

2008 No. 479

SUPREME COURT, NORTHERN IRELAND

COUNTER-TERRORISM

**The Rules of the Supreme Court (Northern Ireland)
(Amendment No.3) 2008**

Approved by both Houses of Parliament

<i>Made</i>	- - - -	<i>2nd December 2008</i>
<i>Coming into operation</i>	-	<i>4th December 2008</i>
<i>Laid before Parliament</i>		<i>3rd December 2008</i>

The Lord Chancellor, having power by virtue of section 72 of the Counter-Terrorism Act 2008 (a) to make rules of court under section 55 of the Judicature (Northern Ireland) Act 1978(b) and sections 66 and 67 of the Counter-Terrorism Act 2008, and after consulting the Lord Chief Justice of Northern Ireland in accordance with section 72(2) of that Act, makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 3) 2008 and shall come into operation on 4th December 2008.

(2) In these Rules, “the principal Rules” means the Rules of the Supreme Court (Northern Ireland 1980(c) and an Order referred to by number or an Appendix referred to by letter means the Order 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 shall be amended by inserting after the entry relating to Order 116A, the following new entry—

“**116B.** Counter-Terrorism Act 2008.”.

(a) 2008 c.28.

(b) 1978 c.23 to which the most recent relevant amendments were made by Schedule 5 to the Constitutional Reform Act 2005 (c.4).

(c) S.R. 1980 No.346 the relevant amendments to which are S.R. 1981 No.224; S.R. 1984 No. 110; S.R. 1991 No.231; S.R. 1991 No.232; S.R. 1992 No.399; S.R. 2005 No.314 and S.R. 2008 No. 22.

Amendment to the principal Rules

3. The principal Rules shall be amended as follows—

- (a) in Order 1, rule 1A(4) after “Order 116A, rule 2(1)” insert “and Order 116B, rule 2(1)”;
- (b) after Order 1, rule 11(k) insert the following—
 - “(1) proceedings under the Counter-Terrorism Act 2008 – financial restrictions proceedings.”; and
- (c) after Order 116A, insert new Order 116B, as set out in the Schedule to these Rules.

Dated 2nd December 2008

Bridget Prentice
Parliamentary Under-Secretary of State
Ministry of Justice

“ORDER 116B
COUNTER-TERRORISM ACT 2008

PART I
PRELIMINARY

Application and interpretation

- 1.—(1) This Order applies to—
- (a) financial restrictions proceedings in the High Court; and
 - (b) appeals to the Court of Appeal against an order of the High Court in such proceedings.
- (2) In this Order—
- (a) “the Act” means the Counter-Terrorism Act 2008(a);
 - (b) “financial restrictions decision” means a decision to which section 63(1) of the Act applies;
 - (c) “financial restrictions proceedings” has the same meaning as in section 65 of the Act;
 - (d) “closed material” means—
 - (i) material, evidence or submissions to the Court upon which the Treasury wishes to rely in proceedings;
 - (ii) material which adversely affects the Treasury’s case or supports another party’s case; or
 - (iii) information which the Treasury is required to lodge pursuant to an order under rule 10(7),
but which the Treasury objects to disclosing to another party and that party’s legal representative;
 - (e) “legal representative” in relation to a party to proceedings other than the Treasury does not include a special advocate;
 - (f) “material” means anything in which information of any description is recorded;
 - (g) “party” includes the Treasury unless otherwise stated or unless the context otherwise requires;
 - (h) “special advocate” means a person appointed under section 68 of the Act; and
 - (i) “specially represented party” means a party, other than the Treasury, whose interest a special advocate represents.

(a) 2008 c.28.

Modification to the overriding objective

2.—(1) Where this Order applies, the overriding objective in Order 1, and so far as relevant any other rule, must be read and given effect in a way which is compatible with the duty set out in paragraph (2).

(2) The Court will ensure that information is not disclosed contrary to the public interest.

