

2010 No. 430

COURT OF JUDICATURE, NORTHERN IRELAND

**The Rules of the Court of Judicature (Northern Ireland)
(Amendment No.3) 2010**

Approved by both Houses of Parliament

Made - - - - 23rd December 2010

Laid before Parliament 23rd December 2010

Coming into operation in accordance with rule 1

The Lord Chancellor, in exercise of the power conferred by section 29 of the Terrorist Asset-Freezing etc. Act 2010(a) to make rules of court under section 55 of the Judicature (Northern Ireland) Act 1978(b) and section 28(4) of the Terrorist Asset-Freezing etc. Act 2010, and after consulting in accordance with section 29(3) of that Act, makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Court of Judicature (Northern Ireland) (Amendment No.3) 2010.

(2) These Rules come into operation on the day after they are laid.

2. In these Rules, “the principal Rules” means the Rules of the Court of Judicature (Northern Ireland) 1980(c) and an Order, Part or rule referred to by number alone means the Order, Part or rule so numbered in the principal Rules.

Amendment to the principal Rules

3. In Order 116B—

(a) in rule 1(1)(b), at the end, omit “and”;

(b) after rule 1(1)(b), insert—

“(ba) appeals relating to designations under the Terrorist Asset-Freezing etc. Act 2010; and”;

(c) after rule 1(2)(c), insert—

“(ca) “designation” means a designation in accordance with Chapter 1 of Part 1 of the 2010 Act;”;

(a) 2010 c.38.

(b) 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); and by Article 15 of and Schedule 17 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010 No.976).

(c) S.R. 1980 No. 346. The Rules of the Supreme Court (Northern Ireland) 1980 were re-named in accordance with paragraph 3 of Schedule 11 to the Constitutional Reform Act 2005 (c.4). The most recent relevant amendments were made by S.R.2008 No.479, S.R.2009 No.264, and the Terrorist Asset-Freezing etc. Act 2010, Schedule 1.

- (d) in the heading to Part II, at the end, insert “UNDER THE 2008 ACT OR THE 2010 ACT”;
- (e) in rule 3, at the end, insert “under section 63(2) of the 2008 Act or section 27(2) of the 2010 Act”;
- (f) for Part III, substitute the new Part III as set out in the Schedule to these Rules;
- (g) in the heading to Part IV, at the end, insert “APPLICABLE TO PARTS II and III OF THIS ORDER”;
- (h) in rule 20, for “rule 1(1)(a) and (b).” substitute “Parts II and III of this Order.”;
- (i) in rule 22(1)(c), after “a decision of” insert “the Treasury or”;
- (j) in rule 28, after paragraph (1), insert—
“(1A) paragraph (1)(b)(iii) does not apply in respect of appeals in relation to designations.
”.

Signed by authority of the Lord Chancellor

Dated 23rd December 2010

J Djanogly
Parliamentary Under Secretary of State
Ministry of Justice

“PART III

APPEALS

A. APPEAL TO THE HIGH COURT IN RESPECT OF DESIGNATIONS

Application and Modification of Order 55

12.—(1) Order 55 Part II applies to an appeal to the High Court under section 26 of the 2010 Act (appeals to the court in relation to designations) in relation to designations and variations, revocation and renewal of those designations, subject to—

- (a) rule 2;
- (b) the rules in Part IV of this Order; and
- (c) the modification set out in paragraph (2).

(2) Order 55, rules 16 to 20 do not apply to appeals to the High Court under section 26 of the 2010 Act.

Notice of Motion

13.—(1) The notice of motion must set out the details of—

- (a) the interim or final designation;
- (b) how the appellant is affected by the interim or final designation; and
- (c) the grounds of the appeal.

(2) The appellant must file and serve the following documents with the notice of motion—

- (a) a copy of the written notice of the interim or final designation; and
- (b) any evidence, including witness statements in support of the application.

(3) The notice of motion may not be amended without the leave of the High Court.

(4) The High Court may strike out the whole or part of a notice of motion where there is a compelling reason to do so.

B. APPEAL TO THE COURT OF APPEAL

Application and Modification of Order 59

14.—(1) Order 59 applies to appeals to the Court of Appeal against orders of the High Court in financial restrictions proceedings, and to appeals to the Court of Appeal in relation to designations under the 2010 Act, subject to—

- (a) rule 2 of this Order;
- (b) the rules in Part IV of this Order; and
- (c) the modification set out in paragraph (2).

(2) Order 59, rules 3(1), (4) and (5), 4, 5, 6(3) and (4), 11, 14 and 16 to 18 do not apply to appeals to the Court of Appeal against orders of the High Court in financial restrictions proceedings, and to appeals to the Court of Appeal in relation to designations under the 2010 Act.

Leave to appeal

15.—(1) A party who wishes to appeal against an order of the High Court in financial restrictions proceedings requires leave to appeal to the Court of Appeal.

(2) An application for leave to appeal may be made—

- (a) to the High Court at the hearing at which the decision to be appealed was made; or
- (b) to the Court of Appeal in the notice of appeal.

