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STATUTORY RULES OF NORTHERN IRELAND

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**1996 No. 281**

**SUPREME COURT, NORTHERN IRELAND  
CROWN COURT**

The Crown Court (Amendment No.  
2) Rules (Northern Ireland) 1996

Made - - - - 10th July 1996

To be laid before Parliament

Coming into operation 25th August 1996

We, the Crown Court Rules Committee in exercise of the powers conferred on us by section 52(1) of the Judicature (Northern Ireland) Act 1978(1) and Article 50(7) of the Proceeds of Crime (Northern Ireland) Order 1996(2), hereby with the concurrence of the Lord Chancellor make the following Rules:—

**Citation, commencement and interpretation**

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

(2) In these Rules “the principal Rules” shall mean the Crown Court Rules (Northern Ireland) 1979(3).

**Amendments to the principal Rules**

2. The principal Rules shall be amended as follows—

(a) by substituting, for rule 46, the following rule:

**“Manner of application**

**46.** Where no other provision is made in these Rules as to the way in which an application is made to the Court (otherwise than at the trial) by the defendant or the prosecutor under these Rules, the application shall be made in writing and delivered to the chief clerk and a copy thereof given to the opposite party.”;

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(1) 1978 c. 23

(2) S.I.1996/1299 (N.I. 9)

(3) S.R. 1979 No. 90; to which the most recent relevant amendments were made by S.R. 1991 No. 327 and S.R. 1992 No. 202

- (b) by substituting, for Part VII, the new Part set out in the Schedule; and
- (c) by deleting Part IX.

**Transitional provisions and savings**

3.—(1) Rule 2(b) shall not apply to any proceedings to which the Proceeds of Crime (Northern Ireland) Order 1996 does not apply.

(2) Part VII of the principal Rules shall continue to apply to such proceedings as if rule 2(b) had not been made.

**Amendment to the Crown Court (Amendment) Rules 1996**

4. In Rule 1(1) of the Crown Court (Amendment) Rules 1996(4) after the words “Rules” in the second place where it occurs, there shall be inserted the words “(Northern Ireland)”.

*Brian Hutton  
R. D. Carswell  
J. M. Nicholson  
J. F. B. Russell  
A. R. Hart  
R. Appleton  
J. W. Wilson  
Patrick Lynch  
Francis Keenan*

Dated 24th June 1996

I concur,

Dated 10th July 1996.

*Mackay of Clashfern, C.*

## SCHEDULE

Rule 2(b).

### “Part VII

#### Applications under the Proceeds of Crime (Northern Ireland) Order 1996

##### **Interpretation**

51. In this Part of these Rules:—

“the 1996 Order” means the Proceeds of Crime (Northern Ireland) Order 1996(5); an Article referred to by number is a reference to the Article so numbered in the 1996 Order; and expressions which are defined in the 1996 Order have the same meaning as in the 1996 Order.

##### **Statements, etc in connection with the making of confiscation orders under the 1996 Order**

52.—(1) Where a defendant has been convicted of an offence to which the 1996 Order applies and the prosecutor or the defendant is required, or proposes, to give to the Court any statement or other document under Article 15 (Provision of information by the prosecution) or Article 16 (Provision of information by the defendant) he shall serve it within such time as the Court may direct on the chief clerk and at the same time serve a copy thereof on the opposite party.

(2) Any statement given to the Court by the prosecutor or the defendant under Article 15 or 16 shall include the following particulars—

- (a) the name of the defendant and the Crown Court case number;
- (b) the name of the person by whom the statement is given and, if different, the name of the person by whom it is made;
- (c) the date on which the conviction for the offence occurred; and
- (d) the facts relied on in support of any allegation made or matter indicated.

(3) Where in accordance with Article 15(3) the defendant is required to indicate the extent to which he accepts any allegation contained within a statement given by the prosecutor, he must indicate so in writing to the chief clerk, and at the same time serve a copy on the prosecutor.

(4) Where the prosecutor intends to indicate the extent to which he accepts any allegation contained within a statement given by the defendant under Article 15 or 16, he must indicate so in writing to the chief clerk, and at the same time serve a copy on the defendant.

##### **Application for increase in term of imprisonment in default of payment**

53.—(1) The following provisions of this rule shall have effect for the purposes of applications under Article 14(2).

(2) Notice of application under Article 14(2) to increase the term of imprisonment or detention fixed in default of payment of the confiscation order by a person (“the defendant”) shall be made by the prosecutor in writing to the chief clerk at the place where the confiscation order was made.