(3) Without prejudice to paragraph (2), the Court will satisfy itself that the material available to it enables it to properly determine the proceedings.

PART II

APPLICATION TO SET ASIDE A FINANCIAL RESTRICTIONS DECISION

Application of this Part

3. This Part applies to an application to set aside a financial restrictions decision.

Application to set aside

4.—(1) An application to set aside a financial restrictions decision must be made by originating summons in Form 6 in Appendix A modified in accordance with rule 5(2).

(2) The originating summons must be supported by an affidavit setting out—

- (a) the details of the financial restrictions decision;
- (b) details of how the plaintiff is affected by the financial restrictions decision; and
- (c) the grounds on which the plaintiff seeks to set aside the decision.

(3) The plaintiff must lodge with the originating summons—

- (a) a copy of—
 - (i) the written notice of the relevant financial restrictions decision made by the Treasury; or
 - (ii) where relevant, any direction, order or licence made under Schedule 7 to the Act or any freezing order made under Part 2 of the Anti-Terrorism, Crime and Security Act 2001(a); and
- (b) any evidence, including witness statements, on which the plaintiff relies at that stage.

Title and form of proceedings

5.—(1) An originating summons under this Part of this Order shall be entitled in the matter of a decision by the Treasury under section 63 of the Counter-Terrorism Act 2008 and all subsequent documents in the matter shall be so entitled.

(2) In Form 6, the following paragraph shall be omitted—

“If the defendant does not enter an appearance, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.”.

Fixing of directions hearing date

6.—(1) When the Court issues the originating summons it will fix a date for a directions hearing.

(a) 2001 c.24

(2) Unless the Court directs otherwise, the directions hearing will be not less than 14 days but not more than 28 days after the date of issue of the originating summons.

Service of the originating summons and accompanying documents

7. The Court will—

- (a) serve on the Treasury and any special advocate (if one has been appointed)—
 - (i) the originating summons; and
 - (ii) the documents specified in rule 4(3); and
- (b) send to all parties and any special advocate a notice of the directions hearing date (where such date is not endorsed on the originating summons).

Memorandum of appearance

8. Where a special advocate has been appointed, the Treasury must serve on that special advocate a copy of the memorandum of appearance lodged under Order 12, rule 9.

Directions Hearing

9. At the directions hearing, the Court may give such directions as to the further conduct of the proceedings as it thinks necessary to secure the just, expeditious and economical disposal of the case, in particular—

- (a) for the holding of a further hearing to determine the application;
- (b) fixing a date, time and place for the further hearing at which the parties, their legal representatives (if any) and any special advocate can be present; and
- (c) as to the order in which, and the time within which, the following are to be lodged and served—
 - (i) any response to the application to be lodged and served by the Treasury under rule 10 (1), (2) and (4);
 - (ii) any application to be made under rule 10(5);
 - (iii) any information to be lodged and served by the Treasury pursuant to an order under rule 10(7);
 - (iv) any evidence to be lodged and served by the plaintiff under rule 11(1);
 - (v) any evidence to be lodged and served by the Treasury under rule 11(2);
 - (vi) any application by the Treasury under rule 10(3), (8) or 11(3); and
 - (vii) any further evidence, including witness statements, written submissions or skeleton arguments, to be lodged and served by the parties and any special advocate.

Response by the Treasury

10.—(1) Where the Treasury intends to oppose the application to set aside the financial restrictions decision, they must lodge with the Court —

- (a) the grounds for contesting the application; and
- (b) any relevant evidence of which they are aware at that stage.

(2) Unless the Treasury objects to the grounds and evidence in paragraph (1) being disclosed to the plaintiff and the plaintiff's legal representative, the Treasury must serve a copy of the grounds and evidence on the plaintiff at the same time as lodging the grounds.

(3) Where the Treasury objects to the grounds and evidence in paragraph (1) being disclosed to the plaintiff and the plaintiff's legal representative, the Treasury must make an application in accordance with rule 30.

