STATUTORY RULES OF NORTHERN IRELAND

1996 No. 282

SUPREME COURT, NORTHERN IRELANDPROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 1996

Made - - - -	*10th July 1996*
To be laid before Parliament	
Coming into operation	*25th August 1996*

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(**1**) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers as follows:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 1996 and shall come into operation on 25th August 1996.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court (Northern Ireland) 1980(**2**).

Affidavits

2. Order 41 rule 5(1) shall be amended by the addition of the following sub-paragraph—

"(g) Order 116 rule 3(4); rule 10(2); rule 20(4); rule 21(3); rule 30(7) and rule 34(2);"

Proceedings relating to the Prevention of Terrorism (Temporary Provisions) Act 1989(3) and Confiscation and Forfeiture in connection with criminal proceedings

3. Order 116 shall be amended as follows—

(a) by inserting, after Rule 15, the following new rule—

(**1**) 1978 c. 23
(**2**) S.R. 1980 No. 346; the relevant amending instruments are S.R. 1989 No. 288, S.R. 1991 No. 334, S.R. 1992 No. 204, S.R. 1992 No. 399 and S.R. 1995 No. 2
(**3**) **1989 c. 4**

"**Prevention of Terrorism (Temporary Provisions) Act 1989 (Enforcement of External Orders) Order 1995(4)**

16.—(1) The provisions of this Part of this Order shall, with such modifications as are necessary and subject to the provisions of any Order in Council made under paragraph 30 of Schedule 4, apply to proceedings for the registration and enforcement of external orders.

(2) For the purposes of this rule, an external order is a forfeiture or restraint order made by a court in a country or territory outside the United Kingdom which is enforceable in the United Kingdom by virtue of an Order in Council made under paragraph 30 of Schedule 4.";

(b) by substituting, for Parts II and III, the new Part II set out in the Schedule hereto.

"SCHEDULE Rule 3(*b*)

Rules to be inserted in Order 116

Part II

Proceeds of Crime (Northern Ireland) Order 1996(**6**) and Criminal Justice (International Co-operation) Act 1990(**7**)

Interpretation

17. In this Part of this Order—

"the 1996 Order" means the Proceeds of Crime (Northern Ireland) Order 1996 and an Article referred to by number means the Article so numbered in the 1996 Order;

expressions used in this Part of this Order which are used in the 1996 Order, have the same meanings in this Part of this Order as in the 1996 Order and, for the purposes of the enforcement in Northern Ireland of orders made under Part VI of the Criminal Justice Act 1988(**8**), the Drug Trafficking Act 1994(**9**) and the Proceeds of Crime (Scotland) Act 1995(**10**), include any extended meaning given by those Acts;

"Master" means Master (Queen's Bench and Appeals).

Assignment of proceedings

18. The jurisdiction of the High Court under the 1996 Order shall be assigned to the Queen's Bench Division and, subject to rule 32, shall be exercised by a judge in chambers.

(**4**) **S.I. 1995 No. 760**
(**6**) S.I. 1996 No. 1299 (N.I. 9)
(**7**) 1990 c. 5
(**8**) 1988 c. 33
(**9**) 1994 c. 37
(**10**) 1995 c. 43

Title and service of proceedings

19.—(1) An originating summons under this Part of this Order shall be entitled in the matter of the defendant, naming him, and in the matter of the 1996 Order, and all subsequent documents in the matter shall be so entitled.

(2) Any originating summons, or other document, required to be served under this Part of this Order may be served out of the jurisdiction with the leave of the Court.

(3) In any application under Article 24 or any related application, where a defendant has absconded, if it appears to the Court that it is impracticable for any reason to serve the summons or other document on the defendant in accordance with the provisions of this Part of this Order, the Court may make an order for substituted service of the summons or other document or may order service to be dispensed with.

(4) An application for an order for substituted service or for an order dispensing with service under paragraph (3) may be made by an affidavit stating the facts on which the application is founded.

(5) Substituted service of a summons or other document, in relation to which an order is made under paragraph (3), is effected by taking such steps as the Court may direct to bring the summons or other document to the notice of the person to be served.

(6) In any application under Article 24 or any related application, where a defendant has died, the summons or other document may be served on the deceased's personal representatives.

Application for confiscation order and service

20.—(1) An application by the prosecution for a confiscation order under Article 24 shall be made by originating summons.

