

## 94<sup>th</sup> UPDATE – PRACTICE DIRECTION AMENDMENTS

The amendments to the existing Practice Directions supplementing the Civil Procedure Rules 1998 are made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by Lucy Frazer QC MP, Parliamentary Under-Secretary of State for Justice, by the authority of the Lord Chancellor.

With the exception of the amendments to Practice Direction 75, which come into force on 1 April 2018, the amendments to the following Practice Directions come into force the day after the date upon which this instrument is signed by the Parliamentary Under Secretary of State for Justice
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Practice Direction 8A – Alternative Procedure for Claims
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Practice Direction 59 – Circuit Commercial Court
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Practice Direction 60 – Technology and Construction Court
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Practice Direction 66 – Crown Proceedings
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Practice Direction 75 – Traffic Enforcement
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Practice Direction – Civil Recovery Proceedings
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Practice Direction – Business and Property Courts
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The Right Honourable Sir Terence Etherton  
Master of the Rolls and Head of Civil Justice

Date: 30 January 2018

Signed by authority of the Lord Chancellor:

Lucy Frazer QC MP  
Parliamentary Under Secretary of State for Justice  
Ministry of Justice

Date: 6 February 2018

## PRACTICE DIRECTION 8A – ALTERNATIVE PROCEDURE FOR CLAIMS

- 1) In the Table of Contents, after the entry for Proceedings under the Drug Dealing Telecommunication Restriction Orders Regulations 2017 insert—

“Proceedings under the Proceeds of Crime Act 2002 and the Anti-terrorism, Crime and Security Act 2001	Para. 25.1”.
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- 2) In Section B, in the table below paragraph 9.4, after the entry for Proceedings under the Drug Dealing Telecommunication Restriction Orders Regulations 2017 insert—

“Proceedings transferred to the High Court from the Magistrates’ Court under section 303R of the Proceeds of Crime Act 2002 or under paragraph 10J of Part 4A of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001	Paragraph 25	Queen’s Bench	N/A”.
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- 3) After paragraph 24.8 insert—

### **“Proceedings under Chapter 3A of Part 5 of the Proceeds of Crime Act 2002 and Part 4A of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001**

**25.1** This paragraph applies to applications which are transferred from a magistrates’ court to the High Court under Section 303R of the Proceeds of Crime Act 2002 or paragraph 10J of Schedule 1 to the Anti-terrorism Crime and Security Act 2001 (“transferred forfeiture applications”).

**25.2** The Part 8 procedure applies to transferred forfeiture applications with the following modifications.

**25.3** Rules 8.2 and 8.2A(2)-(4), and paragraphs 4.1, 4.2, and paragraphs 7.1 to 7.5 of this practice direction, do not apply, and—

- (1) the application made to the magistrates’ court (“the MC document”) shall be treated as equivalent to a Part 8 claim form (whether or not any defendant is named in it);
- (2) no separate claim form is to be issued;
- (3) the applicant to the magistrates’ court shall be “the claimant”;

(4) the address of the claimant given in the MC document shall be the claimant's address for service;

(5) any person named in the MC document as being a person the application was being brought against or who has sought to oppose or who has failed or refused to agree to the application whilst it was in the magistrates' court shall be a defendant; and

(6) any evidence filed by the claimant with the magistrates' court prior to the transfer of the application to the High Court shall be treated as evidence filed by the claimant in support of the Part 8 Claim; and any evidence so filed by any defendant or other person shall be treated as evidence filed in relation to the Part 8 Claim.

**25.4** On receipt of a transferred forfeiture application—

(1) the court shall give the proceedings a number;

(2) the proceedings are to be heard in the Queen's Bench Division unless the court shall otherwise order;

(3) if the court considers it is necessary, the court shall order that the claimant must provide the court with any of the information listed in rule 8.2(b) to (e), and with the names (or other means of identification) of the defendant(s), where that information is not otherwise provided in the MC document; and

(4) the court shall order a directions hearing to be listed on the first available date after twenty-eight days after the end of the service period (see paragraph 25.5), at which the court will—

(i) fix a date for the hearing of the application or for a further directions hearing;

(ii) give directions as to the exchange of evidence between the parties;

(iii) give directions as to any other matters which are required in advance of that hearing, for example regarding the joinder of or service upon any further persons.

**25.5** Rule 7.5 shall not apply and, subject to any direction made by the Court in accordance with paragraph 25.6 (or order made under rules 6.15, 6.16, 6.27 or 6.28), the claimant shall serve (in like manner as provided by Part 6 of the Rules in relation to service of claim forms or as provided by any enactment) upon the defendant the following documents within two months of the date of the order made under paragraph 25.4 ("the service period")—

(1) the transferred application, and any evidence described in paragraph 25.3(6);

- (2) a statement of who are the defendants (unless such is apparent from the MC document) which must also be filed at court;
- (3) the order transferring the application to the High Court under Section 303R of the Proceeds of Crime Act 2002 or paragraph 10J of Schedule 1 to the Anti-terrorism Crime and Security Act 2001 (as appropriate);
- (4) the order made under paragraph 25.4; and
- (5) an acknowledgment of service form.