(4) Where a special advocate has been appointed, the Treasury must serve on that special advocate a copy of the grounds and evidence lodged under paragraph (1).

(5) The plaintiff and any special advocate may apply to the Court for an order directing the Treasury to lodge and serve further information about the Treasury's grounds lodged under paragraph (1)(a).

(6) The application under paragraph (5) must set out—

- (a) what information is sought; and
- (b) why the information sought is necessary for the determination of the application to set aside the financial restrictions decision.

(7) The Court may make an order on an application under paragraph (5) where it considers that the information sought is—

- (a) necessary for the determination of the application to set aside the financial restrictions decision; and
- (b) may be provided without disproportionate cost, time or effort.

(8) Where the Treasury objects to serving on the plaintiff and the plaintiff's legal representative the information sought under paragraph (5), the Treasury must make an application in accordance with rule 30.

Lodging and service of evidence

11.—(1) Where the plaintiff wishes to rely on evidence in support of the application to set aside the financial restrictions decision and—

- (a) such evidence was not lodged with the Court with the originating summons; or
- (b) such evidence was lodged with the Court with the originating summons but the plaintiff wishes to rely on further evidence,

the plaintiff must lodge and serve that evidence, including any witness statement, on the Treasury and any special advocate.

(2) Where the plaintiff serves evidence in support of the application, the Treasury must lodge and serve, subject to paragraph (3), any further evidence, including any witness statement, on the plaintiff and any special advocate.

(3) Where the Treasury seeks to withhold disclosure of any closed material from the plaintiff and the plaintiff's legal representative, the Treasury must make an application in accordance with rule 30.

(4) The Treasury must serve any closed material on the special advocate.

(5) The parties and, where relevant, any special advocate must lodge and serve any further evidence, including witness statements, written submissions or skeleton arguments as directed by the Court.

PART III

APPEAL TO THE COURT OF APPEAL

Application

12.—(1) Order 59 (Appeals to the Court of Appeal) applies to an appeal to the Court of Appeal against an order of the High Court in financial restrictions proceedings subject to—

- (a) rule 2 of this Order, and
- (b) the rules in Part IV of this Order.

(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 an order of the High Court in applications made under this Order.

Leave to appeal

13.—(1) A party to an appeal under this Part of this Order 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.

Notice of appeal

14.—(1) An appeal to the Court of Appeal under this Part of 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 appeals brought under this Order.

Time limit for appealing

15.—(1) The appellant in an appeal under this Part of 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

16. 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

17.—(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

- 18.**—(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

- 19.**—(1) The provisions of this rule apply without prejudice to the generality of the provisions in Order 59, rule 10.
- (2) Every appeal under this Part of 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.

PART IV GENERAL PROVISIONS

Scope of this Part

20. This Part applies to all proceedings specified in rule 1(1).

Notification of hearing

21. Unless the Court orders otherwise, the Court will serve any notice of the date, time and place fixed for a hearing on—

- (a) every party, whether or not a party is entitled to attend that hearing; and
- (b) if one has been appointed for the purposes of the proceedings, the special advocate or those instructing the special advocate.

Hearings

22.—(1) All proceedings to which this Order applies must be determined at a hearing except where—

- (a) the plaintiff withdraws the claim or application;
- (b) the Treasury consents to the claim or application being allowed;
- (c) the appellant withdraws the appeal against a decision of the High Court;
- (d) the respondent to the appeal consents to the appeal being allowed; or
- (e) the parties agree to a determination without a hearing.

(2) Where the Court considers it necessary for a party other than the Treasury and that party's legal representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, the Court will—

- (a) direct accordingly; and
- (b) conduct the hearing, or that part of it from which the party and that party's legal representative are excluded, in private but attended by a special advocate to represent the interests of the excluded party.

