

Orders of the Royal Court

III
1989



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 3rd day of April, 1989 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present: Harry Wilson Bisson, James de Sausmarez Carey Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, John Edward Morris, Charles Anthony Spensley and Kenneth John Rowe, Esquires, Jurats.

No. 3 Order, 1989

ENTITLED

The Drug Trafficking Offence (Procedure) Rules, 1989

THE ROYAL COURT, in exercise of the powers conferred upon it by section 27 of the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988(a), hereby orders:—

1. (1) An application made under section 22 of the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 ("the Law") shall specify the nature of the order sought and of the material to which it relates, and include any supporting evidence.

Order to
make
material
available.

(a) Order in Council No. XII of 1988.

(2) If the Bailiff considers that there are exceptional circumstances justifying the giving of notice to the person believed to be in possession of the material he shall adjourn the hearing of the application in order for at least one clear day's notice to be secured on that person.

Discharge and variation of orders to make material available.

2. (1) Where an order under section 22 of the Law has been made the person required to comply with it may apply in writing to the Bailiff for the order to be discharged or varied and on hearing such an application the Bailiff may discharge the order or vary it as he sees fit.

(2) An application for an order under paragraph (1) shall be made by lodging notice of the application and a copy of any supporting evidence, accompanied by an affidavit stating in full the grounds for the application to the best of the deponent's ability with Her Majesty's Greffier and serving copies thereof on Her Majesty's Procureur, not less than 2 clear days before the date fixed for the hearing.

Statements relating to Drug Trafficking.

3. (1) Where, in any proceedings in respect of a drug trafficking offence Her Majesty's Procureur or the defendant proposes to tender to the Royal Court any statement or other document under Section 3 of the Law a copy shall be lodged with Her Majesty's Greffier and served on Her Majesty's Procureur or the defendant as the case may be not less than 7 days before the date fixed for the hearing.

(2) Any statement tendered to the Royal Court by Her Majesty's Procureur under section 3(1)(a) of the Law shall include:—

(a) the name of the defendant;

(b) the name of the person who tenders the statement;

(c) such information known to Her Majesty's Procureur as is relevant to the determination whether the defendant has benefited from drug trafficking and to the assessment of the value of his proceeds of drug trafficking, together with an indication (so far as is known) of the dates and values of any relevant payments or rewards received by the defendant.

4. (1) An application for a restraint order under section 8 of the Law, a realty charging order under section 9 of the Law, or a personalty charging order under section 10 of the Law shall be made *ex parte*. Applications for restraint or charging orders.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall:—

(a) state the grounds for believing the defendant has benefited from drug trafficking;

(b) state, as the case may be, either that proceedings have been instituted against the defendant for a drug trafficking offence (giving particulars of the offence) and that they have not been concluded, or that a person is to be charged with a drug trafficking offence;

(c) to the best of the deponent's ability, give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;

(d) where proceedings have not been instituted indicate when it is intended that they should be instituted.

(3) Unless the Court directs otherwise, an affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

Restraint orders and charging orders.

5. (1) A restraint order may be made subject to conditions and exceptions including, but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order and exceptions relating to living expenses of the defendant or his dependents and his legal expenses.

(2) Unless the Court directs otherwise, a restraint order or charging order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application.

(3) Where a restraint order is made Her Majesty's Procureur shall cause Her Majesty's Sheriff to serve copies of the order and the supporting affidavit on the defendant and all other persons restrained by the order.

(4) Where a charging order is made Her Majesty's Procureur shall cause Her Majesty's Sheriff to serve copies of the order and the supporting affidavit on the defendant, and where the property is held by another person on that person, and on any other persons whom the order will affect.

Discharge or variation.

6. Notice of an application under section 7(6) of the Law shall be by summons which together with any supporting affidavit shall be lodged with Her Majesty's Greffier and served on Her Majesty's Procureur and, where he is not the applicant, on the defendant not less than 2 clear days before the date fixed for the hearing.

7. (1) Where a restraint order or a charging order has been made Her Majesty's Procureur may apply:— Further application by H.M. Procureur.

- (a) to discharge or vary the order; or
- (b) for a restraint order or charging order in respect of other realisable property; or
- (c) for the appointment of Her Majesty's Sheriff as receiver.

