expert witness' report, unless—
 - (i) the Court permits; or
 - (ii) the other party agrees.

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- (3) An expert witness' answers to questions under this rule shall be treated as part of that expert witness' report.
 - (4) Where—
 - (a) a party has put a written question to an expert witness instructed by another party in accordance with this rule; and
 - (b) the expert witness does not answer the question, the Court may make one or more of the following orders, namely, that—
 - (i) the party who instructed the expert witness may not rely on the evidence of the expert witness;
 - (ii) the party may not recover the fees and expenses of the expert witness from any other party; or
 - (iii) the party asking the questions may seek to obtain answers from another expert witness.
 - (5) This rule also applies where evidence from a single expert witness is to be used under rule 5.21.

Court's power to direct evidence by single expert witness

- 5.21 (1) Where two or more parties, (hereinafter referred to as "the instructing parties") wish to submit expert evidence on a particular issue, the Court may direct that expert evidence be given by one expert witness.
- (2) Where the instructing parties cannot agree who should be the expert witness, the Court may—
- (a) select the expert witness from a list prepared or identified by the instructing parties; or
 - (b) direct that the expert witness be selected in such other manner as the Court may direct.
- (3) The Court may vary a direction given under this rule.
- (4) The Court may appoint a single expert witness—
- (a) instead of the parties instructing their own expert witnesses; or
 - (b) to replace an expert witness instructed by the parties.

Instructions to single expert witness

- 5.22 (1) Where the Court gives directions under rule 5.21 for a single expert witness to be used, each instructing party may give instructions to the expert witness.
- (2) When an instructing party gives instructions to the expert witness, that party must, at the same time, send a copy of the instructions to the other instructing parties.

- (3) The Court may give directions about the arrangements for—
 - (a) the payment of the expert witness' fees and expenses; and
 - (b) any inspection, examination or experiments, which the expert witness wishes to carry out.
- (4) The Court may, before an expert witness is instructed—
 - (a) limit the amount that can be paid by way of fees and expenses to the expert witness; and
 - (b) direct that the instructing parties pay that amount into Court in such proportions as may be directed.
- (5) Unless the Court otherwise directs, the instructing parties are jointly and severally liable for the payment of the expert witness' fees and expenses.
- (6) This rule does not affect any decision as to the party who is ultimately to bear the costs of the single expert witness.

Power of Court to direct party to provide an expert report

- 523 (1) Where a party (hereinafter referred to as the "first party") has access to information which is not reasonably available to the other party, the Court may order the first party—
- (a) to arrange for an expert witness to prepare a report on any matter;
 - (b) if appropriate, to arrange for an examination to be carried out in relation to that matter; and
 - (c) to file the report and serve a copy on any other party.
- (2) The Court's powers under this rule may be exercised only on the application of a party.
- (3) An application under sub-rule (2) must:
- (a) be made in the Form POCR 6; and
 - (b) be supported by affidavit, setting out the reasons it is believed that the first party has access to information which is not reasonably available to the applicant.

Expert witness' reports to be addressed to Court

524 An expert witness shall address his or her report to the Court and not to any person from whom the expert witness has received instructions.

Contents of report

- 525 (1) An expert witness' report shall—
- (a) give details of the expert witness' qualifications;

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- (b) give details of any literature or other material which the expert witness has used in making the report;
 - (c) say who carried out any test or experiment which the expert witness has used for the report;
 - (d) give details of the qualifications of the person who carried out any such test or experiment;
 - (e) where there is a range of opinion on the matters dealt within in the report—
 - (i) summarize the range of opinion; and
 - (ii) give reasons for his or her opinion; and
 - (f) contain a summary of the conclusions reached.
 - (2) At the end of an expert witness' report there shall be a statement that the expert witness—
 - (a) understands his duty to the Court as set out in rules 5.15 and 5.16;
 - (b) has complied with that duty;
 - (c) has included all matters within the expert witness' knowledge and area of expertise relevant to the issue on which the expert evidence is given; and
 - (d) has given details in the report of any matters which to his knowledge might affect the validity of the report.
 - (3) The expert witness shall—
 - (a) attach to his/her report copies of—
 - (i) all written instructions given to the expert witness; and
 - (ii) a note of any oral instructions given to the expert witness; and
 - (b) certify that no other instruction than those disclosed have been received by him or her from the party instructing the expert witness, the party's attorney-at-law or any other person acting on behalf of the party.
 - (4) Where an expert report refers to photographs, plans, calculations, survey reports or other similar documents, these shall be provided to the other party at the same time as the service of the report.
 - (5) Where it is not practicable to provide a copy of the documents referred to in sub-rule (4), such documents shall be made available for inspection by the other party or any expert witness instructed by that party within seven days of a request so to do.

Meeting of expert witnesses

- 5.26 (1) The Court may direct a meeting of expert witnesses of like specialty for the purpose of requiring the expert witnesses to—
- (a) identify the issues relevant to their expertise in the proceedings; and
 - (b) where possible, reach agreement on an issue.
- (2) The Court may specify the issues which the expert witnesses shall discuss.
- (3) The contents of the discussion between the expert witnesses shall not be referred to at the trial or final determination unless the parties agree.
- (4) The meeting may take place personally, over the telephone or by any other suitable means.
- (5) After the meeting, the expert witnesses shall prepare for the Court, a statement of—
- (a) any issues within their expertise on which they agree; and
 - (b) any such issues on which they disagree and their reasons for disagreeing.
- (6) Instead of, or in addition to, such statement, the Court may direct that the expert witnesses prepare an agreed statement of the basic 'science' which applies to the matters relevant to their expertise.
- (7) The statement referred to in sub-rule (6) shall be as short as practicable.

Consequence of failure to disclose expert witness' report

- 5.27 (1) A party who fails to comply with a direction to disclose an expert witness' report, may not use the report at the trial or final determination or call the expert witness, unless the Court gives permission, where it is satisfied that—
- (a) there is good reason for non-compliance with the direction; and
 - (b) it is in the interests of justice to give permission.

Use by one party of expert witness' report disclosed by another

- 5.28 Where a party has disclosed an expert report, any other party may use that report as evidence at the trial or final determination.

Appointment of assessor

- 5.29 (1) The Court may, by order, appoint an assessor to—
- (a) assist the Court in understanding technical evidence;
 - (b) provide a written report; or
 - (c) advise the judge at the trial or final determination with regard to evidence of expert witnesses called by the parties.

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- (2) In making an order under sub-rule (1), the Court shall decide—
 - (a) what fee is to be paid to the assessor; and
 - (b) by whom.
 - (3) Sub-rule (2) does not affect any decision as to the party who is ultimately to bear the cost of the assessor.
 - (4) The Court may order any party to deposit at Court a specified sum in respect of the assessor's fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.
 - (5) The assessor shall assist the Court in dealing with a matter in which the assessor has skill and experience.
 - (6) All communications apart from written instructions between the Court and an assessor shall be in open Court.
 - (7) An assessor shall take such part in the proceedings, as the Court may direct, and in particular, the Court may—
 - (a) direct the assessor to prepare a report for the Court on any matter at issue in the proceedings; and
 - (b) direct the assessor to attend the whole or any part of the trial or final determination to advise the Court on any such matter.
 - (8) Before requesting a written report or opinion from an assessor, the Court shall allow the parties to make submissions in respect of the form and content of the questions to be asked.
 - (9) Where the assessor prepares a report for the Court before the trial or final determination has begun—
 - (a) the Court shall send a copy to each of the parties; and
 - (b) the parties may use it at trial or final determination.
 - (10) Before giving judgment, the Court shall provide the parties with the questions asked of, and any opinion given by the assessor and give them an opportunity to make submissions.

Cross-examination of Court Expert

5.30 An expert or an assessor appointed by the Court who gives oral evidence may be cross-examined by any party.

PART 6—*Consent Orders and Judgments*

Consent orders and judgments

- 6.1 (1) This rule applies where—
- (a) all parties agree to the proposed terms of a Court order or to the proposed terms of a variation to an existing Court order; and
 - (b) no other part of these Rules prevents the parties from so agreeing.