**25.6** The court may extend the service period by making a direction of its own initiative or on application of any party, whether before or after the expiry of the period described in paragraph 25.5. An application for a direction to extend the service period is to be supported by evidence, with the court having a general discretion (and, for the avoidance of doubt, no sanction is imposed by paragraph 25.5), and rule 3.1(2)(a) shall apply and rules 7.6 and 7.7 shall not apply.

**25.7** Rule 8.3 applies with the modification that the acknowledgment of service must be filed not more than 14 days after service of the documents listed in paragraph 25.5.

**25.8** Rule 8.5 does not apply, and, except as provided by paragraphs 25.3(6) above, the parties—

- (1) may (but without any obligation to do so) file and serve evidence not less than 7 days before the first directions hearing; and
- (2) must file and serve evidence in accordance with the directions given by the court, and any such evidence must (unless the court otherwise directs) be in the form of a witness statement or an affidavit.

**25.9** Rule 8.6 applies with the modification that no written evidence may be relied on at the hearing of the claim unless—

- (1) it is as described in paragraphs 25.3(6) or 25.8(1) or it has been filed and served in accordance with the court's directions; or
- (2) the court gives permission (for which any party may apply).".

## **PRACTICE DIRECTION 59 – CIRCUIT COMMERCIAL COURT**

2) For paragraph 2.2 substitute—

“2.2 The claim form must be marked in the top right hand corner ‘Business and Property Courts in [.....], Circuit Commercial Court (QBD)’, or ‘Business and Property Courts of England and Wales, London Circuit Commercial Court (QBD)’ as appropriate.”.

## **PRACTICE DIRECTION 60 – TECHNOLOGY AND CONSTRUCTION COURT**

1) For paragraph 3.2 substitute—

“3.2 The claim form must be marked in the top right hand corner ‘Technology and Construction Court (QBD)’ below the words ‘In the High Court of Justice, Business and Property Courts [in/of ]’. In the County Court the claim form must be marked “Business and Property Courts work”.”.

## **PRACTICE DIRECTION 66 – CROWN PROCEEDINGS**

1) For Annex 1 substitute—

**“ANNEX 1 Disputes as to Venue – Factors to be taken into Consideration  
Attorney General’s note to supplement Practice Direction 66**

### **Introduction**

Rule 30.3(2)(h) provides that in cases involving civil proceedings by or against the Crown, when considering whether to order a transfer of those proceedings, the court must have regard to, “the location of the relevant government department or officers of the Crown and, where appropriate, any relevant public interest that the matter should be tried in London.”

Practice Direction 66, paragraph 1.2, provides that the Attorney General will publish a note concerning the organisation of the Government Legal Service and matters relevant to the venue of Crown proceedings, for the assistance of practitioners and judges. When considering questions of venue under rule 30.3(2), the court should have regard to the Attorney General’s note in addition to all the other circumstances of the case.

This note sets out the further factors to be taken into consideration where there is a dispute as to venue between a claimant and a government department. Where there is such a dispute, it should be dealt with at a case management conference.

### **Organisation of the Government Legal Service**

Lawyers in the Government Legal Service (GLS) provide legal advice to the government and represent it in court proceedings. The Government Legal Department, headed by the Treasury Solicitor, conducts this litigation for the majority of government departments, but lawyers in HM Revenue and Customs (HMRC) have the conduct of litigation for their department. Most government litigation lawyers are based in London. HMRC also has litigation lawyers based in Manchester who deal with judicial reviews and tax litigation. A full list of addresses for service is annexed to Practice Direction 66.

### **Factors be taken into account generally**

#### *Location*

While a number of government departments have offices outside London, central government bodies are based in London and the GLS is geared towards processing claims in the Royal Courts of Justice (see above). Where there is a High Court claim, many witnesses as well as lawyers and officials are London-based and there may be a disproportionate cost in transferring them to a venue outside London. That is not to say, bearing in mind the overriding objective, that the Crown would oppose transfer away from the Royal Courts of Justice where it was appropriate, for example in personal injury disputes.

#### *Precedent value*

Some cases have important precedent value or are of general importance to the public, which may make them more suitable for being heard in the Royal Courts of Justice.

### **Special considerations in relation to HMRC**

HMRC has litigation lawyers based in London and Manchester. The lawyers based in London deal with all types of HMRC's litigation. The lawyers based in Manchester deal with judicial reviews and tax litigation in cases where it makes sense to conduct the litigation outside of London, typically where the claimant's or appellant's address is in, or north of, Birmingham.

**RT HON JEREMY WRIGHT QC MP  
ATTORNEY GENERAL”.**

## **PRACTICE DIRECTION 75 – TRAFFIC ENFORCEMENT**

1) In paragraph 1.1—

- a) in sub-paragraph (12), at the end, for “.” substitute “; and”; and
- b) after sub-paragraph (12) insert—

“(13) ‘the Littering from Vehicles Regulations’ means the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018.”.