(2) An application under paragraph (1) shall be supported by an affidavit which shall to the best of the deponent's ability, give full particulars of any realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) Notice of the application and an affidavit in support shall be lodged with Her Majesty's Greffier and served on the defendant not less than 2 clear days before the date fixed for the hearing.

(4) The Court may dispense with the notice referred to in paragraph (3) on the grounds that the matter is exceptionally urgent or that the ends of justice are likely to be defeated if notice is given.

(5) Rules 5(3) and 5(4) apply to the service of any Orders made under this Rule on persons other than the defendant.

8. (1) Notice of an application by Her Majesty's Procureur under section 11 of the Law and a copy affidavit in support shall be lodged with Her Majesty's Greffier and, not less than 7 days before the date fixed for the hearing shall be served on:— Realisation of property.

- (a) the defendant; and
- (b) any person holding any interest in the realisable property to which the application relates; and

(2) The application shall be supported by an affidavit which shall, to the best of the deponent's ability give full particulars of the realisable property to which it relates and specify the person or persons holding such property and shall have attached thereto copies of any court orders or certificates relating to the matter.

(3) The Court, on an application under section 11, may direct Her Majesty's Sheriff acting as receiver to make payments under section 12(1) of the Law.

(4) Where Her Majesty's Sheriff acting as receiver has fully paid the amount due under the confiscation order and any sums remain in his hands he shall apply to the court for directions as to the distribution of such sums.

(5) Notice of any application under paragraph (5) shall be lodged with Her Majesty's Greffier and, not less than 7 days before the date fixed for the hearing, shall be served on:—

- (a) the defendant, and
- (b) any other persons who held property realised by the receiver.

Certificate
of
insufficiency.

9. The defendant may apply for a certificate under section 14(1) of the law by lodging notice of the application and a copy of any supporting evidence with Her Majesty's Greffier which, not less than 7 days before the date fixed for the hearing, shall be served on Her Majesty's Procureur.

10. An application for an order under section 18 of the Law shall be made by lodging notice of the application and a copy of any supporting evidence with Her Majesty's Greffier, which not less than 7 days before the date fixed for the hearing, shall be served on Her Majesty's Procureur. Compensation.

11. Subject to the provisions of Rule 12 and unless the Court otherwise directs, every notice or other document which is required to be served by or under these Rules shall be served:— Service.

- (a) in the Islands of Guernsey, Herm and Jethou, by Her Majesty's Sergeant;
- (b) in the Island of Alderney, by the Clerk of the Court of Alderney;
- (c) in the Island of Sark, by the Prévôt of Sark;

and shall be served personally on that person, and the certificate of Her Majesty's Sergeant, the Clerk of the Court of Alderney or the Prévôt of Sark, as the case may be, that such notice or other document has been so served shall be conclusive proof of such service.

12. (1) Where any person on whom any notice or other document is required to be served under these Rules is not within the Bailiwick and it is impracticable for any reason to serve the notice or other document personally on that person, the Court may, upon ex parte application, make an order for substituted service of that notice or other document. Substituted Service.

(2) An application under paragraph (1) shall specify the kind of substituted service desired and shall be accompanied by an affidavit stating the facts on which the application is founded.

(3) Substituted service under these Rules shall be effected by taking such steps as the Court may direct to bring the notice or other document to the notice of the person to be served.

Title of Documents.

13. The cause containing an application under the Law shall be entitled "in the matter of" the defendant and of the Law, and all subsequent documents in the matter shall be so entitled.

Interpretation.

14. (1) Expressions used in these Rules have the same meanings as in the Law.

(2) The Interpretation (Guernsey) Law, 1948(b) shall apply to the interpretation of these Rules as it applies to the interpretation of an enactment.

Citation.

15. These Rules may be cited as the Drug Trafficking Offences (Procedure) Rules, 1989.

Commencement.

16. These Rules shall come into force on the 3rd day of April, 1989.

D. R. DOREY,

Her Majesty's Deputy Greffier.

(b) Ordres en Conseil Vol. XIII, p. 355.

Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey.

PRICE 55p