- (2) Where a party is a minor or patient, a consent order cannot be made without the approval of the Court.
- (3) This rule does not allow the making of a consent order by which any hearing date fixed by the Court is to be adjourned.
- (4) Where this rule applies, the order shall—
 - (a) be drawn in the terms agreed;
 - (b) be expressed as being “By Consent”;
 - (c) contain an express indication that each party to whom the order relates is aware of the consequences that may follow from agreeing to the terms of the order;
 - (d) be signed by the party or his/her attorney-at-law; and
 - (e) be filed at the Court for sealing.

Enforcement

Enforcement

- 6.2 An order may be enforced against a respondent or any other person affected by it, notwithstanding that service of a copy of the order has not been effected in accordance with these Rules or any other rules, if the Court is satisfied that the person had notice of the order by being present when the order was made.

*PART 7—Rules Applicable Only to Proceedings Relating to Forfeiture
Orders and Pecuniary Penalty Orders Under
Section 5 of the Act*

Requirement for written notice under section 5(11)

- 7.1 (1) This rule applies when the enforcing authority is required to give written notice of an application pursuant to section 5(11) of the Act.
- (2) A notice under section 5(11) of the Act shall be in the Form POCR 7 and shall be filed and served on the defendant and any other person who the enforcing authority has reason to believe may have an interest in the property concerned in the application.

Statements in connection with section 5 proceedings

- 7.2 (1) When the enforcing authority is required, under section 17 of the Act, to give a statement of information to the Court, the enforcing authority shall also, as soon as practicable, serve a copy of the statement on the defendant.
- (2) A statement of information given to the Court by the enforcing authority pursuant to section 17 of the Act must, in addition to the information required by the Act, include—
 - (a) the name of the defendant;

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- (b) the name of the person by whom the statement is made and the date on which it is made; and
 - (c) where the statement of information is not given to the Court immediately after the defendant has been convicted, the date on which and the place where the relevant conviction occurred.
- (3) A defendant who is required to provide a response to a statement of information under section 18 of the Act shall—
- (a) address the response to the statement of information to the enforcing authority; and
 - (b) file a copy of the response to the statement of information to be filed in Court.
- (4) Any statement of information or response under sections 17 or 18 of the Act, shall be provided in the form of an affidavit.

Application for reconsideration

- 7.3 (1) This rule applies where the enforcing authority makes an application under sections 20, 21 or 22 of the Act.
- (2) The application shall be in the Form POCR 8 and be supported by an affidavit. Details of the following shall be given—
- (a) the name of the defendant;
 - (b) the date on which and the place where any relevant forfeiture or pecuniary penalty order was made or varied.
- (3) The application and the supporting affidavit shall be filed in court and served on the defendant at least twenty-one (21) days before the date fixed for the directions hearing.
- (4) The defendant may file an affidavit in response no later than seven (7) days before the date fixed for the directions hearing.

Variation of pecuniary penalty order due to inadequacy of available amount

- 7.4 (1) This rule applies where the defendant or a receiver makes an application under section 23 of the Act for the variation of a pecuniary penalty order.
- (2) Unless otherwise ordered by the Court, the application shall be made on Form POCR 9 and shall be supported by an affidavit.
- (3) The application and the supporting affidavit shall be filed with the Court and be served at least twenty-one (21) days before the date fixed for the directions hearing on the following persons—
- (a) the enforcing authority;
 - (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 under section 41 of the Act.
- (4) The respondent may file an affidavit in response no later than seven (7) days before the date fixed for the directions hearing.
- (5) Where an application is made under sub-rule (1), the Court shall consider whether it is in the interests of justice to make an order pursuant to section 23 of the Act.

Application for a new calculation of available amount

- 7.5 (1) This rule applies where an application is made under section 24 of the Act for a fresh calculation of the available amount by—
- (a) the Assets Recovery Agency;
 - (b) the Director of Public Prosecutions; or
 - (c) a Director's receiver.
- (2) The application shall be made in the Form POCR 10 and be supported by an affidavit.
- (3) The application and the supporting affidavit shall be filed with the Court and be served at least twenty-one (21) days before the date fixed for the directions hearing on—
- (a) the defendant;
 - (b) the receiver, if the application is made by the Assets Recovery Agency or the Director of Public Prosecutions; and
 - (c) the Assets Recovery Agency or the Director of Public Prosecutions, if the application is made by the receiver.
- (4) The respondent may file an affidavit in response no later than seven (7) days before the date fixed by the court for the directions hearing.

Application to discharge a pecuniary penalty order

- 7.6 (1) This rule applies where the enforcing authority makes an application to the Court under section 25 of the Act for the discharge of a pecuniary penalty order.
- (2) The application shall be made without notice and shall be in the Form POCR 11 and be supported by an supporting affidavit, giving details of—
- (a) the pecuniary penalty order;
 - (b) the amount outstanding under the order; and
 - (c) the grounds for the application,
- and shall be considered on paper.
- (3) Where the Court makes an order discharging the pecuniary penalty order, the enforcing authority who made the application shall, at once, serve the order on—
- (a) the defendant; and

- (b) any receiver appointed under section 41 of the Act.

Application for variation of forfeiture or pecuniary penalty order made against absconder

- 7.7 (1) This rule applies where the defendant makes an application under section 28 of the Act for the variation of a forfeiture order or pecuniary penalty order made pursuant to section 5 of the Act made against an absconder.
- (2) The application shall be made in the Form PO CR 9 and shall be supported by an affidavit which shall give details of—
- (a) the forfeiture or pecuniary penalty order made against the absconder under section 5;
 - (b) the circumstances in which the defendant ceased to be an absconder;
 - (c) the defendant's conviction of the offence or offences concerned; and
 - (d) the reason why he believes the amount required to be paid under the forfeiture or pecuniary penalty order was too large.
- (3) The application and the supporting affidavit shall be filed with the Court and be served at least twenty-one (21) days before the date fixed for the directions for hearing the application on the following persons—
- (a) the enforcing authority;
 - (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 under section 41 of the Act.
- (4) The respondent may file an affidavit in response no later than seven (7) days before the date fixed for the directions hearing.

PART 8—Rules Applicable Only to Restraint Proceedings

Applicability of Rules

- 8.1 This Part applies where the Director of Public Prosecutions or the Assets Recovery Agency, makes an application for—
- (a) a restraint order under the Act; or
 - (b) an ancillary order, under section 33(6) of the Act, for the purpose of ensuring that the restraint order is effective.

Application for restraint order or ancillary order

- 8.2 An application for a restraint order or an ancillary order may be made, without notice, if—
- (a) the application is urgent; or
 - (b) there are reasonable grounds to believe that giving notice would cause the dissipation of realizable property which is the subject of the application.

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- (2) An application for a restraint order shall be in the Form POCR 12 and be supported by an affidavit which shall—
 - (a) give the grounds for the application;
 - (b) give full details of the realizable property in respect of which the applicant is seeking the order and specify the person holding the realizable property; and
 - (c) include the proposed terms of the order.
 - (3) An application for an ancillary order shall be in the Form POCR 12 and be supported by an affidavit which shall—
 - (a) give the grounds for, and full details of, the application, including, if appropriate—
 - (i) the identity of any person whom the applicant wants the Court to examine about the extent or whereabouts of realizable property;
 - (ii) a list of the main questions that the applicant wants to ask any such person;
 - (iii) a list of any documents to which the applicant wants to refer such a person; and
 - (b) include the proposed terms of the order.
 - (4) An application for a restraint order and an application for an ancillary order may be made at the same time and may be contained in the same documents.
 - (5) A restraint order or an ancillary order obtained without notice shall state the date, time and place at which the application will be reconsidered on an *inter parties* basis.