2) In paragraph 1.2—

- a) in sub-paragraph (13), after the semi-colon, omit “and”;
- b) in sub-paragraph (14), at the end, for “.” substitute “; and”; and
- c) after sub-paragraph (14) insert—

“(15) the unpaid amount of a fixed penalty and any related costs awarded by an adjudicator pursuant to regulation 7(2) of the Littering from Vehicles Regulations.”.

3) In paragraph 1.3—

- a) in sub-paragraph (2)—
  - i) in paragraph (g), after the semi-colon, omit “or”;
  - ii) in paragraph (i), at the end, for “.” substitute “; or”; and
  - iii) after paragraph (i) insert—

“(j) a penalty notice issued under regulation 4(1) of the Littering from Vehicles Regulations.”.

- b) in sub-paragraph (3)—
  - i) in paragraph (m), after the semi-colon, omit “or”;
  - ii) in paragraph (n), at the end, for “.” substitute “; or”; and
  - iii) after paragraph (n) insert—

“(o) regulation 7(2)(b) of the Littering from Vehicles Regulations.”.

4) In paragraph 3.1—

- a) in paragraph (c), at the end, after the semi-colon, omit “or”; and
- b) for paragraph (d) substitute—

“(d) the Schedule to the Road User Charging Regulations; or

(e) Part 4 of the Littering from Vehicles Regulations,

is sought, rule 75.3 applies with the necessary modifications and, in addition, the request must—

- (i) state the date on which the adjudication is was made;
- (ii) provide details of the order made on the adjudication; and
- (iii) certify the amount awarded by way of costs and that the amount remains unpaid.”.

**PRACTICE DIRECTION – CIVIL RECOVERY PROCEEDINGS**

1) In the Table of Contents—

a) after the entry beginning “Registers” insert—

“SECTION IIA – APPLICATIONS UNDER PART 4A OF THE ORDER IN COUNCIL IN RESPECT OF PROHIBITION ORDERS	
Applications	Para.7D.1
Exclusions when making prohibition order	Para.7E.1
Receiving order: application for directions	Para.7F.1
Application to vary or set aside an order	Para.7G.1
Exclusions for the purpose of meeting legal costs: general provisions	Para.7H.1”;

b) in the entry beginning “SECTION III”, for “AND DETAINED CASH INVESTIGATIONS” substitute “, UNEXPLAINED WEALTH ORDERS AND INTERIM FREEZING ORDERS, AND APPLICATIONS UNDER PART 1 OF THE 2013 ORDER IN RESPECT OF EXTERNAL INVESTIGATIONS”;

c) in the entry beginning “SECTION IV”, after “THE ACT” insert “OR PART 1 OF THE 2013 ORDER”; and

d) after the entry beginning “Account monitoring order”, insert—

“Unexplained wealth order	Para. 18.1
Interim freezing order	Para. 18.4
Exclusions from interim freezing order for the purpose of meeting legal costs: general provisions	Para. 18.11”.



- 2) In paragraph 1.1, for “Part 5” substitute “Parts 4A and 5”.
- 3) In paragraph 1.2—
- a) in sub-paragraph (b), after “order” insert “or (where applicable) a prohibition order”; and
  - b) in sub-paragraph (d), after “order” insert “under section 245E of the Act or Article 150A of the Order in Council (as appropriate)”.
- 4) After paragraph 1.2 insert—
- “1.2A**
- Section IIA contains provisions about applications to the High Court under Part 4A of the Order in Council for –
- (a) a prohibition order; and
  - (b) a management receiving order under Article 141I of the Order in Council.”.
- 5) For paragraph 1.3 substitute—
- “1.3**
- Section III contains provisions about applications to the High Court for—
- (a) an unexplained wealth order;
  - (b) an interim freezing order (see paragraph 1.5(15));
  - (c) a management receiving order in connection with an interim freezing order under section 362N of the Act; and
  - (d) applications under Part 8 of the Act for any of the following types of order or warrant in connection with a civil recovery investigation, and applications to the High Court under Part 1 of the 2013 Order for any of the following types of order or warrant in connection with an external investigation—
    - (i) a production order;
    - (ii) a search and seizure warrant;
    - (iii) a disclosure order;
    - (iv) a customer information order; and
    - (v) an account monitoring order.”.
- 6) For paragraph 1.5 substitute—
- “1.5**
- In this practice direction –