(3) The Court may otherwise conduct a hearing or part of a hearing in private if it considers that it is in the interests of justice or national security to do so.

(4) Subject to paragraphs (2) and (3) a hearing under this Order is to be in public.

Appointment of a special advocate

23.—(1) Subject to paragraph (2), the Treasury must immediately give notice of the proceedings to the Attorney General—

- (a) upon being served with any originating summons or writ or notice of appeal; or
- (b) where the Treasury intends to lodge a notice of appeal,

in proceedings to which this Order applies.

(2) Paragraph (1) applies unless—

- (a) the Treasury does not intend to—
 - (i) oppose the claim, application or appeal; or

- (ii) apply for leave to withhold closed material from a party and that party's legal representative; or
 - (b) a special advocate has already been appointed to represent the interests of a party other than the Treasury and that special advocate is not prevented from communicating with that party by virtue of rule 25.
- (3) Where any proceedings to which this Order applies are pending but no special advocate has been appointed, any party may request the Attorney General to appoint a special advocate.

Function of a special advocate

24. The function of a special advocate is to represent the interests of a party other than the Treasury by, for example—

- (a) making submissions to the Court at any hearing from which the party and that party's legal representative are excluded;
- (b) adducing evidence and cross-examining witnesses at such a hearing;
- (c) making applications to the Court or seeking directions from the Court where necessary; and
- (d) making written submissions to the Court.

Special advocate: communicating about proceedings

25.—(1) The special advocate may communicate with the specially represented party or that party's legal representative at any time before the Treasury serves closed material on the special advocate.

(2) After the Treasury serves closed material on the special advocate, the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (3) or a direction of the Court pursuant to a request under paragraph (4).

(3) The special advocate may, without directions from the Court, communicate about the proceedings with—

- (a) the Court;
- (b) the Treasury and any persons acting for it;
- (c) the Attorney General and any persons acting for the Attorney General; and
- (d) any other person, except for—
 - (i) the specially represented party and that party's legal representative; and
 - (ii) any other party to the proceedings (other than the Treasury) and that party's legal representative,

with whom it is necessary for administrative purposes for the special advocate to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from the Court authorising the special advocate to communicate with the specially represented party or that party's legal representative or with any other person.

(5) Where the special advocate makes a request for directions under paragraph (4)—

- (a) the Court will notify the Treasury of the request; and
- (b) the Treasury must, within a period specified by the Court, lodge and serve on the special advocate notice of any objection which it has to the proposed communication, or to the form in which it is proposed to be made.

(6) Paragraph (2) does not prohibit the specially represented party from communicating with the special advocate after the Treasury has served closed material on the special advocate as mentioned in paragraph (1), but—

- (a) that party may only communicate with the special advocate through a legal representative in writing; and
- (b) the special advocate must not reply to the communication other than in accordance with directions given by the Court, except that the special advocate may without such directions send a written acknowledgment of receipt to the specially represented party's legal representative.

Consideration of the Treasury's objection

26.—(1) Where the Treasury objects under rule 25(5)(b) to a proposed communication by the special advocate the Court will fix a hearing for the Treasury and the special advocate to make oral representations, unless—

- (a) the special advocate gives notice to the Court that the special advocate does not challenge the objection;
- (b) the Court—
 - (i) has previously considered an objection under rule 25(5)(b) to the same or substantially the same communication; and
 - (ii) is satisfied that it would be just to uphold or dismiss that objection without a hearing; or
- (c) the Treasury and the special advocate consent to the Court deciding the issue without a hearing.

(2) If the special advocate does not challenge the objection, the special advocate must give notice of that fact to the Court and to the Treasury—

- (a) within 14 days after the Treasury serves on the special advocate a notice under rule 25(5)(b); or
- (b) within such other period as the Court may direct.

