

**EXPLANATORY MEMORANDUM TO**  
**THE RULES OF THE COURT OF JUDICATURE (NORTHERN IRELAND)**  
**(AMENDMENT No. 3) 2010**

**2010 No. 430**

**1.** 1.1 This explanatory memorandum has been prepared by the Department of Justice (Northern Ireland Courts and Tribunals Service) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument amends the Rules of the Court of Judicature (Northern Ireland) 1980 (S.R. 1980/346) (“the principal Rules”) to provide for rules of court for applications under section 26 (appeal to the court in relation to designations) of the Terrorist Asset-Freezing etc. Act 2010 (“the Act”).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Since the instrument includes provisions specific to the excepted matter of terrorism, it must be laid before Parliament, rather than the Northern Ireland Assembly (and similarly, any future rules made under the Act by the Northern Ireland Court of Judicature Rules Committee will also need to be laid before Parliament).

3.2 The Rules of the Supreme Court (Northern Ireland) 1980 were re-named the Rules of the Court of Judicature (Northern Ireland) 1980 in consequence of section 59 of, and paragraph 3 of Schedule 11 to, the Constitutional Reform Act 2005, which came into operation on 1<sup>st</sup> October 2009.

**4. Legislative Context**

4.1 Sections 2 and 6 of the Act provide the Treasury with the power to make, respectively, final and interim designations. The effect of a designation is that the funds and economic resources of the designated person may not be dealt with except under a licence from the Treasury, and that the provision of funds and in some circumstances economic resources to a designated person is only permitted under licence from the Treasury. An interim designation lasts up to 30 days and a final designation lasts a year but may be renewed. Sections 2 and 6 of the Act replace a power to designate persons under the Terrorism (United Nations Measures) Order 2009 (2009/1747) (“the 2009 Order”).

4.2 Section 26 of the Act provides that a designated person may appeal against any decision to make vary, revoke or renew or not to vary or revoke a designation to the High Court. Sections 28 and 29 provide a power to make rules of court in relation to such appeals, and for the Lord Chancellor to make rules in the first instance in order to implement these provisions, after which the power will revert, in Northern Ireland, to the Northern Ireland Court of Judicature Rules Committee.

4.3 Order 116B of the principal Rules was created by the Rules of the Supreme Court (Northern Ireland) (Amendment No.3) 2008 (S.R.2008/479) to provide rules of court in relation to financial restriction proceedings under Part 6 of the Counter-Terrorism Act 2008, which included challenges to asset freezing decisions under the 2009 Order. Such challenges were considered on the basis of the principles applicable to judicial review.

4.4 This instrument makes a number of minor textual amendments to Order 116B and replaces the existing Part III with a new Part III to include the procedural rules applicable to appeals under section 26 of the Act. The Act has separately amended Order 116B to apply it to challenges to decisions made by the Treasury under the Act other than designation decisions; such other decisions will be determined on the basis of the principles applicable to judicial review so no substantive amendment was required to the existing rules in Order 116B.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Northern Ireland.

## **6. European Convention on Human Rights**

6.1 The Parliamentary Under Secretary of State, Jonathan Djangoly, MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Rules of the Court of Judicature (Northern Ireland) (Amendment No.3) 2010 are compatible with the Convention Rights.”

## **7. Policy background**

- *What is being done and why*

7.1 Section 26 of the Act creates a right of appeal against designation decisions made under the Act. Such decisions may include consideration of material the disclosure of which would be contrary to the public interest, and which would require the appointment of special advocates in the event of a legal challenge. The rules in Order 116B of the principal Rules which cover asset freezing, the disclosure of such material and the appointment of special advocates do not include provisions relating to the determination of designation decisions on an appeal basis. This instrument amends Order 116B to apply it to appeals under section 26 of the Act and includes new rules setting out the procedure for such appeals. It also disapplies, in relation to designation appeals, rule 28(1)(b)(iii) of Order 116B which concerns an obligation to search for and file inculpatory material which the party concerned does not rely upon.

- *Consolidation*

7.2 It is not expected that there will be any consolidation of this instrument.

## **8. Consultation outcome**

8.1 The Lord Chancellor has consulted the Lord Chief Justice of Northern Ireland, who has indicated that he is content with the Rules. The Act does not require any other consultation on these Rules.

## **9. Guidance**

9.1 These Rules will be published on the Northern Ireland Courts and Tribunals Service website.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 These Rules will form part of the Rules of the Court of Judicature (Northern Ireland) 1980 which are kept under review by the Northern Ireland Court of Judicature Rules Committee. Any subsequent amendment to these Rules will be made by the Northern Ireland Court of Judicature Rules Committee.

## **13. Contact**

13.1 Angela Bell at the Northern Ireland Courts and Tribunals Service, Tel: 028 9041 2201 or e-mail [angelabell@courtsni.gov.uk](mailto:angelabell@courtsni.gov.uk) can answer any queries regarding this instrument.