(3) Where the High Court refuses an application for leave to appeal, a further application may be made to the Court of Appeal.

(4) Where the Court of Appeal, without a hearing, refuses leave to appeal, the person seeking leave may request the decision to be reconsidered at a hearing.

(5) A request under paragraph (4) must be lodged within 7 days after service of the notice that leave has been refused.

(6) Leave to appeal will only be given where—

- (a) the Court considers that the appeal would have a real prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard.

(7) An order giving leave may—

- (a) limit the issues to be heard; and
- (b) be made subject to conditions.

16.—(1) A party who wishes to appeal against an order of the High Court in respect of a designation under the 2010 Act requires leave to appeal to the Court of Appeal from that court.

(2) Leave to appeal will only be given where—

- (a) the Court of Appeal considers that the appeal would raise an important point of principle or practice; or
- (b) there is some other compelling reason for the Court of Appeal to hear it.

Notice of appeal

17.—(1) An appeal to the Court of Appeal under this Order shall be brought by motion, and the notice of motion in this Order shall be referred to as a notice of appeal.

(2) The provisions of Order 8 shall apply to a notice of appeal under this Order as they apply to a notice of motion.

Time limit for appealing

18.—(1) The appellant in an appeal to the Court of Appeal under this Order must lodge the notice of appeal within—

- (a) such period as may be directed by the High Court; or
- (b) where the High Court makes no such direction, 21 days after the date of the decision of the High Court that the appellant wishes to appeal.

(2) Unless the Court of Appeal orders otherwise, a notice of appeal must be served on each respondent—

- (a) as soon as practicable; and
- (b) in any event not later than 7 days, after it is lodged.

Service of notice of appeal on special advocate

19. The appellant must serve a copy of the notice of appeal on any special advocate (if one has been appointed).

Time limit for lodging the respondent's notice

19A.—(1) A respondent's notice must be lodged within—

- (a) such period as may be directed by the High Court; or
- (b) where the Court makes no such direction, 14 days after the date in paragraph (2).

(2) The date referred to in paragraph (1) is—

- (a) the date the respondent is served with the notice of appeal where leave to appeal was given by the High Court;
- (b) the date the respondent is served with notification that the Court of Appeal has given the appellant leave to appeal; or
- (c) the date the respondent is served with notification that the application for leave to appeal and the appeal itself are to be heard together.

(3) Unless the Court of Appeal orders otherwise a respondent's notice must be served on the appellant and any other respondent—

- (a) as soon as practicable; and
- (b) in any event not less than 7 days,

after it is lodged.

Striking out notices of appeal and setting aside or imposing conditions on leave to appeal

19B.—(1) The Court of Appeal may—

- (a) strike out the whole or part of a notice of appeal;
- (b) set aside leave to appeal in whole or in part;
- (c) impose or vary conditions upon which an appeal may be brought.

(2) The Court will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party was present at the hearing at which leave was given, he may not subsequently apply for an order that the Court exercise its powers under paragraph (1) (b) or (c).

(4) If the Court of Appeal—

- (a) refuses an application for leave to appeal;
- (b) strikes out a notice of appeal; or
- (c) dismisses an appeal,

and it considers that the application, the notice of appeal or the appeal is without merit, the Court's order must record this fact.

Hearing of appeals

19C.—(1) The provisions of this rule apply without prejudice to the generality of the provisions in Order 59, rule 10.

(2) Every appeal to the Court of Appeal under this Order will be limited to a review of the decision of the High Court unless the Court of Appeal considers that, in the circumstances of an individual appeal, it would be in the interests of justice to hold a re-hearing.

(3) Unless it orders otherwise, the Court of Appeal will not receive—

- (a) oral evidence; or
 - (b) evidence which was not before the High Court.
- (4) The Court of Appeal will allow an appeal where the decision of the High Court was—
- (a) wrong; or
 - (b) unjust because of a serious procedural or other irregularity in the proceedings in the High Court.
- (5) The Court of Appeal may exercise its powers in relation to the whole or part or an order of the High Court.”

EXPLANATORY NOTE

(This note is not part of these Rules)

These Rules amend the Rules of the Court of Judicature (Northern Ireland) 1980 (“the principal Rules”) to prescribe the procedure for appeals in relation to designations under the Terrorist Asset-Freezing etc. Act 2010.

The Terrorist Asset-Freezing etc. Act 2010 provides for the Treasury to impose financial restrictions, by way of ‘designation’, on, and in relation to, certain persons believed or suspected to be, or to have been involved in terrorist activities. Section 26 of the Act provides that challenges to decisions relating to both interim and final designations should be heard by way of appeal to the High Court. Other decisions taken by the Treasury under the Act may be reviewed by the High Court applying the principles applicable to judicial review. These Rules make a number of minor amendments to Order 116B of the principal Rules and replace the existing Part III of Order 116B with a new Part III, as set out in the Schedule, to include the procedure for appeals before the High Court under section 26 of the Act, and for related appeals to the Court of Appeal.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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