

2009 No. 207

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

**The Rules of the Supreme Court (Northern Ireland)
(Amendment) 2009**

Made - - - - - *20th May 2009*
Coming into operation - *30th June 2009*
To be laid before Parliament

The Northern Ireland Supreme Court Rules Committee makes the following Rules in exercise of the powers conferred by sections 55 and 55A of the Judicature (Northern Ireland) Act 1978(a).

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment) 2009 and shall come into operation on 30th June 2009.

(2) In these Rules, “the principal Rules” means the Rules of the Supreme Court (Northern Ireland) 1980(b) and an Order or Form referred to by a number or an Appendix referred to by letter means the Order or Form so numbered or the Appendix so lettered in the principal Rules.

Arrangement of Orders

2. The Arrangement of Orders at the beginning of the principal Rules is amended by adding, after the entry relating to Order 123, the following—

“**124.** Serious Crime Act 2007 – Serious Crime Prevention Orders.”.

Amendments to the principal Rules

3. The principal Rules shall be amended as follows—

(1) in Order 116—,

(a) rule 1—

(i) in the definition of “defendant”, for “an offence under any of sections 15 to 18 of the Act” substitute “a relevant offence”;

(ii) in the definition of “prosecutor”, for “an offence under any of the sections 15 to 18 of the Act” substitute “a relevant offence”;

(a) 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).

(b) S.R. 1980 No. 346 to which the most recent relevant amendments were made by S.R. 2003 No. 54.

(b) in rule 3(2)(a), for “an offence under any of sections 15 to 18 of the Act” substitute “a relevant offence”;

(2) in Order 123—

(a) in rule 1, after the definition of “civil recovery proceedings”, insert—

““management receiver” means a receiver appointed under section 245E of the Act, or, as the case may be, under Article 150A of the Order in Council;

“management receiving order” means an order made under section 245E of the Act, or, as the case may be, under Article 150A of the Order in Council;”;

(b) in Part II, on each occasion where it occurs, for “the Director”, substitute “the enforcement authority”;

(c) in rule 7—

(i) in the heading—

(aa) for “or”, substitute “, ”; and

(bb) after “interim receiving order”, insert “or a management receiving order”;

(ii) in sub-paragraph (1)(b), at the end, for “,” substitute “, or”;

(iii) after sub-paragraph (1)(b), insert—

“(c) a management receiving order,”;

(iv) in paragraph (3)—

(aa) after “interim receiving order,”, insert “or for a management receiving order,”;

(bb) for sub-paragraph (a), substitute—

“(a) specify the person nominated by the enforcement authority (“the nominee”) under section 246 of the Act or Article 151 of the Order in Council to act as interim receiver, or, as the case may be, under section 245E of the Act or Article 150A of the Order in Council to act as a management receiver;” and

(v) in paragraph (4)—

(aa) for “or”, substitute “, ”;

(bb) after “interim receiving order”, insert “, or a management receiving order”; and

(cc) for “of”, where it occurs for the second time, substitute “on”;

(d) in rule 8—

(i) in the heading, delete “Interim”;

(ii) after “interim receiver”, insert “or a management receiver”; and

(iii) after “interim receiving order”, insert “or a management receiving order”;

(e) in rule 9—

(i) for paragraph (1) substitute—

“(1) An application for directions as to the exercise of the functions of—

(a) an interim receiver under section 251 of the Act or Article 156 of the Order in Council; or

(b) a management receiver under section 245G of the Act or Article 150C of the Order in Council,

shall be made by way of summons.”; and

(ii) in sub-paragraph (2)(a), after “interim receiver”, insert “or, as the case may be, the management receiver”;