- (1) 'the Act' means the Proceeds of Crime Act 2002;
- (2) 'appropriate officer' has the meaning set out in section 378 of the Act;
- (3) 'appropriate person' has the meaning set out in section 352(5) or section 353(10) of the Act (as appropriate);
- (4) for the purposes of section II 'enforcement authority' has the meaning set out in section 316 of the Act, and for the purposes of sections III and IV 'enforcement authority' has the meaning set out in section 362A(7) of the Act;
- (5) 'the Order in Council' means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005;
- (6) 'the 2013 Order' means the Proceeds of Crime Act 2002 (External Investigations) Order 2013;
- (7) 'civil recovery proceedings' means proceedings under Part 5 of the Act or Part 5 of the Order in Council (as appropriate);
- (8) 'interim receiving order' has the meaning set out in section 246 of the Act or Article 151 of the Order in Council (as appropriate);
- (9) 'management receiver' means a receiver appointed by order of the court under any of the provisions listed in paragraph (4B);
- (10) 'management receiving order' means an order to appoint a receiver:
  - (a) for the purposes of Section II, under section 245E of the Act or Article 150 of the Order in Council;
  - (b) for the purposes of Section IIA, under Article 141I of the Order in Council;
  - (c) for the purposesg of Section III (where the order relates to an Interim Freezing Order), under section 362N of the Act.
- (11) 'management receiving order' means an order to appoint a receiver under section 245E of the Act;
- (12) 'property freezing order' has the meaning set out in section 245A of the Act;
- (13) 'prohibition order' has the meaning set out in article 141D of the Order in Council;
- (14) 'unexplained wealth order' has the meaning set out in section 362A(3) of the Act;

(15) 'interim freezing order' has the meaning set out in section 362J(3) of the Act;

(16) 'the Regulations' means the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005;

(17) 'relevant authority' has the meaning set out in section 357(7) of the Act;

(18) 'relevant Director' has the meaning set out in section 352(5A) of the Act;

(19) 'CPR' means the Civil Procedure Rules 1998; and

(20) other expressions used have the same meaning as in the Act, or the Order in Council or the 2013 Order (as appropriate).".

7) In paragraph 2.1, for "Part 5 of the Order" substitute "Parts 4A and 5".

8) In paragraph 2.2, after "transferred" insert "by the Administrative Court".

9) In paragraph 5.2, after "Part 25" insert "and Practice Direction 25A".

10) In paragraph 5.3(3), after "Act and" insert "article 150A(3) of".

11) For paragraph 5.5A substitute—

**"5.5A**

CPR Part 69 (court's power to appoint a receiver) and Practice Direction 69 apply to an application for a management receiving order with the following modifications—

(1) paragraph 2.1 of Practice Direction 69 does not apply; and

(2) the enforcement authority's written evidence must always identify a nominee and include the information in paragraph 4.2 of that Practice Direction.".

12) In paragraph 6.1(2), after "or under" insert "article 150C of".

13) After paragraph 7.2 insert—

**"7.2A**

Before exercising the power to discharge or vary a property freezing order, the court must give an opportunity for the parties, and any other person who may be affected by the court's decision, to be heard, in accordance with

section 245B(5) of the Act or Article 148(5) of the Order in Council (as appropriate).

## **7.2B**

A Master or District Judge may, with the consent of all the parties, vary or discharge a property freezing order, an interim receiving order or a management receiving order granted by any Judge.”.

14) In paragraph 7.3, for sub-paragraphs (2) and (3) substitute—

“(2) include a statement of the costs which the person has incurred and an estimation of the costs which the person will incur in relation to each stage to which the application relates;

(3) include a statement of assets containing the information set out in paragraph 7A.3 (unless the person has previously filed such a statement in the same civil recovery proceedings, or the person has previously filed a statement of assets containing the information set out in paragraph 7H.3 (for an application for an exclusion from a prohibition order), or in paragraph 18.14 (for an application for an exclusion from an interim freezing order), and there has been no material change in the facts set out in the applicable previous statement);”.

15) After paragraph 7.3 insert—

## **“7.3A**

Where, under paragraph 7.3(2), a person includes in evidence a statement of the costs which the person has incurred, paragraphs 9.5(2) and (3) of Practice Direction 44 apply.”.

16) In paragraph 7A.2, after “made” insert “, served”.

17) In paragraph 7B.1—

a) in sub-paragraph (1), for “or” substitute “, a prohibition order or an”; and

b) in sub-paragraph (2), after “freezing order” insert “, prohibition order”.

18) In paragraph 7B.6, for “included” substitute “include”.

19) After rule 7C, insert—

“SECTION IIA – APPLICATIONS UNDER PART 4A OF THE ORDER IN COUNCIL IN RESPECT OF PROHIBITION ORDERS

**Applications**

**7D.1**

An application for a prohibition order must be made—

- (1) to a High Court judge; and
- (2) in accordance with CPR Part 23.

**7D.2**

CPR rule 23.10(2), Section I of CPR Part 25 and Practice Direction 25A do not apply to applications for property freezing orders, interim receiving orders and management receiving orders.

**7D.3**

The application may be made without notice in the circumstances set out article 141E(1) of the Order in Council (in the case of an application for a prohibition order).

**7D.4**

An application for a prohibition order must be supported by written evidence which must confirm that—

- (1) it is relevant property identified in an external request, and
- (2) proceedings have not been taken in relation to the property under Chapter 2 of Part 5 of the Order in Council.

**7D.5**

CPR Part 69 (court’s power to appoint a receiver) and Practice Direction 69 apply to an application for a management receiving order with the following modifications—

- (1) paragraph 2.1 of Practice Direction 69 does not apply; and
- (2) the enforcement authority’s written evidence must always identify a nominee and include the information in paragraph 4.2 of that Practice Direction.

