1991 No. 334

SUPREME COURT, NORTHERN IRELAND PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment No. 4) 1991

Made	*25th July 1991*
Coming into operation . .	*30th August 1991*
To be laid before Parliament	

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(a) 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 and all other powers enabling us in that behalf as follows:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No.4) 1991 and shall come into operation on 30th August 1991.

(2) In these rules an Order referred to by number or an Appendix referred to by letter means the Order so numbered and the Appendix so lettered in the Rules of the Supreme Court (Northern Ireland) 1980(**b**).

Proceedings relating to the Criminal Justice (Confiscation) (NI) Order 1990(**c**)

2. Order 116 shall be amended as follows—

(1) by substituting for the title to the Order the title "PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1989(**d**) AND CRIMINAL JUSTICE (CONFISCATION) (NORTHERN IRELAND) ORDER 1990";

(2) by dividing the Order into parts, of which Part I shall consist of rules 1 to 15 under the heading "PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1989";

(3) by inserting in rule 1, before the words "this Order", the words "this Part of";

(a) 1978 c. 23
(b) S.R. 1980 No. 346; the relevant amending instrument is S.R. 1989 No. 288
(c) S.I. 1990/2588 (N.I. 17)
(d) 1989 c. 4

(4) by adding at the end of rule 10 the following new paragraph—

"(2) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof."

and rule 10 shall stand as paragraph (1) of that rule;

(5) by omitting rule 12(3) and rule 14(1); and

(6) by inserting, after Rule 15 the Part II set out in the Schedule hereto.

Dated 27th June 1991

Brian Hutton
Donald Murray
J. P. Higgins
Aidan A. Canavan

I concur *Mackay of Clashfern*, C.

Dated 25th July 1991

SCHEDULE Rule 2(4)

Rules to be inserted in Order 116

PART II

CRIMINAL JUSTICE (CONFISCATION) (NORTHERN IRELAND) ORDER 1990

Interpretation

16. In this Part of this Order—

"the 1990 Order" means the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(a) and an Article referred to by number means the Article so numbered in the 1990 Order;

expressions used in this part of this Order have the same meanings as in the 1990 Order;

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

Assignment of proceedings

17. The jurisdiction of the High Court under the 1990 Order shall be assigned to the Queen's Bench Division and, subject to Rule 28, shall be exercised by a judge in chambers.

Application for restraint or charging order

18.—(1) An application for a restraint order under Article 13 or for a charging order under Article 14 (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*) state either that proceedings have been instituted against the defendant in respect of an offence to which the 1990 Order applies (giving particulars of the offence) and that they have not been concluded or that, whether by the laying of a complaint or otherwise, a person is to be charged with such an offence;

(*b*) in the case of a drug trafficking offence, state the grounds for believing that the defendant has benefited from drug trafficking;

(*c*) in the case of an offence to which the 1990 Order applies, other than a drug trafficking offence, state either that a confiscation order has been made or the grounds for believing that such an order may be made;

(*d*) 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;

(*e*) where proceedings have not been instituted, verify that the applicant is to have conduct of the proposed proceedings;

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

(3) An originating summons under paragraph (1) shall be entitled in the matter of the defendant, naming him, and in the matter of the 1990 Order, and all subsequent documents in the matter shall be so entitled.

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

(a) S.I. 1990/2588 (N.I. 17)

Restraint order or charging order

19.—(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

20.—(1) Any person or body on whom a restraint 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 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.

Further application by the prosecution

21.—(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, ex parte:—