Restraint orders and ancillary orders

- 8.3 (1) Unless the Court otherwise directs, orders made under section 33(1) and/or section 33(6) of the Act, have effect until the Court makes an order varying or discharging the particular order.
- (2) The applicant for an order shall—
 - (a) serve the order, application and any affidavit made in support of the application, on the defendant and any person who is prohibited from dealing with realizable property; and
 - (b) serve the order on any person or body that the applicant knows to be affected by the order or its terms.

- (3) The court may include in the restraint order a term that the parties may by agreement vary the terms of the order without further order of the court.
- (4) If the order is varied by agreement pursuant to sub-rule (3), the order must be—
 - (a) drawn in the terms agreed;
 - (b) expressed as being “By Consent”; and
 - (c) signed by each party or his/her attorney-at-law.
- (5) If the order is varied by agreement pursuant to sub-rule (3), a copy of the order shall be filed with the Court for sealing and served on any person who is prohibited from dealing with realizable property by the restraint order and any person or body that the applicant knows to be affected by the order or its terms.

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

- 8.4 (1) This rule applies where a person affected by a restraint order makes an application to the Court under section 34(1)(b) of the Act to discharge or vary the restraint order.
- (2) The application for discharge or variation of a restraint order shall be filed in Court and supported by evidence on affidavit and shall be made—
 - (a) in the case of an application to vary the restraint order in the Form POCR 13; or
 - (b) in the case of an application to discharge the restraint order in the Form POCR 14.
- (3) An application to vary an order to release funds shall be accompanied by a Statement of Financial Position as set out in Form POCR 23 and shall annex copies of documents to support assertions made within the Statement of Financial Position.
- (4) The application and any affidavit shall be served, at least seven days before the date fixed for the directions hearing on—
 - (a) the person who applied for the restraint order; and
 - (b) any person who is prohibited from dealing with realizable property by the restraint order.

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

- 8.5 (1) This rule applies where the applicant for a restraint order makes an application to the Court under section 34(1)(a) of the Act, to vary a restraint order including where the Court has already made a restraint order and the applicant is seeking to vary the order to restrain further realizable property.
- (2) The application may be made without notice if the application is urgent or if there are reasonable grounds to believe that giving notice would cause the dissipation of realizable property which is the subject of the application.

- (3) The application, which shall be made in the Form POCR 13, must be filed in Court and supported by an affidavit which shall—
 - (a) give the grounds for the application;
 - (b) where the application is for the inclusion of further realizable property in a restraint order, give full details of the realizable property in respect of which the applicant is seeking the order and specify the person holding that realizable property; and
 - (c) include the proposed terms of the variation.
- (4) Except where sub-rule (2) applies, the application and affidavit shall be served on the defendant and any person who the applicant seeks to prohibit from dealing with realizable property by the restraint order at least seven days before the date fixed for the directions hearing.
- (5) Where the Court makes an order on an application made under sub-rule (2), the applicant shall—
 - (a) serve the order, application and any affidavit made in support of the application, on the defendant and any person who is prohibited from dealing with realizable property; and
 - (b) serve the order on any person or body that the applicant knows to be affected by the order or its terms.
- (6) Where the Court makes an order on an application made under sub-rule (2), the order shall state the date, time and place at which the application will be reconsidered on an *inter parties* basis.

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

- 8.6 (1) This rule applies where the applicant for a restraint order makes an application under section 34(1)(a) of the Act to discharge a restraint order.
- (2) The application shall be made in the Form POCR 14, shall state the grounds for the application and shall be served on the defendant and any person who is prohibited from dealing with realizable property at least seven days before the date fixed for the directions hearing.
 - (3) If the Court makes an order for the discharge of a restraint order, the applicant must, within seven days of the making of the order, serve copies of the order and the application, on—
 - (a) the defendant;
 - (b) any person who was prohibited from dealing with realizable property by the restraint order; and
 - (c) any other person whom the applicant knows to be affected by the order.

PART 9—*Rules Applicable Only to Director's Receivership Hearings*

Application for appointment of a Director's receiver

- 9.1 (1) This rule applies to an application for the appointment of a Director's receiver under section 41 of the Act and to applications for the contemporaneous conferral of powers upon that Director's receiver under section 42 of the Act.
- (2) Except as provided for in section 42(11) of the Act, the application may be made without notice if—
- (a) the application is urgent; or
 - (b) there are reasonable grounds to believe that giving notice would cause the dissipation of realizable property which is the subject of the application.
- (3) The application shall be made in the Form POCR 15 and be supported by an affidavit which shall—
- (a) give the grounds for the application;
 - (b) give full details of the proposed receiver;
 - (c) give full details of the realizable property in respect of which the applicant is seeking the order and specify the person holding that realizable property; and
 - (d) specify any powers which are sought to be conferred upon the receiver pursuant to section 42 of the Act.
- (4) The application shall also include—
- (a) a copy of the pecuniary penalty order made against the defendant; and
 - (b) the proposed terms of the order.
- (5) The documents referred to in sub-rules (3) and (4) shall be filed and served at least twenty-one days before the date fixed for the directions hearing on—
- (a) the defendant;
 - (b) any person who holds realizable property to which the application relates; and
 - (c) any other person whom the applicant knows to be affected by the application.
- (6) The respondent to the application may file and serve an affidavit in response no later than seven days before the date fixed for the directions hearing.

Application for variation or discharge of the order and applications for directions on the exercise of powers of the Director's receiver

- 9.2 (1) This rule applies where an application is made under section 47(1) and or 48(1) of the Act.

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- (2) The application may be made without notice if—
 - (a) the application is urgent; or
 - (b) there are reasonable grounds to believe that giving notice would cause the dissipation of the property which is the subject of the application.
 - (3) The application may not be made without notice if the application is:
 - (a) for an order to confer the powers mentioned in section 42(2)(b) or (c) of the Act;
 - (b) for an order to exercise the power conferred on it by section 42(9) of the Act;
 - (c) made by a person under section 48(1)(d) of the Act; or
 - (d) made under section 47 of the Act.
 - (4) The application shall be made in the Form POCR 16 and be supported by an affidavit which shall—
 - (a) give the grounds for the application;
 - (b) if the application is to include additional realizable property, give full details of the additional realizable property in respect of which the applicant is seeking the order;
 - (c) specify the person holding that realizable property;
 - (d) if the application is to widen the powers given to a Director's receiver, specify what additional powers are necessary and why they are necessary; and
 - (e) include the proposed terms of the order.
 - (5) The application and supporting affidavit shall be served at least seven days before the date fixed for the directions hearing upon—
 - (a) the defendant, where applicable;
 - (b) the person who applied for the appointment of the receiver, where applicable;
 - (c) the Director's receiver, where applicable; and
 - (d) any other person whom the applicant knows to be affected by the application.
 - (6) Where an application is made under sub-rule (2), there is no requirement to serve the application in accordance with sub-rule (5).
 - (7) The respondent to the application may file and serve an affidavit in response no later than seven days before the date fixed for the directions hearing.

Orders made without notice

- 9.3 (1) Where the Court makes an order under section 41 for the appointment of a Director's receiver or under section 48 to vary the order pursuant to an application in accordance either with rule 9.1 or 9.2—
- (a) any person to whom notice of an application was not given, may apply to the Court to have the order set aside or varied and for the application to be dealt with again; and
 - (b) the person shall file an application with the Court in the Form PO CR 16 no more than seven days after the date on which the order was served on that person.
- (2) An order made on an application without notice shall contain a statement informing that person of the right to make an application under this rule.

Service of the order

- 9.4 (1) Where the Court makes an order under section 41 or under section 48(1)(a), (b) or (c), the applicant shall serve copies of the order and of the affidavit made in support of the application on—
- (a) the defendant;
 - (b) any person who holds realizable property to which the order applies;
 - (c) any other person whom the applicant knows to be affected by the order; and
 - (d) the Director's receiver.