(3) Where the Court fixes a hearing under paragraph (1)—

- (a) the special advocate may lodge with the Court and serve on the Treasury a reply to the Treasury's objection;
- (b) the Treasury may lodge with the Court and serve on the special advocate a response to the special advocate's reply; and
- (c) the Treasury and the special advocate must lodge with the Court at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must—
 - (i) give brief reasons for their contentions on each issue in dispute; and
 - (ii) set out any proposals for the Court to resolve the issues in dispute.

(4) A hearing under this rule must take place in the absence of the specially represented party and that party's legal representative.

Modification of the general rules of evidence and disclosure

27.—(1) Order 24 (discovery and inspection of documents), Order 38 (evidence) and Order 39 (evidence by deposition), rules 1 and 2 do not apply to any proceedings to which this Order applies.

(2) Subject to the other rules in this Order and to any directions of the Court, the evidence of a witness may be given either—

- (a) orally before the Court; or
- (b) in a witness statement.

(3) The Court may also receive evidence in documentary or any other form.

(4) A party is entitled to adduce evidence and to cross-examine witnesses during any part of a hearing from which a party and that party's legal representative are not excluded.

(5) The Court may require a witness to give evidence on oath or by affirmation.

Search for, lodging of and service of material

28.—(1) A party (the disclosing party) must—

- (a) make a reasonable search for material relevant to the matters under consideration in the proceedings to which this Order applies; and
- (b) lodge and serve on the other party and any special advocate material other than closed material—
 - (i) on which the disclosing party relies;
 - (ii) which adversely affects the disclosing party's case;
 - (iii) which adversely affects the other party's case; or
 - (iv) which supports the other party's case.

(2) The factors relevant in deciding the reasonableness of a search under paragraph (1)(a) include—

- (a) the amount of material involved;
- (b) the nature and complexity of the proceedings;
- (c) whether the material is in the control of the party making the search;
- (d) the ease and expense of retrieval of any material; and
- (e) the significance of any material which is likely to be located during the search.

(3) The duty to search for, lodge and serve material under paragraph (1) continues until the proceedings to which this Order applies have been determined.

(4) Where material, other than closed material, to which the duty under paragraph (1) extends comes to a party's attention before the proceedings to which this Order applies have been determined, that party must immediately—

- (a) lodge it with the Court;
- (b) serve it on the other party; and
- (c) serve it on any special advocate.

Redacted material

29. Where the Treasury serves on another party any evidence (including a witness statement) or material which has been redacted on grounds other than those of legal professional privilege, the Treasury must—

- (a) notify the party that the evidence or material has been redacted and on what grounds it has been redacted;
- (b) lodge the evidence or material with the Court in an unredacted form together with an explanation of the redaction.

Application to withhold closed material

30.—(1) The Treasury—

- (a) must apply to the Court for leave to withhold closed material from another party and that party's legal representative in accordance with this rule; and
- (b) may not rely on closed material at a hearing unless a special advocate has been appointed and attends the hearing to represent the interests of that party.

(2) The Treasury must lodge with the Court and serve, at such time as the Court directs, on the special advocate—

- (a) the closed material;
 - (b) a statement of the reasons for withholding that material from the specially represented party; and
 - (c) if the Treasury considers it possible to summarise that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the specially represented party or that party's legal representative.
- (3) Where the Treasury serves on the special advocate any closed material which has been redacted on grounds other than those of legal professional privilege—
- (a) the Treasury must file with the Court the material in an unredacted form together with an explanation of the redactions; and
 - (b) the Court will give a direction to the Treasury as to what may be redacted and what, if any, must be served on the special advocate in an unredacted form.
- (4) The Treasury may at any time amend or supplement material lodged under this rule, but only with—
- (a) the agreement of the special advocate; or
 - (b) the leave of the Court.