**Exclusions when making prohibition order**

**7E.1**

When the court makes a prohibition order on an application without notice, it will normally make an initial exclusion from the order for the purpose of enabling the respondent to meet their reasonable legal costs so that they may—

- (1) take advice in relation to the order;
- (2) prepare a statement of assets in accordance with paragraph 7A.3; and
- (3) if so advised, apply for the order to be varied or set aside.

The total amount specified in the initial exclusion will not normally exceed £3,000.

### **7E.2**

When it makes a prohibition order, the court may also make an exclusion to enable the respondent to meet their reasonable legal costs so that (for example) when the claim is commenced—

- (1) the respondent may file an acknowledgment of service and any written evidence on which they intend to rely; or
- (2) the respondent may apply for a further exclusion for the purpose of enabling them to meet their reasonable costs of the proceedings.

### **7E.3**

Paragraph 7H contains general provisions about exclusions made for the purpose of enabling a person to meet their reasonable legal costs.

## **Receiving order: application for directions**

### **7F.1**

An application for directions as to the exercise of the functions of the management receiver under article 141K of the Order in Council may be made at any time by –

- (1) the receiver;
- (2) any party to the proceedings; and
- (3) any person affected by any action taken, or proposed to be taken, by the receiver.

### **7F.2**

The application must always be made by application notice, which must be served on—

- (1) the receiver (unless the receiver is the applicant);
- (2) every party to the proceedings; and
- (3) any other person who may be interested in the application.

### **Application to vary or set aside an order**

#### **7G.1**

An application to vary or set aside a prohibition order (including an application for, or relating to, an exclusion from the order) may be made at any time by—

- (1) the enforcement authority; or
- (2) any person affected by the order.

#### **7G.2**

Unless the court otherwise directs or exceptional circumstances apply, a copy of the application notice must be served on—

- (1) every party to the proceedings; and
- (2) any other person who may be affected by the court's decision.

#### **7G.3**

Before exercising the power to discharge or vary a prohibition order, the court must give an opportunity for the parties, and any other person who may be affected by the court's decision, to be heard, in accordance with article 141E of the Order in Council.

#### **7G.4**

The evidence in support of an application for an exclusion from a prohibition order for the purpose of enabling a person to meet their reasonable legal costs must—

- (1) contain full details of the stage or stages in proceedings under Part 4A of the Order in Council in respect of which the costs in question have been or will be incurred;
- (2) include an estimate of the costs which the person has incurred and will incur in relation to each stage to which the application relates;

(3) include a statement of assets containing the information set out in paragraph 7A.3 (unless the person has previously filed such a statement in the same proceedings and there has been no material change in the facts set out in that statement);

(4) where the court has previously made an exclusion in respect of any stage to which the application relates, explain why the person's costs will exceed the amount specified in the exclusion for that stage; and

(5) state whether the terms of the exclusion have been agreed with the enforcement authority.

### **7G.5**

Where, under paragraph 7G.4(2), a person includes in evidence a statement of the costs which the person has incurred, paragraphs 9.5(2) and (3) of Practice Direction 44 apply.

### **7G.6**

A Master or District Judge may, with the consent of all the parties, vary or discharge a prohibition order granted by any judge.

## **Exclusions for the purpose of meeting legal costs: general provisions**

### **7H.1**

Subject to paragraph 7H.2, when the court makes a prohibition order it will at the same time consider whether it is appropriate to make or vary an exclusion for the purpose of enabling any person affected by the order or directions to meet their reasonable legal costs.

### **7H.2**

To enable the court to consider whether it is appropriate to make or vary an exclusion, the court may order a party to file an estimate of costs (unless the person has previously filed such an estimate in the same proceedings and there has been no material change in the facts set out in that estimate).

### **7H.3**

The court will not make an exclusion for the purpose of enabling a person to meet their reasonable legal costs, other than an exclusion to meet the costs



of taking any of the steps referred to in paragraph 7E.1, unless that person has made, served and filed a statement of assets.

#### **7H.4**

A statement of assets is a witness statement which sets out all the property which the maker of the statement owns, holds or controls, or in which the maker of the statement has an interest, giving the value, location and details of all such property. Information given in a statement of assets under this practice direction will be used only for the purpose of the prohibition order proceedings, or in support of an application for an exclusion from a property freezing order or interim receiving order for the purpose of enabling a person to meet their reasonable legal costs (see paragraph 7.3).

#### **7H.5**

The court—

(1) will not make an exclusion for the purpose of enabling a person to meet their reasonable legal costs (including an initial exclusion under paragraph 7E.1); and

(2) may set aside any exclusion which it has made for that purpose or reduce any amount specified in such an exclusion,

if it is satisfied that the person has property to which the prohibition order does not apply from which the person may meet those costs.

#### **7H.6**

The court will normally refer to a costs judge any question relating to the amount which an exclusion should allow for reasonable legal costs in respect of proceedings or a stage in proceedings.