Sums in the hands of receivers

- 9.5 (1) This rule applies where the amount payable under a pecuniary penalty order has been fully paid and there remains an outstanding balance in the hands of a Director's receiver.
- (2) The receiver shall make an application to the Court for directions regarding distribution of the sums in his hands. The application shall be made in the Form PO CR 17 and be supported by an affidavit.
- (3) The application and any evidence which the receiver intends to rely on in support of the application, shall be served at least fourteen days, before the date fixed for the directions hearing unless the Court specifies a shorter period, on—
- (a) the defendant; and
 - (b) any other person who held (or holds) interests in any property realized by the receiver.
- (4) Where property is excluded from a person's estate for the purposes of insolvency or winding up pursuant to Part VII of the Act, the Court may order that any

proportion of that property which was not disposed of during the order for receivership should now be made available to the insolvency practitioner appointed in relation to the insolvency, if the order appointing that practitioner remains in force.

Security

- 9.6 (1) This rule applies where the Court appoints a receiver under section 41 of the Act and the receiver is not a member of staff of a government agency (and it is immaterial whether the receiver is a permanent or temporary member of staff or on secondment from elsewhere).
- (2) The Court may direct that, before the receiver begins to act, or within a specified time, he shall—
- (a) give such security as the Court may direct; or
 - (b) file with the Court and serve on all parties, evidence that he already has in force sufficient security to cover his liability for his acts and omissions as a receiver.
- (3) The Court may terminate the appointment of a receiver if he fails by the date specified by the Court, to—
- (a) give the security; or
 - (b) satisfy the Court as to the security he has in force.

Remuneration

- 9.7 (1) This rule applies where the Court appoints a receiver under section 41 of the Act and the receiver is not a member of staff of a government agency (and it is immaterial whether the receiver is a permanent or temporary member of staff or on secondment from elsewhere).
- (2) The Court shall fix the remuneration payable to the receiver.
- (3) An application relating to remuneration shall be made in the Form POCR 17 and be supported by an affidavit.
- (4) Unless the Court orders otherwise, in determining the remuneration of the receiver, the Court shall award such sum as is reasonable and proportionate in all 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 to 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.
- (5) An order that the receiver be remunerated from funds generated in the receivership shall include an order that in the event that the receivership order or the predicate order that formed the basis for the receivership order is found to be incorrectly made, the costs of remuneration be met instead from the applicant authority.

PART 10—*Rules Applicable only to Civil Recovery in the Supreme Court*

Application for civil recovery

- 10.1 (1) The enforcing authority may make an application for civil recovery which application shall commence by filing of a recovery order claim form in the Form POCR 18, setting out the nature of the claim of the enforcing authority and shall be accompanied by a particulars of claim.
- (2) The recovery order claim form shall—
- (a) specify the property to be subject to the recovery order or describe it in general terms;
 - (b) state whether the property is alleged to be recoverable property or associated property; and
 - (c) state the grounds on which the property is alleged to be recoverable property or associated property.
- (3) The enforcing authority must include in the particulars of claim, a statement of all the facts on which the enforcing authority relies.
- (4) Such statement must be as short as practicable.
- (5) The recovery order claim form must be verified by a certificate of truth.
- (6) The enforcing authority shall identify in, or annex to, the claim form or particulars of claim, any document which the enforcing authority considers to be necessary to the claim.
- (7) The enforcing authority shall serve the claim form and particulars of claim—
- (a) on the respondent; and
 - (b) on any other person who may be affected by the claim.

Acknowledgment of service

- 10.2 (1) The general rule is that the period for filing an acknowledgment of service is the period of fourteen days after the date of service of the claim form.
- (2) A party who wishes to dispute—
- (a) the claim; or
 - (b) the Court's jurisdiction.

shall file at the registry of the Court at which the proceedings were issued, an acknowledgment of service, in the Form POCR 20 containing a notice of intention to defend and serve the acknowledgment of service on the enforcing authority.

- (3) An enforcing authority shall serve copies of any acknowledgement of service on all other parties who have been served with the claim form.
- (4) An acknowledgment of service shall be filed in accordance with rule 2.2.
- (5) An acknowledgment of service has no effect until it is received at the registry.
- (6) An acknowledgment of service need not be filed if a defence is filed and served on the enforcing authority within the period specified in sub-rule (1).
- (7) Where a party fails to file either an acknowledgment of service or a defence, judgment may be entered against that party if rules 10.7 to 10.10 permit it.

Contents of acknowledgment of service

10.3 A party acknowledging service—

- (a) shall state, in the acknowledgment of service, the date on which the party received the claim form;
- (b) may state, in the acknowledgment of service, that all or part of the claim is admitted;
- (c) who admits part of the claim under sub-rule (b), shall state what is admitted.

Response to claim

- 10.4 (1) A party who wishes to defend all or part of a claim shall file a defence, which may be in the Form POCR 21.
- (2) The general rule is that the period for filing a defence is the period of forty-two days after the date of service of the claim.
 - (3) The respondent, on filing a defence, shall also serve a copy on every other party to the proceedings.
 - (4) The defence shall set out all the facts on which the party relies to dispute the claim and shall be verified by a certificate of truth.
 - (5) Such statement shall be as short as practicable.
 - (6) In the defence, the respondent shall say—
 - (a) which (if any) of the allegations in the particulars of claim are admitted;
 - (b) which (if any) are denied; and
 - (c) which (if any) of the allegations in the particulars of claim are neither admitted nor denied, because the respondent does not know whether they are true, and as a result wishes the enforcing authority to prove.

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- (7) Where the respondent denies any of the allegations in the particulars of claim—
- (a) the respondent shall state the reasons for doing so; and
 - (b) if the respondent intends to prove a different version of events from that given by the enforcing authority, the respondent's own version shall be set out in the defence.
- (8) Where, in relation to any allegation in the particulars of claim, the respondent does not—
- (a) admit it; or
 - (b) deny it and put forward a different version of events,
- the respondent shall state the reasons for not admitting or denying the allegation.
- (9) The respondent shall identify in, or annex to, the defence, any document which the respondent considers to be necessary to the defence.
- (10) The parties may agree to extend the period for filing a defence specified in sub-rule (2).
- (11) The parties may not make more than two agreements under sub-rule (10).
- (12) The maximum total extension of time that may be agreed is 56 days.
- (13) The respondent must file details of such an agreement.
- (14) The respondent may apply for an order to extend the time for filing a defence and the application must be supported by an affidavit.

Consequences of not setting out the case

10.5 A party may not rely on any allegation or factual argument which is not set out in their claim form, particulars of claim or defence, but which could have been set out there, unless the Court gives permission for the party to do so.

Reply to defence

10.6 The enforcing authority may file a reply within fourteen days of service of the defence.

Directions hearing

10.7 After the expiration of the fourteen days within which the enforcing authority may file a reply, the Registrar shall set a date for a directions hearing in chambers.

Default judgment arising from failure to file an acknowledgement of service or failure to file a defence

- 10.8 (1) A judge, on the application of the enforcing authority, shall not enter judgment against a respondent for failure to file an acknowledgment of service, unless—
- (a) the enforcing authority proves service of the claim form and any supporting documents required by these Rules;

- (b) the period for filing an acknowledgment of service under rule 8.2(1) has expired;
 - (c) that respondent has not filed—
 - (i) an acknowledgement of service; or
 - (ii) a defence to the claim or any part of it.
- (2) A judge, on the application of the enforcing authority, shall not enter judgment against a respondent for failure to file a defence unless—
- (a) the enforcing authority proves service of the claim form and any supporting documents required by these Rules; or
 - (b) an acknowledgment of service has been filed by the respondent against whom judgment is sought; and
 - (c) that respondent has not—
 - (i) filed a defence within the specified time, to the claim or any part of it; and
 - (ii) there is no pending application for an extension of time to file the defence.
- (3) An application for default judgment shall be made using Form PO CR 22.

Default judgment in an application against more than one respondent

10.9 Where the enforcing authority applies for a default judgment against one of two or more respondents—

- (a) if the application can be dealt with separately from the claim against the other respondent(s)—
 - (i) the Court may enter judgment against that respondent; and
 - (ii) the enforcing authority may continue the proceedings against the other respondent(s); or
- (b) if the application cannot be dealt with separately from the claim against the other respondent(s)—
 - (i) the Court may not enter judgment against that respondent; and
 - (ii) the Court shall deal with the application at the same time as it disposes of the claim against the other respondent(s).