(2) The application shall be supported by an affidavit giving full particulars of the following matters:—

(a) the grounds for believing that the defendant has died or absconded;

(b) the date or approximate date on which the defendant died or absconded;

(c) where the application is made under Article 24(2), the offence or offences of which the defendant was convicted and the date and place of conviction;

(d) where the application is made under Article 24(4), the proceedings which have been instituted against the defendant (including particulars of the offence or offences and the date and place of institution of those proceedings); and

(e) where the defendant is alleged to have absconded, the steps taken to contact him.

(3) Any statement required from the prosecution under Article 15 shall be exhibited to the affidavit and shall include the following particulars—

(a) the name of the defendant;

(b) the name of the person by whom the statement is given; and

(c) such information known to the prosecution as is relevant to, the determination whether the defendant has benefited from any relevant criminal conduct or drug trafficking, and, as to the assessment of the value of his benefit from the criminal conduct or, as the case may be, from the drug trafficking.

(4) Unless the court otherwise orders, an affidavit under paragraph (2) may contain statements of information and belief, with their sources and grounds.

(5) The application and affidavit in support shall be served not less than seven clear days before the date fixed for the hearing of the application on—

(a) the defendant;

(b) any person who the prosecution reasonably believes is likely to be affected by the making of a confiscation order; and

(c) the receiver, where one has been appointed in the matter.

Application for restraint order or charging order

21.—(1) An application for a restraint order under Article 31 or for a charging order under Article 32 (to either of which may be joined an application for the appointment of a receiver) may be made by the prosecution ex parte by originating summons in Form No. 8 in Appendix A.

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

(a) give the grounds for the application; and

(b) 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.

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

Restraint order or charging order

22.—(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 and legal expenses of the defendant or other person, but the applicant shall not be required to give an undertaking to abide by an order as to damages sustained by the defendant or other person as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application and a charging order shall have effect subject to such conditions as the Court may direct.

(3) Where a restraint order is made the applicant shall serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the applicant shall, unless the Court otherwise directs, serve copies of the order and of the affidavit in support on the defendant and, where property to which the order relates is held by another person, on that person and shall serve a copy of the order on such of the persons or bodies referred to below as shall be appropriate:—

(a) where the order relates to securities other than funds in court (including securities in court),

(i) in the case of Government funds or stock, on the keeper of the register;

(ii) in the case of stock of any body incorporated within Northern Ireland, on that body, or, on the keeper of the register;

(iii) in the case of stock of any body incorporated outside Northern Ireland or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within Northern Ireland, on the keeper of the register;

(iv) in the case of units of any unit trust in respect of which a register of the unit holders is kept at any place within Northern Ireland, on the keeper of the register;

(b) where the order relates to a fund in court on the Accountant General at the Court Funds Office, and

(c) where the order relates to an interest under a trust, on such trustees as the Court may direct.

Discharge or variation of restraint or charging order

23.—(1) Any person or body on whom a restrain order or charging order is served or who is notified of such an order or who is affected by such an order may apply by summons to discharge or vary the order.

(2) The summons and any affidavit in support shall be lodged with the Court and served on the prosecution and, where he is not the applicant for discharge or variation, on the defendant, not less than two clear days before the date fixed for the hearing of the summons.

(3) Upon the Court being satisfied that proceedings for the offences have been concluded or that the amount, payment of which is secured by the relevant charging order has been paid into Court, any restraint order or charging order, as the case may be, shall be discharged.

(4) The Court may also discharge a restraint order or a charging order upon receiving notice from the prosecution that it is no longer appropriate for the restraint order or charging order to remain in place.

Further application by the prosecution

24.—(1) Where a restraint order or a charging order has been made the prosecution may apply by summons or, where the case is one of urgency or the giving of notice would cause a reasonable apprehension of dissipation of assets, ex parte:—

(a) to vary such an order;

(b) for a restraint order or a charging order in respect of other realisable property; or

(c) for the appointment of a receiver.

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

(3) The summons and affidavit in support shall be lodged with the Court and served on the defendant and, where one has been appointed in the matter, on the receiver, not less than two clear days before the date fixed for hearing of the summons.

(4) Rule 22(3) and (4) shall apply to the service of an order varying a restraint order or charging order on persons other than the defendant and to the notification of all other persons or bodies affected thereby.