STATUTORY RULES OF NORTHERN IRELAND

2011 No. 422

COURT OF JUDICATURE, NORTHERN IRELAND

COUNTER-TERRORISM

The Rules of the Court of Judicature (Northern Ireland) (Amendment No.4) 2011

Made - - - - *14th December 2011*

Laid before Parliament *15th December 2011*

Coming into force in accordance with rule 1

The Lord Chancellor, in exercise of the power conferred by paragraph 7 of Schedule 4 to the Terrorism Prevention and Investigation Measures Act 2011(**1**) to make rules of court under section 55 and 55A of the Judicature (Northern Ireland) Act 1978 (**2**), and paragraphs 2 to 4 and 6 of Schedule 4 to the Terrorism Prevention and Investigation Measures Act 2011, and after consulting the Lord Chief Justice of Northern Ireland in accordance with paragraph 7(2)(b) of that Schedule, makes the following Rules:

Citation, commencement and interpretation

1. These Rules may be cited as the Rules of the Court of Judicature (Northern Ireland) (Amendment No.4) 2011 and shall come into force the day after the day on which they are made.

2. In these Rules a reference to an Order or rule by number alone means the Order or rule so numbered in the Rules of the Court of Judicature (Northern Ireland) 1980 (**3**).

Amendments to the Rules of the Court of Judicature (Northern Ireland) 1980

3. In Order 1, for "Order 116A, rule 2(1) and Order 116B, rule 2(1)" substitute "Order 116A, rule 2(1), Order 116B, rule 2(1) and Order 116C, rule 2(1)".

4. After Order 116B, insert Order 116C (Proceedings under the Terrorism Prevention and Investigation Measures Act 2011), as set out in Schedule 1.

5. In the Appendix 1, after Form 37B, insert new Form 37C, as set out in Schedule 2.

(**1**) 2011 c.23

(**2**) 1978 c.23; to which the most recent relevant amendments were made by paragraphs 29 and 30 of Schedule 5 to the Constitutional Reform Act 2005 (c.4) and by Article 15 of and Schedule 17 to the Northern Ireland (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010 No. 976).

(**3**) S.I.1980/346; .to which the most recent relevant amendments were made by S.R. 2008 No.479 and S.R. 2009 No.264

Signed by the authority of the Lord Chancellor

J Djanogly
Parliamentary Under-Secretary of State
Ministry of Justice

Dated 14th December 2011

SCHEDULE 1 Rule 4

"ORDER 116C

PART 1

Application of this Order

Scope and interpretation

1.—(1) This Order contains rules about—

(a) TPIM proceedings in the High Court, and

(b) appeals to the Court of Appeal against an order of the High Court in such proceedings.

(2) In the case of proceedings brought by the virtue of section 17(2) of the Act, the rules in this Order shall apply with any modification which the Court considers necessary.

(3) In this Order—

(a) "the Act" means the Terrorism, Prevention and Investigation Measures Act 2011;

(b) "closed material" means any relevant material that the Secretary of State objects to disclosing to a relevant party on the grounds that it is contrary to the public interest;

(c) "extension notice" means a notice issued under section 5(2) of the Act, extending a TPIM notice;

(d) "legal representative" is to be construed in accordance with paragraph 4(4)(b) of Schedule 4 to the Act;

(e) "measures" means terrorism prevention and investigation measures (which has the has the same meaning as in section 2 of the Act);

(f) "open material" means any relevant material that the Secretary of State does not object to disclosing to a relevant party on the grounds it is contrary to the public interest;

(g) "relevant material" means the material described in paragraph 3(1)(a) to (c) of Schedule 4 to the Act;

(h) "relevant party" means any party to the proceedings other than the Secretary of State;

(i) "revival notice" means a notice issued under section 13(6) of the Act, reviving a TPIM notice;

(j) "special advocate" is a person appointed under paragraph 10(1) of Schedule 4 to the Act;

(k) "TPIM notice" has the same meaning as in section 2(1) of the Act;

(l) "TPIM proceedings" has the same meaning as in section 30(1) of the Act;

(m) "TPIM subject" means an individual on whom the Secretary of State has imposed, or is proposing to impose, measures by means of a TPIM notice;

(n) "variation notice" means a notice issued under section 12(1)(c) of the Act, varying the TPIM notice without the individual's consent.