The Nature of default judgement

10.10 Default judgment on an application for civil recovery shall be a judgment—

- (a) that the respondent's property which is subject to the application is recoverable property; and

- (b) that requires that property to be dealt with in accordance with section 58(8) of the Act.

Cases where Court shall set aside default judgment

- 10.11 (1) The Court shall set aside a judgment entered under rule 10.8 or 10.9, if judgment was wrongly entered because—
- (a) in the case of a failure to file an acknowledgment of service, none of the conditions in rule 10.8(1) were satisfied;
 - (b) in the case of judgment for failure to defend, none of the conditions in rule 10.8(2) were satisfied; or
 - (c) the whole of the claim was satisfied before judgment was entered.
- (2) The Court may set aside judgment under this rule with or without an application being made to the Court.

Cases where Court may set aside or vary default judgment.

- 10.12 (1) The Court may set aside or vary a judgment entered under rule 10.8 or 10.9, if the respondent has a real prospect of successfully defending the application.
- (2) In considering whether to set aside or vary a judgment under this rule, the Court shall consider whether the respondent has—
- (a) applied to the Court as soon as reasonably practicable after finding out that judgment has been entered.
 - (b) given a good explanation for the failure to file an acknowledgement of service or a defence, as the case may be.
- (3) Where this rule gives the Court power to set aside a judgment, the Court may, instead, vary the judgment.

Applications to vary or set aside judgment—procedure

- 10.13 (1) An application may be made by any person who is directly affected by the entry of the default judgment.
- (2) The application shall be made in the Form POCR 22 and shall be supported by an affidavit.
- (3) The affidavit shall exhibit a draft of the proposed defence.

Court to impose condition as to filing of defence

- 10.14 Where judgment is set aside under rule 10.12, the general rule is that the order shall be conditional upon the respondent filing and serving a defence by a specified date.

Hearing to be treated as directions hearing

- 10.15 (1) When judgment is set aside under rule 10.12, the Court shall treat the hearing as a directions hearing, unless it is not possible to deal with the matter justly at that time.
- (2) Where it is not possible to deal with the matter justly at that time, the registry shall fix a date, time and place for a directions hearing and give notice to the parties.

Application for an interim receiving order

- 10.16 (1) This rule applies to an application for an interim receiving order under section 58(9) of the Act and the Regulations.
- (2) The application may be made, without notice, if the circumstances are such that notice of the application would prejudice any right of the enforcing authority to obtain a recovery order in respect of the property.
- (3) The application shall be made in the Form POCR 15 and be supported by an affidavit which shall—
- (a) give the grounds for the application;
 - (b) give full details of the proposed interim receiver;
 - (c) give full details of the property in respect of which the applicant is seeking the order and specify the person holding that property; and
 - (d) specify any powers which are sought to be conferred upon the receiver pursuant to regulation 7 of the Regulations.

Application for variation of the order to include additional assets in an interim receiving order or to grant additional powers to the interim receiver

- 10.17 (1) This rule applies to an application under regulation 9 of the Regulations for directions or variation of an interim receivership order.
- (2) The application shall be made in the Form POCR 17 and be supported by an affidavit which shall—
- (a) give the grounds for the application;
 - (b) if the application is to include additional property, give full details of the additional property in respect of which the applicant is seeking the order and specify the person holding that property;
 - (c) if the application is to widen the powers given to an interim receiver, state the additional powers that are necessary and give reasons as to why they are necessary;
 - (d) include the proposed terms of the order.

-
-
- (3) The documents referred to in sub-rule (2) shall be filed with the Court and served at least twenty-one days before the date fixed for the directions hearing upon—
 - (a) the respondent;
 - (b) any person who holds property to which the application relates; and
 - (c) any other person whom the applicant knows to be affected by the application.
 - (4) The respondent and any person served with the application may file and serve an affidavit in response no later than seven days before the date fixed for the directions hearing.

Reasonable expenses

- 10.18 (1) This rule applies to an application under regulation 10 of the Regulations, for an exclusion from an interim receiving order to meet reasonable expenses.
- (2) An application to vary an order to release funds for reasonable expenses shall—
 - (a) be made in the Form POCR 16;
 - (b) be supported by a schedule of income and outgoings which shall be in the Form POCR 23; and
 - (c) include copies of documents to support assertions made within that schedule.

Compensation

- 10.19 (1) An application for compensation pursuant to section 69 of the Act is to be treated as ancillary to an existing civil recovery or interim application and need not be commenced as a new claim.
- (2) Upon receipt of the application for compensation, the Registrar shall set a date for a directions hearing in Chambers.
- (3) The application shall be filed at Court and made in the Form POCR 20, supported by an affidavit, setting out—
 - (a) the nature and amount of the loss for which compensation is sought;
 - (b) why it is reasonable, having regard to all of the circumstances, to compensate the applicant for that loss; and
 - (c) the steps taken by the applicant to mitigate their loss.
- (4) Any application pursuant to this rule should be served upon the enforcing authority from whom compensation is sought twenty-one days before the date fixed for the directions hearing.
- (5) If an application is served pursuant to this rule, the enforcing authority may, within seven days of receipt of the application, serve an affidavit in response.

PART 11—*Costs**Orders about costs*

- 11.1 The Court's powers to make orders in relation to costs, include the power to make orders requiring any person or party to pay the costs of another person or party arising out of or related to all or any part of any proceedings.

Entitlement to recover costs

- 11.2 A party or person may not recover the costs of proceedings from any other party or person except by virtue of—
- (a) an order of the Court; or
 - (b) an agreement.

General rule as to costs

- 11.3 (1) If the Court decides to make an order in relation to costs of any proceedings, the general rule is that, it shall order the unsuccessful party to pay the costs of the successful party.
- (2) The Court may, however, order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs.
- (3) When deciding whether to award costs against an unsuccessful applicant, the Court shall take into account whether the application was reasonably bought.

General costs considerations

- 11.4 (1) In deciding whether to make an order relating to costs against an applicant, in particular, the Court shall have regard as to whether it was reasonable for the applicant—
- (a) to pursue a particular allegation; or
 - (b) to raise a particular issue;
- (2) In deciding who should be liable to pay costs, the Court may have regard to—
- (a) the conduct of the parties both before and during the proceedings;
 - (b) whether a party has succeeded on a particular issue, even if that party has not been successful in the whole of the proceedings;
 - (c) whether it was reasonable for a party—
 - (i) to pursue a particular allegation; or
 - (ii) to raise a particular issue;
 - (d) the manner in which a party has pursued—
 - (i) that party's case;

- (ii) a particular allegation; or
- (iii) particular issue.

Two or more parties having the same interest

11.5 Where two or more parties having the same interest in relation to proceedings are separately represented, the Court may disallow more than one set of costs.

Duty of attorney-at-law to notify client

11.6 Where—

- (a) the Court makes a costs order against a legally represented party; and
- (b) the party is not present when the order is made,

that party's attorney-at-law must notify his or her client in writing of the costs order no later than 7 days after the attorney receives notice of the order.

Costs against person who is not a party

11.7 (1) This rule applies where—

- (a) an application is made for; or
- (b) the Court is considering whether to make an order that a person who is not a party to the proceedings nor the attorney-at-law to a party should pay the costs of some other person.

(2) An application by a party shall be made on notice to the person against whom the costs order is sought. The application shall be—

- (a) made in the Form POCR 24; and
- (b) supported by an affidavit.

(3) Where the Court considers making an order relating to costs against a person, it shall give that person notice of the fact that it is minded to make such an order.

(4) A notice under sub-rule (2) or (3) shall state—

- (a) the grounds of the application or on which the Court is minded to make the order; and
- (b) the date, time and place at which that person may attend to show cause why the order should not be made.

