

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

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*:-

- (a) to discharge or 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 19(3) and (4) shall apply to the service of an order discharging or 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.

Realisation of property

22.—(1) An application by the prosecution under Article 16 shall be made by summons and be supported by an affidavit.

(2) The summons and an affidavit in support shall be lodged with the Court and served on:—

- (a) the defendant;
- (b) any person holding an interest in the realisable property to which the application relates; and
- (c) the receiver, where one has been appointed in the matter,

not less than seven clear days before the date fixed for hearing of the summons.

(3) The supporting affidavit shall, to the best of the deponent's ability, give full particulars of the grounds of the application and of the realisable property to which it relates and specify the person or persons holding such property.

(4) A copy of the confiscation order, of any certificate issued under Article 9(7) by the Crown Court or, in the case of an offence to which the 1990 Order applies other than a drug trafficking offence, of any certificate issued by the Crown Court or a magistrates' court and of any charging order made in the matter shall be exhibited to the supporting affidavit.

(5) The Court may, on an application under Article 16, exercise the power conferred by Article 18(1) to direct the making of payments by the receiver.

Increase in realisable property

23.—(1) An application for a certificate under Article 17(1) shall be made by summons.

(2) A summons under paragraph (1) shall be served with any supporting affidavit on:—

- (a) the prosecution, where it is not the applicant;
- (b) the receiver, where one has been appointed in the matter and he is not the applicant; and
- (c) the defendant,

not less than seven clear days before the date fixed for hearing of the summons.

Receivers

24.—(1) Subject to the provisions of this Rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed in pursuance of a charging order or under Article 13 or 16.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the 1990 Order, it shall not be necessary for an affidavit of fitness to be sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall apply by summons for directions as to the distribution of such sums.

(4) A summons under paragraph (3) shall be served with any evidence in support not less than seven clear days before the date fixed for hearing of the summons on:—

(a) the defendant; and

(b) any other person who held property realised by the receiver.

Application by defendant for certificate of inadequacy

25.—(1) The defendant may apply by summons for a certificate under Article 20(1).

(2) A summons under paragraph (1) shall be served with any supporting evidence on:—

(a) the prosecution; and

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

not less than seven clear days before the date fixed for hearing of the summons.

Application for compensation order

26. An application for an order under Article 25 shall be made by summons, which shall be served, with any supporting evidence, on the person alleged to be in default (where known) and on the appropriate body mentioned in Article 25(5) not less than seven clear days before the date fixed for hearing of the summons.

Application for order for disclosure of information

27.—(1) An application by the prosecution under Article 34, for the purpose of an investigation into drug trafficking, shall be made by summons, which shall state the nature of the order sought and whether material sought to be disclosed is to be disclosed to a receiver appointed in pursuance of a charging order or under Article 13 or 16 or to a person mentioned in Article 34(8).

(2) An application under paragraph (1) shall be supported by an affidavit which shall state the grounds for believing that the conditions in Article 34(4) and, if appropriate, 34(7) are fulfilled.

(3) The summons and affidavit in support shall be served on the authorised government department in accordance with Order 77, rule 3, not less than seven clear days before the date fixed for hearing of the summons.

Reciprocal enforcement of orders

28. Notwithstanding the provisions of Order 32 rule 11(1)(a), the powers conferred on the High Court by virtue of Article 28 may be exercised by a judge in chambers or the Master.

Application for registration

29. An application for registration of an external confiscation order to which Article 28 applies may be made ex parte.

Evidence in support of application under Article 28

30.—(1) An application for registration of an external confiscation order under Article 28 must be supported by an affidavit—

- (i) exhibiting the order or a verified or certified or otherwise duly authenticated copy thereof and, where the order is not in the English language, a translation thereof into English certified by a notary public or authenticated by affidavit; and
- (ii) stating—
 - (a) that the order is in force and is not subject to appeal,
 - (b) where the person against whom the order was made did not appear in the proceedings, that he received notice thereof in sufficient time to enable him to defend them,
 - (c) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered, and
 - (d) to the best of the deponent's knowledge, particulars of what property the person against whom the order was made holds in Northern Ireland, giving the source of the deponent's knowledge.

(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.

Register of orders

31.—(1) There shall be kept in the Central Office under the direction of the Master a register of the orders registered under the 1990 Order.

(2) There shall be included in such register particulars of any variation or setting aside of a registration, of any variation, satisfaction or discharge of a registered order, and of any execution issued on the order.

Notice of registration

32.—(1) Notice of the registration of an order must be served on the person or persons against whom it was obtained by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the Court may direct.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a writ.

Application to vary or set aside registration

33. An application by the person against whom an order was made to vary or set aside the registration of an order must be made to a judge by summons supported by affidavit.

Enforcement of order

34. If an application is made under rule 33, an order shall not, unless the Court otherwise orders, be enforced until after such application is determined.

Variation, satisfaction and discharge of registered order

35. Upon the Court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge (including where appropriate particulars of the

amount received in satisfaction of the order), as the case may be, shall be entered in the register.

Rules to have effect subject to Orders in Council

36. Rules 16 to 35 shall have effect subject to the provisions of any Order in Council made under Article 27.

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules provide, as a new Part II of Order 116 of the Rules of the Supreme Court (Northern Ireland) 1980, for the procedure to be followed in applications to the High Court under the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

The Rules also amend the rules in Part I of Order 116 which regulate the procedure in applications under the Prevention of Terrorism (Temporary Provisions) Act 1989.