#### **7H.7**

Attention is drawn to article 141G of the Order in Council (in relation to exclusions from prohibition orders). An exclusion for the purpose of enabling a person to meet their reasonable legal costs must be made subject to the 'required conditions' specified in Part 2 of the Regulations.

#### **7H.8**

An exclusion made for the purpose of enabling a person to meet their reasonable legal costs will specify the maximum amount which may be released in respect of legal costs.

#### **7H.9**

A person who becomes aware that their legal costs will exceed the maximum amount specified should apply for a further exclusion or a variation of the existing exclusion as soon as reasonably practicable.”.

- 20) In the heading to Section III, for “AND DETAINED CASH INVESTIGATIONS” substitute “, UNEXPLAINED WEALTH ORDERS AND INTERIM FREEZING ORDERS, AND APPLICATIONS UNDER PART 1 OF THE 2013 ORDER IN RESPECT OF EXTERNAL INVESTIGATIONS”.
- 21) In paragraph 8.1, for “or (where applicable) a detained cash investigation” substitute “, for an unexplained wealth order and an interim freezing order, or for an order or warrant under Part 1 of the 2013 Order in connection with an external investigation”.
- 22) In paragraph 8.2, after “notice” insert “, subject to section 362J(5) of the Act (where applicable)”.
- 23) After paragraph 8.2 insert—

#### **“8.3**

CPR rule 23.10(2), Section I of CPR Part 25 and Practice Direction 25A do not apply to applications for interim freezing orders.”.

- 24) In paragraph 9.1, after “the Act,” insert “(including an application for an unexplained wealth order or an interim freezing order) or an application under Part 1 of the 2013 Order,”.
- 25) In paragraph 9.3, after “officer” insert “, or (in the case of an application for an unexplained wealth order or an interim freezing order) the enforcement authority,”.
- 26) In paragraph 10.2—
  - a) after “officer” insert “, or (in the case of an application for an unexplained wealth order or an interim freezing order) the enforcement authority,”; and

b) after “the Act” insert “or (where applicable) the relevant articles of the 2013 Order,”.

27) For paragraph 12.1 substitute—

**“12.1**

An application to vary or discharge an order or warrant under Part 8 of the Act in connection with a civil recovery investigation, or for an order or warrant under Part 1 of the 2013 Order in connection with an external investigation, may be made by—

(1) the appropriate officer or, in the case of a disclosure order, the relevant authority; or

(2) any person affected by the order or warrant.

**12.1A**

An application to vary or discharge an unexplained wealth order or an interim freezing order (including an application for, or relating to, an exclusion from the interim freezing order) may be made by—

(1) the enforcement authority; or

(2) any person affected by the order.

**12.1B**

Unless the Court otherwise directs or exceptional circumstances apply, a copy of the application notice must be served on—

(1) every party to the proceedings; and

(2) any other person who may be affected by the court’s decision.

**12.1C**

The evidence in support of an application for an exclusion from an interim freezing order for the purpose of enabling a person to meet their reasonable legal costs must—

(1) contain full details of the stage or stages of proceedings under Chapter 2 of Part 8 of the Act in respect of which the costs in question have been or will be incurred;

(2) include an estimate of the costs which the person has incurred and will incur in relation to each stage to which the application relates;

(3) include a statement of assets containing the information set out in paragraph 7A.3 (unless the person has previously filed such a statement in the same proceedings and there has been no material change in the facts set out in that statement);

(4) where the court has previously made an exclusion in respect of any stage to which the application relates, explain why the person's costs will exceed the amount specified in the exclusion for that stage and state whether the terms of the exclusion have been agreed with the enforcement authority.

#### **12.1D**

Where, under paragraph 12.1C(2), a person includes in evidence a statement of the costs which the person has incurred, paragraphs 9.5(2) and (3) of Practice Direction 44 apply.

#### **12.1E**

Before exercising the power to discharge or vary an interim freezing order, the court must give an opportunity for the parties, and any other person who may be affected by the court's decision, to be heard, in accordance with section 362K(9) of the Act.

#### **12.1F**

The court must discharge an interim freezing order in the circumstances set out in section 362K of the Act.

#### **12.1G**

A Master or District Judge may, with the consent of all the parties, vary or discharge an interim freezing order granted by any judge.”.

28) In paragraph 12.2, after “12.1” insert “or 12.1A”.

29) After rule 12.4 insert—

#### **“Management receiving order in connection with an interim freezing order: application for directions**

#### **12.5**

CPR Part 69 (court's power to appoint a receiver) and Practice Direction 69 apply to an application for a management receiving order with the following modifications—

- (1) paragraph 2.1 of Practice Direction 69 does not apply; and
- (2) the enforcement authority's written evidence must always identify a nominee and include the information in paragraph 4.2 of that Practice Direction.

## **12.6**

Where an application is made for a management receiving order, a draft of the order which is sought must be filed with the application notice. This should if possible also be supplied to the court in an electronic form compatible with the word processing software used by the court.

## **12.7**

An application for directions as to the exercise of the functions of the management receiver under section 362P of the Act may be made at any time by—

- (1) the management receiver;
- (2) any party to the proceedings; and
- (3) any person affected by any action taken, or proposed to be taken, by the management receiver.