Consideration of the Treasury's application

31.—(1) Where the Treasury applies in accordance with rule 30 for leave to withhold closed material the Court will fix a hearing for the Treasury and the special advocate to make oral representations, unless—

- (a) the special advocate gives notice to the Court that the special advocate does not challenge the application;
- (b) the Court—
 - (i) has previously considered an application for leave to withhold the same or substantially the same material; and
 - (ii) is satisfied that it would be just to grant leave without a hearing; or
- (c) the Treasury and the special advocate consent to the Court deciding the issue without a hearing.

(2) If the special advocate does not challenge the application, the special advocate must give notice of that fact to the Court and to the Treasury—

- (a) within 14 days after the Treasury serves on the special advocate the material under rule 30(2); or
- (b) within such other period as the Court may direct.

(3) Where the Court fixes a hearing under paragraph (1)—

- (a) the special advocate may lodge with the Court and serve on the Treasury a reply to the Treasury's application;
- (b) the Treasury may lodge with the Court and serve on the special advocate a response to the special advocate's reply; and
- (c) the Treasury and the special advocate must lodge with the Court at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must—
 - (i) give brief reasons for their contentions on each issue in dispute; and
 - (ii) set out any proposals for the Court to resolve the issues in dispute.

(4) A hearing under this rule must take place in the absence of the specially represented party and that party's legal representative.

(5) The Court will grant leave to the Treasury to withhold closed material where it considers that disclosure of that material would be contrary to the public interest.

(6) Where the Court grants leave to the Treasury to withhold closed material, the Court will—

- (a) consider whether to direct the Treasury to serve a summary of that material on the specially represented party or that party's legal representative; but
- (b) ensure that such a summary does not contain material, the disclosure of which would be contrary to the public interest.

(7) Where the Court does not grant leave to the Treasury to withhold closed material from, or directs the Treasury to serve a summary of that material on, the specially represented party or that party's legal representative—

- (a) the Treasury is not required to serve that material or summary; but
- (b) if it does not do so, at a hearing on notice, the Court may—
 - (i) where it considers that the material or anything that is required to be summarised might adversely affect the Treasury's case or supports the case of the specially represented party, direct that the Treasury must not rely on such material in its case, or must make such concessions or take such other steps, as the Court may specify; or
 - (ii) in any other case, direct that the Treasury does not rely on the material or (as the case may be) on that which is required to be summarised.

Failure to comply with directions

32.—(1) Where a party or special advocate fails to comply with a direction of the Court, the Court may serve on that party or the special advocate a notice which states—

- (a) the respect in which that party or special advocate has failed to comply with the direction;
- (b) a time limit for complying with the direction; and
- (c) that the Court may proceed to determine the proceedings before it, on the material available to it, if the party or special advocate fails to comply with the relevant direction within the time specified.

(2) Where a party or special advocate fails to comply with such a notice, the Court may proceed in accordance with paragraph (1)(c).

Judgments

33.—(1) When the Court gives judgment in any proceedings to which this Order applies, it may withhold all or some of its reasons if and to the extent that it is not possible to give reasons without disclosing information contrary to the public interest.

(2) Where the judgment of the Court does not include the full reasons for its decision, the Court will serve on the Treasury and the special advocate a separate written judgment including those reasons.

(3) Where the Court serves a separate written judgment under paragraph (2), the special advocate may apply to the Court to amend that judgment and the judgment under paragraph (1) on the grounds that the separate written judgment under paragraph (2) contains material not in the judgment under paragraph (1) the disclosure of which would not be contrary to the public interest.

(4) The special advocate must serve a copy of the application under paragraph (3) on the Treasury.

(5) The Court will give the special advocate and the Treasury an opportunity to lodge written submissions and may determine the application with or without a hearing.

Application by Treasury for reconsideration of order, direction or judgment

34.—(1) This rule applies where the Court proposes, in any proceedings to which this Order applies, to serve on a party other than the Treasury—

- (a) notice of any order or direction made or given in the absence of the Treasury; or
- (b) any written judgment.