(3) The notice under paragraph (2) shall—

- (a) state the name and address of the defendant;

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- (b) specify the grounds of the application;
  - (c) give details of any enforcement measures taken;
  - (d) include a copy of the confiscation order.
- (4) On receiving a notice under paragraph (2) the chief clerk shall—
- (a) forthwith send to the defendant a copy of the said notice; and
  - (b) notify in writing the applicant and the defendant of the date, time and place appointed for the hearing of the application.
- (5) Where the Court makes an order pursuant to an application under Article 14(2), the chief clerk shall forthwith send a copy of the order—
- (a) to the applicant;
  - (b) to the defendant;
  - (c) where the defendant is in custody at the time of the making of the order, to the person having custody of him.

#### **Investigations — discharge and variation of order**

54.—(1) Where an order has been made under Article 50(2), the person required to comply with the order may apply to the county court judge who made the order or, where that judge is not available, to any other county court judge, to have the order discharged or varied.

(2) An application under paragraph (1) shall be made in writing, setting out the grounds of the application and shall be served on—

- (a) the chief clerk of the county court division in which the material the subject of the order is situated; and
- (b) the constable who obtained the order.

(3) The application may be determined by the judge either with or without a hearing and if a hearing is directed the chief clerk shall notify the parties of the time and place of the hearing.

#### **Postponement of confiscation orders**

54A.—(1) Notice of application by the defendant or prosecutor under Article 11(5) asking the Court to exercise its powers under Article 11(1) or (4), shall be made in writing to the chief clerk of the Court at the place where the defendant was convicted.

(2) On receiving a notice under paragraph (1), the chief clerk shall forthwith send a copy of the notice to the opposite party who shall within 28 days notify the applicant and the chief clerk, in writing, whether or not he proposes to oppose the application, giving the reason for any such opposition.

(3) After the expiry of the period referred to in paragraph (2), the Court shall determine whether an application under paragraph (1) is to be dealt with—

- (a) without a hearing, or
- (b) at a hearing at which the parties may be represented,

and the chief clerk, shall inform the parties accordingly.

(4) Where the Court makes an order pursuant to an application under Article 11(5), the chief clerk shall forthwith send a copy of the order to the applicant and to the other party.

### **Confiscation — revised assessments**

54B.—(1) A notice of application by the prosecutor under Article 17, 18 or 19, shall be made in writing to the chief clerk of the Court at the place where the defendant was convicted.

(2) The notice under paragraph (1) shall—

- (a) state the name of the defendant and the Crown Court case number;
- (b) give the date on which any relevant conviction occurred;
- (c) give the date on which any relevant confiscation order was made or, as the case may be, varied;
- (d) specify the grounds on which the application is made; and
- (e) give an indication of the evidence available to support the application.

(3) On receiving a notice under paragraph (1) the chief clerk shall—

- (a) forthwith send to the defendant a copy of the said notice, and
- (b) notify in writing the applicant and the defendant of the date, time and place appointed for the hearing of the application.

(4) Where the Court makes an order pursuant to an application under Article 17, 18 or 19, the chief clerk shall forthwith send a copy of the order to the applicant and to the defendant.

### **Compensation where absconder is acquitted**

54C. Where the Court cancels a confiscation order under Article 27, the chief clerk shall give notice to that effect to the Master (Queen’s Bench and Appeals) in the High Court.”

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## **EXPLANATORY NOTE**

*(This note is not part of the Rules.)*

These Rules amend the Crown Court Rules (Northern Ireland) 1979 principally to take account of the repeal and replacement of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (as amended) by the Proceeds of Crime (Northern Ireland) Order 1996.

The Rules substitute a new Part VII into the 1979 Rules to provide for various matters arising under the 1996 Order, including:—

- (a) the statements and other documents to be tendered to the Court under Articles 15 and 16 of the 1996 Order (rule 52);
- (b) applications under Article 14(2) of the 1996 Order for the term of imprisonment or detention fixed in default of payment of a confiscation order to be increased to take account of interest on the unsatisfied order (rule 53);
- (c) applications for the variation and discharge of orders under Article 50(2) of the 1996 Order (rule 54);
- (d) applications by the defendant or prosecutor under Article 11 of the 1996 Order for the postponement of the making of a confiscation order or the extension of such postponement (rule 54A);

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- (e) applications under Articles 17, 18 and 19 of the 1996 Order for, respectively, the reconsideration of cases where the defendant's proceeds of crime were not assessed, the reassessment of the defendant's proceeds of crime and the revised assessment of a defendant's proceeds of crime (rule 54B);
- (f) the giving of notice to the Master (Queen's Bench and Appeals) that a confiscation order has been cancelled under Article 27 of the 1996 Order (rule 54C).

The Rules also make a consequential amendment to rule 46 of the 1979 Rules and delete Part IX of those Rules to take account of the lapsing of the confiscation provisions in the Northern Ireland (Emergency Provisions) Act 1991.

The Rules also amend the Crown Court (Amendment) Rules (Northern Ireland) 1996 to rectify an error in the citation provision.