

EXPLANATORY MEMORANDUM TO
THE CROWN COURT (AMENDMENT) RULES (NORTHERN IRELAND) 2011

S.R 2011 No 230

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Justice (Northern Ireland Courts and Tribunals Service) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 This Statutory Rule is made under sections 52(1) and 53A of the Judicature (Northern Ireland) Act 1978, and on this occasion section 49 of the Crime (International Co-operation) Act 2003, and is subject to negative resolution.

2. Purpose

- 2.1 The Crown Court Rules (Northern Ireland) 1979 (S.R. 1980 No.90) (“the principal Rules”) govern practice and procedure in the Crown Court in Northern Ireland.
- 2.2 This instrument amends the Crown Court Rules (Northern Ireland) 1979 to –
 - extend the procedure prescribed by rule 46 to include applications made by third parties (where no other provisions exist in the principal Rules);
 - make a minor tidy up amendment to existing rules which prescribe the procedure for the mutual transmission of evidence between EU Member States under the Crime (International Co-operation) Act 2003;
 - insert new rules to prescribe the procedure for making an application to the Crown Court under sections 10-12 and 20-25 of the Crime (International Co-operation) Act 2003; and
 - make a number of minor technical amendments to Forms 6 and 7A of the principal Rules.

3. Matters of special interest

- 3.1 None.

4. Background

- 4.1 Sections 10-12 and 20-25 of the 2003 Act implement, in domestic law, the provisions of Council Framework Decision 2003/577/JHA. The Framework Decision allows for the mutual recognition, between EU States, of freezing orders for evidence issued in the framework of criminal proceedings.
- 4.2 There are two types of freezing order under the 2003 Act – a domestic freezing order and an overseas one. The Home Office acts as a central authority for the sending and receiving of all freezing orders.
- 4.3 A domestic freezing order is an order for protecting evidence which is in another EU Member State, pending its transfer to the UK. Rule 3(4) inserts new rules 58A and 58B into the principal Rules to prescribe the procedure for making an application to the Court for a domestic freezing order, and how an application for variation or revocation of a freezing order should be made.
- 4.4 An overseas freezing order is an order for protecting evidence which is in the UK pending its transfer to another EU Member State. Rule 3(5) inserts new rules 60A and 60B into the principal Rules to make provision in respect of how the Court should deal with an application received from another EU Member State in relation to an overseas freezing order, and how an application to release evidence held under such an order should be made.
- 4.5 The Rules also make a number of other amendments to the principal Rules intended to either streamline existing procedures or remove obsolete references to reflect current practice. In particular Rule 3(1) inserts new rule 46 into the principal Rules to extend the procedure prescribed by rule 46 to applications made by third parties (where no other provisions exists in the principal Rules). Currently, rule 46 of the principal Rules sets out a general procedure prescribing the manner in which an application should be made to the Court (otherwise than at the trial) by the defendant or the prosecutor. There is, however, currently no provision which provides a general procedure where an application may be made by a third party and new Rule 46 makes provision in that respect.

5. Consultation

- 5.1 Due to the representative nature of the Crown Court Rules Committee (which makes the rules which are then allowed by the Department of Justice) and the fact that the rules are procedural in nature (and are therefore of limited public interest) no formal consultation was considered necessary on this occasion.

6. Equality Impact

6.1 This Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

7. Regulatory Impact

7.1 This Statutory Rule does not require a Regulatory Impact Assessment as it does not impose any additional costs or savings on business, charities or voluntary bodies.

8. Financial Implications

8.1 This Statutory Rule does not have any financial implications.

9. Section 24 of the Northern Ireland Act 1998

9.1 It is the view of the Northern Ireland Courts and Tribunals Service that this Statutory Rule is compatible with section 24 of the Northern Ireland Act 1998.

10. EU Implications

10.1 Sections 10-12 and 20-25 of the 2003 Act implement Council Framework Decision 2037/577/JHA. Rules 3(4) and (5) prescribe the procedure for dealing with applications under sections 10-12 and 20-25, and as such those Rules are necessary to support the implementation of the primary legislative provisions and the Framework Decision.

11. Parity or Replicatory Measure

11.1 In relation to Rule 3(5) (overseas freezing orders), similar provision has been made in Rule 32.10 of the Criminal Procedure Rules in England and Wales.

12. Additional Information

12.1 Not applicable.