(5) The—

- (a) registry, in the case of sub-rule (3); or
- (b) party seeking the order under sub-rule (2),

shall serve the notice on the person against whom the costs order is sought and all parties to the proceedings not less than fourteen days before the date fixed for hearing the application.

Wasted costs orders

- 11.8 Where permitted by statute or other authority, in any proceedings, the Court may order that the whole or part of any wasted costs—
- (a) be disallowed, as against the attorney-at-law's client; or
 - (b) be paid by the attorney-at-law.

Wasted costs orders—procedure

- 11.9 (1) This rule applies where—
- (a) an application is made for; or
 - (b) the Court is considering whether to make, without an application, an order under rule 11.8.
- (2) An application by a party shall be—
- (a) on notice to the attorney-at-law against whom the wasted costs order is sought; and
 - (b) made in the Form POCR 7 and supported by evidence on affidavit setting out the grounds on which the application is made.
- (3) If the Court is considering making such an order without an application, it shall give the attorney-at-law notice of the fact that it is minded to make such an order.
- (4) A notice under sub-rule (3) shall state the grounds on which the Court is minded to make the order.
- (5) A notice under sub-rule (2) or (3) shall state a date, time and place at which the attorney-at-law may attend to show cause why a wasted costs order should not be made.
- (6) Fourteen days (14) notice of the hearing shall be given to the attorney-at-law against whom the wasted costs order is sought and all parties to the proceedings.

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Forms

<u>Form Service</u>	<u>Nature of Application</u>	<u>Rule</u>
POCR 1	Application to permit service upon a minor or patient	2.8(3)
POCR 2	Application for Service by an Alternative Specified Method including—	
	(a) application to serve by a method other than those specified in rules 9-11;	2.12(2)
	(b) application to serve out of Jamaica by means of electronic communication;	2.15(3)
	(c) application to serve on the agent of a principal who is out of Jamaica	2.16(3)
POCR 3	Application to serve out of Jamaica on a person whose location is unknown	2.14(2)
<i>Postponement or Adjournment of Proceedings</i>		
POCR 4	Application to postpone or to adjourn proceedings	4.9(2)
<i>Applications for Disclosure</i>		
POCR 5	Application for an Order to Disclose Material	5.1(1)
<i>Applications re Expert Evidence</i>		
POCR 6	(a) application for directions;	5.17(4)
	(b) application to use expert evidence;	5.18(4)
	(c) application to direct another party to produce an expert report	5.23(3)
<i>Applications relating to Pecuniary Penalty Orders and Forfeiture Orders (s5)</i>		
POCR 7	Notice of Application for an order under s5 of the POCA	7.1(2) 11.9(2)
POCR 8	Application for reconsideration of benefit (00-22)	7.3(2)
POCR 9	Application to vary an order made under s5, including—	
	(a) application for variation of a pecuniary penalty order by a defendant or a receiver (s23);	7.4(2)

<i>Forms, contd.</i>		
<u>Form Service</u>	<u>Nature of Application</u>	<u>Rule</u>
	(b) application for variation of an order made pursuant to s5 against an absconder (s28)	7.7(2)
POCR 10	Application to increase the available amount (s24)	7.5(2)
POCR 11	Application to discharge a pecuniary penalty order (s25)	7.6(2)
<i>Applications Relating to Restraint Proceedings</i>		
POCR 12	Application for a restraint order or ancillary order	8.2(2)
POCR 13	Application to vary a restraint order, including—	
	(a) application to vary a restraint order by a person affected by the order;	8.4(2)(a)
	(b) application to restrain further assets by the person who applied for the order	8.5(3)
POCR 14	Application to discharge a restraint order, including—	
	(a) application to discharge a restraint order by a person affected by the order;	8.4(2)(b)
	(b) application to discharge of the restraint order by the person who applied for the order	8.6(2)
<i>Applications relating to Receivership Hearings</i>		
POCR 15	Application for the appointment of Receiver, including—	
	(a) application for the appointment of a director's receiver;	9.1(3)
	(b) application for the appointment of an interim receiver	10.16(3)
POCR 16	Application to vary or discharge a receivership order, including—	9.2
	(a) application to include additional assets or to grant additional powers;	9.2(4) 10.18(2)
	(b) application to vary or discharge by a person affected by the order	9.1(3)(b)
POCR 17	Application for receivership directions, including applications for directions as to—	
	(a) the exercise of powers by the receiver;	9.2(2)

<i>Forms, contd.</i>		
<u>Form Service</u>	<u>Nature of Application</u>	<u>Rule</u>
	(b) the distribution of sums in the hands of a director's receiver;	9.5(2)
	(c) the remuneration of the receiver.	9.7(3)
<i>Applications relating to Civil Recovery</i>		
POCR 18	Recovery Order Claim Form	10.1(1) 10.17(2)
<i>Applications relating to Compensation arising out of Civil Recovery proceedings</i>		
POCR 19	Application for Compensation, including compensation arising out of an application for civil recovery	10.19(3)
<i>Responding to an Application for Civil Recovery Proceedings</i>		
POCR 20	Acknowledgement of Service	10.2(2) 10.3 10.19(3)
<i>Nature of Application</i>		
POCR 21	Defence	10.4(1)
POCR 22	Application relating to default judgment, including—	
	(a) application for default judgment	10.8(3)
	(b) application set aside default judgment	10.13(2)
<i>Statement of Financial Position</i>		
POCR 23	Statement of financial position	8.4(3), 10.18(2)(b) 10.1
<i>Costs</i>		
POCR 24	(a) costs against a person who is not a party to proceedings;	11.7(2)
	(b) wasted costs	11.9(2)(b)

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Application to Permit Service upon a Minor or Patient (or Upon an Alternative Person

Connected to that Minor or Patient) Form PO CR 1 [2.8(3)]

Claim No.

Application No.

BETWEEN

AND

The applicant [insert details] _____
hereby applies to serve an application upon a minor, patient or person not specified in rule 2.7 or 2.8.

1. The application to be served is: _____
2. It is intended to serve that application upon: _____
3. The person named at question 2 is (delete as applicable):
 - (a) a minor;
 - (b) a patient; or
 - (c) another person not specified by rule 2.7 or 2.8; namely _____
[State nature of the individual upon whom it is intended to serve the application]
4. The person named at question 2 is a suitable person upon whom to serve the application for the reasons set out in the affidavit accompanying this application.
5. This application is made (delete as applicable):
 - (a) with notice;
 - (b) without notice for the reasons set out in the affidavit annexed hereto.

This application will be heard by a [Judge in Chambers/In open Court] [Registrar] on the _____ day of _____ 20____ at the Supreme Court, King Street, Kingston at _____ in the morning/ afternoon at _____ or at _____ in the morning/afternoon at _____. If you do not attend this hearing either personally or by an Attorney-at-Law an order may be made in your absence.

6. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice].

Dated the _____ day of 20____ .

Applicant's/Applicant's Attorney-at-Law's signature

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application)

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Application for Service by an Alternative Specified Method

Form PO CR 2 [Rules 2.12(2); 2.15(3); 2.16(3)]

Claim No.

Application No.

BETWEEN

AND

1. The Applicant [insert details] _____ hereby applies for permission to serve documents/an application (delete as applicable):

- (a) by a method other than those set out in rules 2.4-2.8;
- (b) by electronic communication outside of Jamaica; or
- (c) upon an agent of a principal who is outside of Jamaica.

2. The method of service proposed is:

3. For the reasons set out in the affidavit accompanying this application, the proposed method of service is likely to enable the person to be served to ascertain the contents of the material which is subject to the application.

4. This application is made (delete as applicable):

- (a) with notice;
- (b) without notice for the reasons set out in the affidavit annexed hereto.

This application will be heard by a [Judge in Chambers/In open Court] [Registrar] on the _____ day of _____ 20 at the Supreme Court, King Street, Kingston at _____ in the morning/afternoon at _____ or at _____ in the morning/afternoon at _____. If you do not attend this hearing either personally or by an attorney-at-Law an order may be made in your absence.

5. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice]

Dated the _____ day of _____ 20 .

Applicant's/Applicant's Attorney-at-Law's signature _____

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application)

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Application to Serve out of Jamaica on a Person Whose Location is Unknown

Form POCR 3 [Rule 2.14(2)]

Claim No.

Application No.

BETWEEN

AND

The Applicant [insert details] _____ hereby applies to serve an application out of Jamaica upon a person whose location is unknown.

1. The person who is out of Jamaica is:
2. That person may probably be found in the following country:
3. That person may probably be found at the following place in that country:

4. The grounds on which it is believed that there is a serious issue to be tried between the applicant and the person who is out of Jamaica are set out in the affidavit accompanying this application.

5. This application is made (delete as applicable):

- (a) with notice;
- (b) without notice for the reasons set out in the affidavit annexed hereto.

This application will be heard by a [Judge in Chambers/In open Court] [Registrar] on the _____ day of _____ 20____ at the Supreme Court, King Street, Kingston at _____ in the morning/afternoon at _____ or at _____. If you do not attend this hearing either personally or by an attorney-at-Law an order may be made in your absence.

6. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice].

Dated the _____ day of _____ 20____.

Applicant's/Applicant's Attorney-at-Law's signature _____

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application)

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Application to Postpone or to adjourn Proceedings

Form POCR 4 [Rule 4.9(2)]

Claim No.

Application No.

BETWEEN

AND

1. This is an application by [insert details]
2. The application is (delete as applicable):
 - (a) to postpone the commencement of a hearing; or
 - (b) to adjourn a hearing

on the following grounds (set out briefly):

- 3. The hearing is currently scheduled to take place on [insert date]
- 4. It is proposed that the postponement/adjournment is for (delete as applicable):
 - (a) fewer than 28 days; or
 - (b) more than 28 days

5. The affidavit accompanying this application contains the required chronology and sets out the exceptional circumstances that require the postponement/adjournment of the hearing.

This application will be heard by a [Judge in Chambers/In open Court] [Registrar] on the _____ day of _____ 20____ at the Supreme Court, King Street, Kingston at _____ in the morning/afternoon at _____ or at _____ in the morning/afternoon at _____. If you do not attend this hearing either personally or by an attorney-at-Law an order may be made in your absence.

6. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice].

Dated the _____ day of _____ 20 .

Applicant's/Applicant's Attorney-at-Law's signature _____

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application)

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Application for an Order to Disclose Material

Form POCR 5 [Rule 5.1(1)]

Claim No. _____

Application No. _____

BETWEEN

AND

1. This is an application by [insert details]

2. The Applicant hereby applies for an order to disclose the material described in the affidavit accompanying this application.

3. There is reasonable cause to believe that the material is in the possession of _____

4. That party named in the paragraph above should be required to disclose the material for the reasons set out in the affidavit accompanying this application.

5. For the reasons set out in the affidavit accompanying this application, the applicant submits that (delete as applicable):

- (a) a hearing is required; and it is requested that the hearing be in public/in private; or
- (b) a hearing is not required.

This application will be heard by a [Judge in Chambers/In open Court] [Registrar] on the _____ day of _____ 20____ at the Supreme Court, King Street, Kingston at _____ in the morning/afternoon at _____ or at _____ in the morning/afternoon at _____. If you do not attend this hearing either personally or by an attorney-at-Law an order may be made in your absence.

6. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice].

Dated the _____ day of _____ 20____.

Applicant's/Applicant's Attorney-at-Law's signature _____

NOTICE TO THE RESPONDENT(S):

You have the right to make written representations within fourteen (14) days of being served with this application (see rule 5.1(4)(b)).

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application)

NB:

This application and accompanying affidavit must be served as quickly as possible on the respondent(s) to the application (see rule 5.2(b)).

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application)

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Application in Relation to Expert Witness Evidence

Form POCR 6 [Rules 5.17(4); 5.18(4); 5.23(3)]

Claim No.

Application No.

BETWEEN

AND

1. This is an application by [insert details].

2. The applicant hereby applies—

(a) to use expert evidence — [tick box as appropriate]

(i) namely the evidence of [insert details]

(ii) the area of expertise of the person named in question 2 is [insert details]

(iii) the reasons why expert evidence is necessary are set out below/in the affidavit accompanying this application (delete as applicable).

(b) to direct that another party — namely [insert details]

(i) arranges for an expert witness to prepare a report;

(ii) arranges for an examination to be carried out;

(iii) files the report and serves a copy on any other party.

The reasons why it is believed that the party named in item 2(b) has access to information which is not reasonably available to the applicant are set out in the affidavit accompanying this application.

(c) for directions to assist the expert in carrying out his or her functions as an expert witness or his or her duty to the court—

The nature of the directions sought are set out below/in the affidavit accompanying this application (delete as applicable).

This application will be heard by a [Judge in Chambers/In open Court] [Registrar] on the _____ day of _____ 20 _____ at the Supreme Court, King Street, Kingston at _____ in the morning/afternoon at _____ or at _____ in the morning/afternoon at _____. If you do not attend this hearing either personally or by an Attorney-at-Law an order may be made in your absence.

3. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice].

Dated the _____ day of _____ 20 _____

Applicant's/Applicant's Attorney-at-Law's signature _____

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application)

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Notice of Application for an Order under Section 5 of the Proceeds of Crime Act

Form PO CR 7 [Rule 7.1(2)] 11.9(2)

Claim No.

Application No.

BETWEEN

ENFORCING AUTHORITY

AND

DEFENDANT

TAKE NOTICE THAT THE ENFORCING AUTHORITY HEREBY APPLIES FOR AN ORDER UNDER SECTION 5 OF THE PROCEEDS OF CRIME ACT

1. On the _____ day of _____ 20 _____ the defendant was convicted—

(a) before:

(b) for the following offences:

2. The defendant has/has not been subject to a committal under s52 of the Act.

3. The Enforcing Authority hereby applies for:

- (a) a pecuniary penalty order against the Defendant; or
- (b) a forfeiture order relating to property, namely:

4. A directions hearing in relation to the application will take place:

on the _____ day of _____ 20____ at the Supreme Court, King Street, Kingston at _____ in the morning/afternoon at _____ or at _____ in the morning/afternoon at _____. If you do not attend this hearing either personally or by an attorney-at-Law an order may be made in your absence.

5. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice].

Dated the _____ day of _____ 20____ .

Enforcing Authority's/Enforcing Authority's Attorney-at-Law's signature _____

NOTE TO THE RECIPIENT

1. Take note that the court is being asked to consider making an order which will either:
 - (a) in the case of a pecuniary penalty order, require the defendant to pay a sum of money which is the equivalent to his or her benefit from crime; or
 - (b) in the case of a forfeiture order, require that property be forfeited where it represents a benefit from criminal conduct, or where it has been used in connection with an offence.
2. The application is being brought by the Enforcing Authority set out at the top of the notice.
3. Details about a hearing have been set out at part 4 of the notice. If you wish to contest the order then you should attend court.

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application).

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2020

Application for Reconsideration of Benefit

Form POCR 8 [Rule 7.3(2)]

Case/Claim No.

Application No.

BETWEEN

AND

1. This is an application by [insert details].
2. The application is for reconsideration of a pecuniary penalty/forfeiture order (delete as applicable)—
 - (a) Where a s5 order was not previously considered in the case and no consideration was previously given by the court to making an order (s20 POCA); or
 - (b) Where a s5 order was previously considered in the case and
 - (i) no order was made (s21 POCA); or
 - (ii) an order was made (s22 POCA);
3. The decision subject to an application under section 21 POCA or section 22 POCA was made:
 - (a) by
 - (b) on the day of 20
4. The defendant was convicted by [insert details]
On the day of 20
5. The application is made on the following grounds (set out briefly):
6. The affidavit accompanying this application contains the evidence in support of the application.