(f) in rule 10—

(i) in the heading—

(aa) after “property freezing order”, for “or”, substitute “, ”; and

- (bb) after “interim receiving order”, insert “or management receiving order”;
- (ii) in paragraph (1), after “(which may include an application for an exclusion from the order)”, insert “, or a management receiving order”;
- (iii) in sub-paragraph (2)(b), delete “and”; and
- (iv) after sub-paragraph (2)(b), insert—
 - “(ba) in the case of an application to vary or set aside a management receiving order, the management receiver (where he is not the applicant); and”;
- (g) in rule 19—
 - (i) in sub-paragraph (2)(d)—
 - (ii) for “member of staff of the Agency”, substitute “appropriate person”; and
 - (iii) delete “(“the named officer”);”;
 - (iv) in sub-paragraph (2)(e)—
 - (aa) for “member of staff of the Agency”, substitute “other person”;
 - (bb) for “the Director”, substitute “the senior appropriate officer”; and
 - (cc) for “named officer”, substitute “appropriate person”;
- (h) in rule 20, on each occasion where it occurs, for “the Director”, substitute “the relevant authority”;
- (i) in rule 21, for “the Director”, substitute “the appropriate officer”;
- (j) in rule 22—
 - (i) in paragraph (1), for “the Director”, substitute “an appropriate officer”; and
 - (ii) in sub paragraph (2)(b), for “member of staff of the Agency”, substitute “appropriate officer”;
- (k) in rules 23, 24, and 25, on each occasion where it occurs, for “the Director”, substitute “an appropriate officer”;
- (l) in rule 26—
- (m) in paragraph (2), for “the Director”, substitute “the appropriate officer”; and
- (n) in paragraph (3), for “the Director”, substitute “an appropriate officer”;
- (3) After Order 123, insert the Order set out in the Schedule to these Rules;
- (4) In Appendix A—
 - (a) in Form 27, for “above-named plaintiff [*or* defendant]”, substitute “[plaintiff][defendant][*(name)*, third party]”;
 - (b) in Form 72, paragraph 2, for “a civil recovery investigation”, substitute “[a civil recovery investigation] [a detained cash investigation] (*delete as appropriate*)”.

*Brian Kerr
Patrick Coghlin
Declan Morgan
John Gillen
Tony Caher*

Dated 13th May 2009

Signed by the authority of the Lord Chancellor

In exercise of the powers conferred by section 55A (3) of the Judicature (Northern Ireland) Act 1978, I allow these Rules.

Bridget Prentice
Parliamentary Under-Secretary of State
Ministry of Justice

Dated 20th May 2009

SCHEDULE

Rule 3(3)

“ORDER 124

SERIOUS CRIME ACT 2007 – SERIOUS CRIME PREVENTION ORDERS

Interpretation

1. In this Order—

“the 2007 Act” means the Serious Crime Act 2007(a), a section referred to by number means the section so numbered in the Act, and expressions used have the same meaning as in the Act.

Assignment of proceedings

2. In this Order, the jurisdiction of the High Court under the Act shall be assigned to the Queen’s Bench Division.

Application for a serious crime prevention order

3.—(1) An application under section 8(b) for a serious crime prevention order shall be made by originating summons.

(2) The application shall be supported by an affidavit which shall—

- (a) specify the provisions of section 3(1) relied upon, and in respect of each such provision, give full particulars of the allegations that the defendant has been involved in serious crime (whether in Northern Ireland or elsewhere);
- (b) state the plaintiff’s grounds for contending that the proposed terms of the serious crime prevention order are appropriate for the purpose of protecting the public in accordance with section 1(3); and
- (c) give full particulars of any third party whom the plaintiff believes is likely to be significantly affected by the serious crime prevention order and the nature of that adverse effect.

(3) The application shall be accompanied by a draft of the serious crime prevention order for which the application is made and shall specify the dates upon which the plaintiff proposes that the serious crime prevention order should come into force and cease to be in force.

(4) Where it is alleged that the defendant has been convicted of a serious offence in Northern Ireland, the application shall be accompanied by a certificate of conviction.

(5) Where it is alleged that the defendant has been convicted of an offence in another jurisdiction, the plaintiff shall attach—

- (a) a document from the appropriate public authority in the jurisdiction concerned certifying that the defendant has, after due process of law, been convicted of the offence; and
- (b) where the document is not in English, a translation of that document into English—
 - (i) certified by a notary public or other qualified person; or
 - (ii) authenticated by affidavit.

(a) 2007 c.27.

(6) The plaintiff shall serve a copy of the application, affidavit in support and any other documents required under paragraphs (3)-(5) as soon as is practicable upon—

- (a) the Court;
- (b) the defendant; and
- (c) any person on whom the making of the order would be likely to have a significant adverse effect.

(7) The Court shall not determine an application under paragraph (1) unless—

- (a) the defendant has had an opportunity to make representations at the hearing of that application; and
- (b) any person on whom the making of the order would be likely to have a significant adverse effect has had an opportunity to make representations before the Court about the making of the order.