## **12.8**

An application mentioned in paragraph 12.7 must always be made by application notice, which must be served on—

- (1) the management receiver (unless the management receiver is the applicant);
- (2) every party to the proceedings; and
- (3) any other person who may be interested in the application.

## **12.9**

An application to vary or set aside a management receiving order under section 362P of the Act (including an application for, or relating to, an exclusion from the order) may be made at any time by—

- (1) the enforcement authority; or
- (2) any person affected by the order.

## **12.10**

Unless the court otherwise directs or exceptional circumstances apply, a copy of the application notice for an application mentioned in paragraph 12.9 must be served on—

- (1) every party to the proceedings;
- (2) the management receiver; and
- (3) any other person who may be affected by the court's decision.”.

30) In the heading to Section IV, at end insert “OR PART 1 OF THE 2013 ORDER”.

31) In paragraph 13.2(1), after “the Act” insert “or, if the application is made under Part 1 of the 2013 Order, whether the application is for an order under paragraph (a) or (b) of article 6(4) of the 2013 Order”.

32) In paragraph 13.3, after “the Act” insert “, or (where applicable) article 8 of the 2013 Order,”.

33) Omit paragraph 14.1.

34) In paragraph 14.2(1), after “the Act” insert “or, (where applicable) in article 13(4) of the 2013 Order,”.

35) In paragraph 14.3, for “13.8” substitute “14.8”.

36) In paragraph 14.4—

- a) in sub-paragraph (3), for “officer” substitute “person”; and
- b) in sub-paragraph (4), after “the Act” insert “or (where appropriate) the 2013 Order”.

37) In paragraph 15.2—

- a) in sub-paragraph (2), after “the Act” insert “or (where applicable) article 16(3) of the 2013 Order”; and
- b) in sub-paragraph (3)(a), after “the Act” insert “or (where applicable) article 18 of the 2013 Order”.

- 38) In paragraph 15.3, after “the Act” insert “or (where applicable) article 16(3) of the 2013 Order”.
- 39) In paragraph 16.3(2)(a), after “the Act” insert “or (where applicable) article 25 of the 2013 Order”.
- 40) In paragraph 17.2(1), after “the Act” insert “or (where applicable) by article 29(2) and (3) of the 2013 Order”.
- 41) After rule 17.3 insert—

### **“Unexplained wealth order**

#### **18.1**

The application notice must name as a respondent the person who is required to be specified under section 362A(2)(b) of the Act.

#### **18.2**

The application notice must—

- (1) state the matters required by section 362A(2) of the Act; and
- (2) specify what other information in connection with the property is sought (see section 362A(3)(d) of the Act) and what documents are sought (see section 362A(5));
- (3) specify whether the respondent is a politically exposed person in accordance with section 362B(4)(a) of the Act, or whether there are reasonable grounds to suspect that the respondent is, or has been, involved in serious crime in accordance with section 362B(4)(b) of the Act.
- (4) give details of—
  - (a) the nature of the Order sought in respect of the matters set out in section 362A(4) of the Act;
  - (b) the period within which compliance with the unexplained wealth order is sought (see section 362A(6) of the Act);
  - (c) the known sources of the respondent’s lawfully obtained income (see section 362B(3) of the Act).

#### **18.3**

An unexplained wealth order must—

- (1) state the person and the property to which it applies;
- (2) specify the matters set out in section 362A(3), including in particular what other information in connection with the property is to be provided (see section 362A(3)(d));
- (3) specify the matters set out in section 362A(4);
- (4) state the period within which the respondent must comply with the order (see section 362A(6) of the Act);
- (5) contain a statement of the offences relating to unexplained wealth orders under section 362E of the Act.

### **Interim freezing order**

#### **18.4**

An application for an interim freezing order must be made –

- (1) to a High Court judge;
- (2) in accordance with section 362J(4) of the Act; and
- (3) in accordance with CPR Part 23.

#### **18.5**

CPR rule 23.10(2), section I of CPR Part 25 and Practice Direction 25A do not apply to applications for interim freezing orders.

#### **18.6**

The application must be made without notice in the circumstances set out in section 362J(5) of the Act.

#### **18.7**

An application for an interim freezing order must be supported by written evidence which must—

- (1) set out the grounds on which the order is sought; and
- (2) give details of each item or description of property in respect of which the order is sought, including—
  - (a) the name of the respondent to the unexplained wealth order to which the interim freezing order relates; and



(b) an estimation of the value of the property.

### **18.8**

CPR Part 69 (court's power to appoint a receiver) and Practice Direction 69 apply to an application for the court to appoint a receiver under section 362N(2) of the Act with the following modifications—

- (1) paragraph 2.1 of Practice Direction 69 does not apply;
- (2) the enforcement authority's written evidence must, in addition to the matters required by paragraph 4.1 of that practice direction, also identify a nominee and include the information in paragraph 4.2 of that practice direction.