This application will be heard by a [Judge in Chambers/In open Court] [Registrar] on the _____ day of _____ 20 at the Supreme Court, King Street, Kingston at _____ in the morning/ afternoon at _____ or at _____ in the morning/afternoon at _____. If you do not attend this hearing either personally or by an Attorney-at-Law an order may be made in your absence.

7. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice].

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application)

Dated the _____ day of _____ 20 .

Applicant's/Applicant's Attorney-at-Law's signature _____

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Application to Vary an Order made under S5

Form POCR 9 [Rules 7.4(2); 7.7(2)]

Claim No.

Application No.

BETWEEN

AND

1. This is an application by [insert details] _____
2. The application is to (delete as applicable)—
 - (a) remove assets from a forfeiture order; or
 - (b) vary the amount to be required to be paid under a pecuniary penalty order.
3. The order was made against the defendant on [insert date] _____

4. The defendant (tick as applicable):

Either

- (a) hereby applies for reconsideration of the order on the basis that the defendant does not have sufficient assets to satisfy the order as it was originally made (s23)—
- (i) the application is made on the following grounds (set out briefly):
 - (ii) the affidavit accompanying this application contains the evidence in support of the application.

Or

- (b) was treated as an absconder when the order was made and now contends that the order was incorrectly made. The defendant hereby applies for reconsideration of the order on the basis that it was incorrectly made (328).
- (i) the application is made on the following grounds (set out briefly);
 - (ii) the affidavit accompanying this application contains the evidence in support of the application.

This application will be heard by a [Judge in Chambers/In open Court] [Registrar] on the _____ day of _____ 20 at the Supreme Court, King Street, Kingston at _____ in the morning/afternoon at _____ or at _____ in the morning/afternoon at _____. If you do not attend this hearing either personally or by an Attorney-at-Law an order may be made in your absence.

5. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice].

Dated the _____ day of _____ 20 .

Applicant's/Applicant's Attorney-at-Law's signature _____

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application).

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Application to Increase the Available Amount

Form POCR 10 [Rules 7.5(2)]

Claim No. []

Application No. []

BETWEEN

AND

1. This is an application by [insert details]

2. On the _____ day of 20____, the defendant was granted an order pursuant to s23 of the Act by [insert details].

3. The order referred to in paragraph 2 set the amount available to the defendant to satisfy a pecuniary penalty order at \$ [insert amount].

4. An application is hereby made to increase that available amount.

5. The application is made on the following grounds (set out briefly):

6. The affidavit accompanying this application contains the evidence in support of the application.

This application will be heard by a [Judge in Chambers/In open Court] [Registrar] on the _____ day of _____ 20____ at the Supreme Court, King Street, Kingston at _____ in the morning/ afternoon at _____ or at _____ in the morning/afternoon at _____. If you do not attend this hearing either personally or by an Attorney-at-Law an order may be made in your absence.

7. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice].

Dated the _____ day of _____ 20____.

Applicant/Applicant's Attorney-at-Law's signature _____

NOTE TO THE RECIPIENT

The Enforcing Authority is making an application to the court to increase the amount that you have to pay under a pecuniary penalty order. The court has the power to do this under section 24 of the Proceeds of Crime Act 2007. You may want to take legal advice about this application.

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application).

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Application to Discharge a Pecuniary Penalty Order

Form POCR 11 [Rule 7.6(2)]

Claim No. _____

Application No. _____

BETWEEN

AND

1. This is an application by [insert details] _____
2. The application is to discharge the pecuniary penalty order made against the defendant on the day of 20 [insert date]
3. The pecuniary penalty order was made by [insert details] _____
4. The amount outstanding under the order is \$ [insert sum] _____
5. The application is made on the following grounds (set out briefly):
6. The affidavit accompanying this application contains the evidence in support of the application.

This application will be heard by a [Judge in Chambers/In open Court] [Registrar] on the _____ day of _____ 20____ at the Supreme Court, King Street, Kingston at _____ in the morning/ afternoon at _____ or at _____ in the morning/afternoon at _____. If you do not attend this hearing either personally or by an Attorney-at-Law an order may be made in your absence.

7. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice]

Dated the _____ day of _____ 20 .

Applicant/Applicant's Attorney-at-Law's signature _____

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application)

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Application for a Restraint Order or Ancillary Order

Form POCR 12 [Rule 8.2 (2)]

Claim No. []

Application No. []

BETWEEN

AND

1. This is an application by [insert details] _____

2. This application is for (tick as appropriate):

(a) a restraint order;

To the best of the applicant's ability full details of the realizable property in respect of which the order is sought and the person holding that realizable property are set out in the affidavit accompanying this application. The proposed terms of the order have also been set out;

(b) ancillary orders (s33(6)), namely [insert] _____

Full details of the application for the ancillary orders have been set out in the affidavit accompanying this application. The proposed terms of the order have also been set out.

3. This application is made (delete as applicable):

(a) with notice; or

(b) without notice because (delete as applicable)—

(i) the application is urgent; and/or

(ii) there are reasonable grounds for believing that giving notice would cause the dissipation of realizable property which is the subject of the application.

4. The application is made on the following grounds (set out briefly):

5. The affidavit accompanying this application contains the evidence in support of the application.

This application will be heard by a [Judge in Chambers/In open Court] [Registrar] on the _____ day of _____ 20 at the Supreme Court, King Street, Kingston at _____ in the morning/ afternoon at _____ or at _____ in the morning/afternoon at _____. If you do not attend this hearing either personally or by an Attorney-at-Law an order may be made in your absence.

6. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice]

Dated the _____ day of _____ 20 .

Applicant's/Applicant's Attorney-at-Law's signature _____

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application).

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2021

Application to Vary a Restraint Order

Form POCR 13 [Rules 8.4(2)(a); 8.5(3)]

Claim No.

Application No.

BETWEEN

AND

1. This is an application by [insert details] _____
2. The application is to vary the restraint order made:
 - (a) against [insert name]
 - (b) on the _____ day of _____ 20 _____ [insert date]
 - (c) by [insert details of person who made the order].
3. The variation sought is:
 - (a) to allow for reasonable expenses for (delete as appropriate):
 - (i) living;
 - (ii) legal;
 - (iii) business expenses;
 - (b) to remove assets from the order;
 - (c) to restrain further realizable property. This application is made (delete as applicable):
 - (i) with notice; or
 - (ii) without notice because (delete as applicable)—
 - (A) the application is urgent; and/or
 - (B) there are reasonable grounds for believing that giving notice would cause the dissipation of realizable property which is the subject of the application.
 - (d) a variation other than those variations mentioned in (a)-(c), please specify [give a brief explanation]

4. The application is made on the following grounds (set out briefly):
5. The affidavit accompanying this application contains the evidence in support of the application.

This application will be heard by a [Judge in Chambers/In open Court] [Registrar] on the _____ day of _____ 20 _____ at the Supreme Court, King Street, Kingston at _____ in the morning/ afternoon at _____ or at _____ in the morning/afternoon at _____. If you do not attend this hearing either personally or by an Attorney-at-Law an order may be made in your absence.

6. Notice of this application is being given to the following person(s):

[List the name and address for service of each respondent except in circumstances where the application is permitted without giving notice]

Dated the day of 20 .

Applicant/Applicant's Attorney-at-Law signature _____

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application).

THE JUDICATURE (SUPREME COURT) ACT

THE PROCEEDS OF CRIME ACT

THE JUDICATURE (SUPREME COURT) (PROCEEDS OF CRIME) RULES, 2020

Application to Discharge a Restraint Order

Form POCR 14 [Rules 8.6(2)](b); 8.6(2)]

Claim No.

Application No.

BETWEEN

AND

1. This is an application by [insert details] _____
2. The application is to discharge the restraint order made:
 - (a) against [insert name] _____
 - (b) on the day of 20 . [insert date]
 - (c) by _____ [insert details of person who made the order]
3. The person named in item 1 is (tick as appropriate)—
 - (a) a person affected by the order.

Full details of the application are set out in the affidavit annexed hereto. This application (delete as applicable):