Application to vary or discharge a serious crime prevention order

4.—(1) An application to vary a serious crime prevention order under section 17(2) or to discharge a serious crime prevention order under section 18(1)(b) shall be made by way of notice of motion.

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

- (a) where the applicant is the defendant, details of the change of circumstances affecting the serious crime prevention order;
- (b) where the application is to vary a serious crime prevention order, particulars of how the terms of the order as varied would protect the public in accordance with section 17(2);
- (c) where the plaintiff seeks to vary a serious crime prevention order—
 - (i) details of any third party whom he believes is likely to be significantly adversely affected by the proposed variation of the serious crime prevention order; and
 - (ii) details of the nature of that adverse effect;
- (d) where a third party seeks to vary a serious crime prevention order—
 - (i) particulars of why he believes that he is significantly adversely affected by the order;
 - (ii) particulars of how condition A or B in section 17 is met; and
 - (iii) particulars relied upon to establish that the purpose of the application is not to make the serious crime prevention order more onerous on the person who is the subject of the order; and
- (e) where a third party applies for the discharge of a serious crime prevention order, particulars of—
 - (i) why he believes that he is significantly adversely affected by the order; and
 - (ii) how condition A or B in section 18 is met.

(3) Where the application is to vary or discharge a serious crime prevention order made by the Crown Court, the application must be accompanied by a copy of that order.

(4) Unless the Court otherwise directs, the summons and affidavit in support shall, not less than two days before the date fixed for the hearing of the summons, be filed in the Central Office and be served upon—

- (a) the Court; and
- (b) where he is not the party bringing the application—
 - (i) the defendant;

- (ii) the plaintiff; and
- (iii) any person on whom the applicant is aware the variation or discharge of the order would be likely to have a significant adverse effect.

(5) The Court shall not determine an application under paragraph (1) unless—

- (a) the defendant;
- (b) the plaintiff; and
- (c) any person on whom the order would be likely to have a significantly adverse effect, in accordance with section 17(5) or 18(4),

has had an opportunity to make representations at the hearing of that application.

Application by a third party to make representations in relation to a serious crime prevention order

5.—(1) An application by a third party under section 9 to make representations in proceedings in relation to a serious crime prevention order shall contain details of why the third party believes the proposed order would be likely to have a significant adverse effect on him.

(2) An application under paragraph (1) shall be made as soon as is practicable by serving written notice upon—

- (a) the Court;
- (b) the plaintiff;
- (c) the defendant; and
- (d) any other person on whom the order would be likely to have a significant adverse effect.

Appeals in relation to serious crime prevention orders

6.—(1) Where an appeal is made under either section 35 of the Act or section 23(1) of the 2007 Act in respect of a serious crime prevention order, the appellant shall serve a copy of the notice of appeal on any party to the proceedings which are the subject of the appeal, including any person who was given the opportunity to make representations in these proceedings.

(2) Order 59 (Appeals to the Court of Appeal) applies to an appeal to the Court of Appeal in respect of a serious crime prevention order made by the High Court.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 (S.R. 1980 No. 346) in consequence of:

- amendments made by the Counter Terrorism Act 2008 to the Terrorism Act 2000 (“the 2000 Act”) in relation to when a restraint order may be made. Rule 3(1) amends Order 116 to reflect the circumstances in which a restraint order may be made under the 2000 Act as amended;
- amendments made by the Serious Crime Act 2007 (“the 2007 Act”) to the Proceeds of Crime Act 2002 (“the 2002 Act”) in relation to civil recovery management receivers and detained cash investigations; and by the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2008 to the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 in relation to civil recovery management receivers. Rule 3(2) amends Order 123 to include provision for the procedure to be followed in applying for a management receiving order and for applications relating to the exercise of management receivers powers under the 2002 Act as amended;
- the 2007 Act in relation to serious crime prevention orders. Rule 3(3) inserts a new Order 124 which prescribes the practice and procedure to be used in proceedings under Part 1 of the 2007 Act in relation to the making, variation, discharge and appeal of serious crime prevention orders made by the High Court;
- Rule 3(4) makes amendments to Forms 27 and 72 in Appendix A in connection with these Rules.

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£5.50

Dd. N4042. C2. 5/09. Gp. 130. 14567.