(4) For the purposes of this Order, disclosure is contrary to the public interest if it is made contrary to the interests of national security, the international relations of the United Kingdom, the detection and prevention of crime, or in any other circumstances where disclosure is likely to harm the public interest.

Modification to the overriding objective

2.—(1) Where this Order applies, the overriding objective in Order 1, and so far as relevant any other rule, must be read and given effect in a way which is compatible with the duty set out in paragraph (2).

(2) The court must ensure that information is not disclosed contrary to the public interest.

(3) Subject to paragraph (2), the court must satisfy itself that the material available to it enables it properly to determine proceedings.

PART 2

Permissions Applications, References and Appeals to the High Court Relating to TPIM Notices

Scope of this Part

3. This Part of this Order contains rules about—

(a) applications under section 6(1)(b) of the Act (application for permission to impose a TPIM notice);

(b) references under paragraph 3(1) of Schedule 2 to the Act (references of a TPIM notice imposed without permission); and

(c) appeals to the High Court under section 16 of the Act (appeals relating to TPIM notices).

Application for permission to impose measure

4. An application under section 6(1)(b) of the Act for permission to impose measures must be made by the Secretary of State lodging with the Court—

(a) a statement of reasons to support the application;

(b) any relevant material of which the Secretary of State is aware at that stage;

(c) any written submissions; and

(d) the proposed TPIM notice.

Reference of measures imposed without permission

5. A reference under paragraph 3(1) of Schedule 2 to the Act of the imposition of measures imposed without permission is made by the Secretary of State lodging with the Court-

(a) a statement of reasons for imposing measures and for imposing the measures specified in the TPIM notice;

(b) any relevant material of which the Secretary of State is aware at that stage;

(c) any written submissions; and

(d) the TPIM notice.

Directions for hearing on application for permission or on a reference

6.—(1) If the Court gives permission on an application under section 6(1)(b) of the Act or confirms a TPIM notice on a reference under paragraph 3(1) of Schedule 2 to the Act, the Court must give directions for a directions hearing at which the TPIM subject, the TPIM subject's legal

representative, the special advocate (if one has been appointed) and the Secretary of State's legal representative may be present.

(2) In a case where permission is given (following an application under section 6(1)(b) of the Act), the date to be fixed for the directions hearing must, unless the court otherwise directs, be no later than 7 days after the date on which the TPIM notice is served on the TPIM subject.

(3) In a case where the TPIM notice is confirmed (following a reference under paragraph 3(1) of Schedule 2 to the Act), the date to be fixed for the directions hearing must, unless the Court otherwise directs, be no later than 7 days after the date on which the Court confirms the TPIM notice.

(4) At the directions hearing, the Court must give directions—

(a) for a review hearing under section 9(1) of the Act; and

(b) specifying a date and time by which the parties and special advocate must lodge and serve any written evidence or written submissions in accordance with rule 29.

(5) When giving directions under paragraph (4), the Court must have regard to the need to expedite the review hearing.

(6) Rules 27 and 28 will apply where any closed material is lodged by the Secretary of State.

Appeals under section 16 of the Act

7.—(1) This rule and rules 8 to 10 apply to an appeal under section 16 of the Act (appeals relating to a TPIM notice).

(2) With the exception of rule 16 thereof, Part II of Order 55 shall not apply to appeals under section 16 of the Act.

(3) Order 59, rule 10 applies to appeals under section 16 of the Act subject to —

(a) rule 2 of this Order; and

(b) the rules in Part 4 of this Order.

Notice of appeal

8.—(1) The TPIM subject must give notice of appeal by—

(a) lodging a notice of appeal in Form 37C with the Court; and

(b) serving a copy of that notice and any accompanying documents on the Secretary of State.

(2) The notice of appeal must—

(a) set out the grounds of the appeal; and

(b) state the name and address of—

(i) the TPIM subject, and

(ii) the TPIM subject's legal representative (if any).

(3) A notice of appeal may include an application under rule 18 for an order requiring anonymity for the TPIM subject.

(4) The notice of appeal must be lodged with a copy of the TPIM notice imposing measures on the TPIM subject and (as relevant)—

(a) a copy of the extension notice, revival notice or variation notice that is the subject of the appeal;

(b) a copy of the application to the Secretary of State—

(i) for permission in connection with a measure in the TPIM notice,

(ii) for the revocation of the TPIM notice, or