(2) Before the Court serves any such notice or judgment on a party other than the Treasury, it will first serve notice on the Treasury of its intention to do so.

(3) The Treasury may, within 5 days of being served with notice under paragraph (2), apply to the Court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if it considers—

- (a) its compliance with the order or direction; or
- (b) the notification to another party of any matter contained in the judgment, order or direction,

would cause information to be disclosed contrary to the public interest.

(4) Where the Treasury makes an application under paragraph (3), it must at the same time serve on the special advocate, if one has been appointed—

- (a) a copy of the application;
- (b) a copy of the relevant document referred to in paragraph (1)(a) or (b); and
- (c) a copy of the notice served on the Treasury pursuant to paragraph (2).

(5) If a special advocate has been appointed, rule 31 (except for paragraphs (6) and (7)) will apply with any necessary modifications to the consideration of an application under paragraph (3) of this rule.

(6) The Court will not serve notice on a party other than the Treasury as mentioned in paragraph (1) before the time for the Treasury to make an application under paragraph (3) has expired.

Supply of court documents

35. Unless the Court directs otherwise, Order 66 (paper, printing, notices, copies and inspection of documents), rules 3 to 5 do not apply to any proceedings to which this Order applies or to any documents relating to such proceedings.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 (“the principal Rules”) by—

- (a) amending Order 1 rule 1A(4) so that it is subject to both Order 116A and 116B;
- (b) inserting a new Order 116B containing rules about financial restrictions proceedings under the Counter-Terrorism Act 2008; and
- (c) modifying the application of certain other Orders in the principal Rules for the purposes of those proceedings.

The Counter-Terrorism Act 2008 provides for financial restrictions proceedings, including the application to the High Court to set aside a financial restrictions decision. The new Order 116B inserted into the principal Rules by these Rules sets out the procedure for such applications to the High Court and any appeal to the Court of Appeal.

Part I of Order 116B contains rules about the scope and application of the Order. In particular, rule 2, modifies the overriding objective in Order 1 of the principal Rules, where Order 116B applies, to place a duty on the Court to ensure that information is not disclosed contrary to the public interest and to require the Court to read and give effect to the overriding objective in a way which is compatible with this duty.

Part II of Order 116B contains rules about the Court procedure relating to applications to set aside a financial restrictions decision.

Part III of Order 116B provides that Order 59 of the principal Rules applies to an appeal to the Court of Appeal against an order of the High Court in financial restrictions proceedings subject to rule 2 (modification of the overriding objective), Part IV of Order 116B and certain modifications. A copy of the appellant’s notice must be served on any special advocate (if one has been appointed).

Part IV of Order 116B contains rules which apply to all financial restrictions proceedings and appeals against an order of the High Court in such proceedings. These include provision for—

- the notification by the Court of the date, time and place fixed for a hearing (rule 21);
- hearings (rule 22);
- the appointment and function of a special advocate and the special advocate’s communications with others (rules 23 to 26);
- the modification of the general rules of evidence and disclosure (rule 27);
- the search for, lodging of and service of material (rule 28);
- the service and lodging of redacted material by the Treasury (rule 29);
- the application by the Treasury to withhold closed material (rules 30 and 31);
- service by the Court of a notice where there has been a failure to comply with a direction of the Court (rule 32);
- the Court to withhold all or some of its reasons when giving judgment where it is not possible to give reasons without disclosing information contrary to the public interest (rule 33);
- the application by the Treasury to the Court for reconsideration of an order, direction or judgment where compliance with the order or direction or the notification to another party of any matter contained in the judgment, order or direction would cause information to be disclosed contrary to the public interest (rule 34); and
- disapplying Order 66, rules 3 to 5 to proceedings to which Order 116B applies (rule 35) or to any document relating to such proceedings.

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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SUPREME COURT, NORTHERN IRELAND

COUNTER-TERRORISM

The Rules of the Supreme Court (Northern Ireland)
(Amendment No.3) 2008