### **18.9**

An interim freezing order must—

- (1) specify the matters required by section 362J(3) of the Act; and
- (2) specify the period for which the prohibition referred to in that section will apply; and
- (3) contain a statement of the right of any person affected by the order to apply to discharge or vary the order.

### **18.10**

The court shall have regard to the following when setting the period for which an interim freezing order has effect —

- (1) the period set under section 362A(6) for the respondent to comply with the unexplained wealth order which applies to the property to which interim freezing order relates; and
- (2) the period allocated to the enforcement agency under section 362D(2) to
- (4) to determine what enforcement or investigatory provisions it considers are to be taken in relation to the property .

### **Exclusions from interim freezing order for the purpose of meeting legal costs: general provisions**

### **18.11**

Subject to paragraph 18.12 when the court makes an interim freezing order on an application without notice, it will normally make an initial exclusion from

the order for the purpose of enabling the respondent to meet their reasonable legal costs so that they may—

- (1) take advice in relation to the order;
- (2) prepare a statement of assets in accordance with paragraph 18.14; and
- (3) if so advised, apply for the order to be varied or set aside.

The total amount specified in the initial exclusion will not normally exceed £3,000.

#### **18.12**

To enable the court to consider whether it is appropriate to make or vary an exclusion, the court may order a party to file an estimate of costs.

#### **18.13**

The court will not make an exclusion for the purpose of enabling a person to meet their reasonable legal costs, other than an exclusion to meet the costs of taking any of the steps referred to in paragraph 18.11, unless that person has made, served and filed a statement of assets.

#### **18.14**

A statement of assets is a witness statement which sets out all the property which the maker of the statement owns, holds or controls, or in which the person has an interest, giving the value, location and details of all such property. Information given in a statement of assets under this practice direction will be used only for the purpose of the civil recovery proceedings or in support of an application for an exclusion from a property freezing order or interim receiving order for the purpose of enabling a person to meet their reasonable legal costs (see paragraph 7.3).

#### **18.15**

If the court is satisfied that a person has property to which the interim freezing order does not apply and from which the person may meet their reasonable legal costs, it—

- (1) will not make an exclusion for the purpose of enabling a person to meet their reasonable legal costs (including an initial exclusion under paragraph 18.11); and
- (2) may set aside any exclusion which it has made for that purpose or reduce any amount specified in such an exclusion.

**18.16**

The court will normally refer to a costs judge any question relating to the amount which an exclusion should allow for reasonable legal costs in respect of proceedings under Chapter 2 of Part 8 of the Act. or a stage in those proceedings.

**18.17**

Attention is drawn to section 362L of the Act. An exclusion for the purpose of enabling a person to meet their reasonable legal costs must be made subject to the 'required conditions' specified in Part 2 of the Regulations.

**18.18**

An exclusion made for the purpose of enabling a person to meet their reasonable legal costs will specify—

- (1) the stage or stages in proceedings under Chapter 2 of Part 8 of the Act to which it relates;
- (2) the maximum amount which may be released in respect of legal costs for each specified stage; and
- (3) the total amount which may be released in respect of legal costs pursuant to the exclusion.

**18.19**

A person should apply for a further exclusion or variation of an existing exclusion as soon as reasonably practicable after becoming aware that their legal costs—

- (1) in relation to any stage in proceedings under Chapter 2 of Part 8 of the Act have exceeded or will exceed the maximum amount specified in the exclusion for that stage; or
- (2) in relation to all the stages to which the exclusion relates have exceeded or will exceed the total amount that may be released pursuant to the exclusion.”.

## **PRACTICE DIRECTION – BUSINESS AND PROPERTY COURTS**

- 1) In the Practice Direction, for “BPCs”, in each place it appears, substitute “B&PCs”.
- 2) In paragraph 1.1, for “Manchester” substitute “Liverpool, Manchester, Newcastle”.
- 3) In paragraph 1.2—
  - a) in the second sentence—
    - i) for “Manchester” substitute “Liverpool, Manchester, Newcastle”;
    - ii) after “the Business and Property Courts in Leeds,” insert “the Business and Property Courts in Liverpool,”; and
    - iii) after “the Business and Property Courts in Manchester,” insert “the Business and Property Courts in Newcastle”; and
  - b) in the third sentence, for “Manchester” substitute “Liverpool, Manchester, Newcastle”.
- 4) In paragraph 2.3—
  - a) in sub-paragraph (2), after “a particular circuit outside” insert “London or anywhere else in”; and
  - b) after sub-paragraph (3), insert—

“(4) A claim which raises significant questions of fact or law in common with another claim already proceeding before a B&PCs District Registry may be regarded as having significant links with the circuit in question.”.
- 5) In paragraph 3.1(3)(a), after “listed in paragraph 2.3” insert “and (4)”.
- 6) In paragraph 3.2(a) for “paragraphs 4.2 to 4.5” substitute “paragraphs 4.1 to 4.4”.
- 7) For paragraph 4.2(d) substitute—

“(d) Hearings of applications to set aside statutory demands, unopposed creditors’ winding-up petitions or unopposed bankruptcy petitions;”.