

2011 No. 208

COURT OF JUDICATURE, NORTHERN IRELAND

PROCEDURE

**The Rules of the Court of Judicature (Northern Ireland)
(Amendment No.2) 2011**

Made - - - - - *4th April 2011*

Coming into operation - - - - - *23rd May 2011*

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

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Court of Judicature (Northern Ireland) (Amendment No.2) 2011 and shall come into operation on 23rd May 2011.

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

Amendments to the principal Rules

2. Order 116 of the principal Rules shall be amended as follows—

(1) In rule 1, after the definition of “prosecutor” insert—

““domestic freezing order certificate” means a certificate made by the High Court under paragraph 41B of Schedule 4 in relation to property in a country other than the United Kingdom;

“overseas freezing order” means an order received by the High Court in accordance with paragraph 41D of Schedule 4 in relation to property in the United Kingdom.”;

(2) In the cross heading to rule 3, after “restraint order” insert “*and domestic freezing order certificate*”;

(3) In rule 3—

(a) The Northern Ireland Supreme Court Rules Committee was re-named the Northern Ireland Court of Judicature Rules Committee in accordance with section 59(3) of the Constitutional Reform Act 2005 (c.4).

(b) 1978 c.23; to which the most recent relevant amendments were made by Article 15 of and Schedule 17 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.R. 2010 No. 976) and paragraphs 29 and 30 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).

(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. 2002 No.15 and S.R. 2009 No.207.

- (a) in paragraph (1), after “paragraph 33 and 34” insert, “and, where relevant, a domestic freezing order certificate under paragraph 41B”;
- (b) for paragraph (2)(d), substitute—
 - “(d) to the best of the deponent’s ability, give full particulars of the property in respect of which the restraint order and, where relevant, the domestic freezing order certificate is sought, and specify the person or persons holding such property and any other person having an interest in it.”;
- (c) after paragraph (2), insert—
 - “(2A) Where an application for a domestic freezing order certificate is made, the applicant shall—
 - (a) prepare a draft of the certificate in accordance with paragraph 41B of Schedule 4; and
 - (b) attach it to the application made under paragraph (1).”;
- (4) After rule 4(3),
 - “(4) Where a domestic freezing order certificate is made it shall be served with copies of the restraint order in accordance with paragraph (3).”;
- (5) In the cross heading to rule 5, after “restraint order”, insert “*and a domestic freezing order certificate*”;
- (6) In rule 5—
 - (a) in paragraph (1) after “restraint order”, insert, “and, where relevant a domestic freezing order certificate”;
 - (b) for paragraph (2), substitute—
 - “(2) The summons and any affidavit in support shall be lodged with the court and, where not the applicant, shall be served on—
 - (a) the prosecution;
 - (b) the defendant; and
 - (c) any other person affected by the restraint order, and where relevant, the domestic freezing order certificate,

not less than two clear days before the date fixed for hearing of the summons.”;

- (c) after paragraph (3), insert—
 - “(4) An order made under this rule which discharges or varies a domestic freezing order certificate, shall be sent to the Secretary of State in accordance with paragraph 41C of Schedule 4.”
- (7) In rule 6—
 - (a) in paragraph (1), after “restraint order” insert “and where relevant a domestic freezing order certificate,”;
 - (b) in paragraph (3), after “defendant” insert “and any other person affected by the restraint order and, where relevant, the domestic freezing order,”;
 - (c) in paragraph (4), after “restraint order”, insert “and, where relevant, a domestic freezing order”;
 - (d) after paragraph (4), insert—
 - “(5) An order made under this rule which discharges or varies a domestic freezing order certificate, shall be sent to the Secretary of State in accordance with paragraph 41C of Schedule 4.”;
- (8) After rule 15, insert—

“Consideration by the court of an overseas freezing order

15A.—(1) Where an overseas freezing order has been received by the court, the court shall consider whether to give effect to the order—

- (a) save in exceptional circumstances, on the next business day after receipt of a copy of the order from the Secretary of State; and
- (b) in any event within 5 business days of receipt of the order.

(2) The court shall not make an order giving effect to an overseas freezing order unless it is satisfied that the Director of the Public Prosecution Service has been given an opportunity to make representations to the court either in writing or at a hearing.

(3) In this rule—

- (a) “business day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday;
- (b) “bank holiday” has the same meaning as in Order 3, rule 2(6).

Giving effect to an overseas freezing order

15B. Where the court makes an order to give effect to an overseas freezing order, the court shall register the order in accordance with rule 11.

Notice of registration of an overseas freezing order

15C. Where the court gives effect to an overseas freezing order, the court shall provide for notice of the registration of the order to be given to any persons affected by it.

Application to cancel the registration of, or vary an overseas freezing order

15D. An application under paragraph 41G(4) of Schedule 4 by the Director of Public Prosecutions or any person affected by an overseas freezing order shall be made to a judge by summons supported by affidavit.”.

*Declan Morgan
John Gillen
F P Girvan
W R B Stephens
Tony Caher
Mark Horner
Paul R Maguire*

Dated 23rd March 2011

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

Kenneth Clarke
Lord Chancellor

Dated 4th April 2011

EXPLANATORY NOTE

(This note is not part of the Rules)

These rules amend Order 116 of the Rules of the Court of Judicature (NI) 1980 (S.R. 1980 No. 346) ('the principal Rules') to take account of amendments made to Schedule 4 of the Terrorism Act 2000 by section 90 of, and Schedule 4 to, the Crime International Co-operation Act 2003, which provide for the mutual recognition of freezing orders between participating European Union countries.

- Rule 2(1) amends rule 1 of Order 116 to insert definitions in respect of a domestic freezing order certificate and an overseas freezing order;
- Rule 2(2) amends the cross heading to rule 3 (Application for restraint order) to insert reference to a domestic freezing order certificate.
- Rule 2(3) amends rule 3 of Order 116, to prescribe the procedure to be followed in respect of an application for a restraint order, and where relevant, a domestic freezing order certificate;
- Rule 2(4) inserts new rule 4(4) into Order 116 to require a copy of a restraint order to be attached to the domestic freezing order certificate when served;
- Rule 2(5) amends the cross heading to rule 5 of Order 116 (discharge or variation of a restraint order) to insert reference to a domestic freezing order certificate;
- Rule 2(6) amends rule 5 of Order 116 to allow a person who is the subject of, or affected by a domestic freezing order certificate to make an application to the court to vary or discharge the order;
- Rule 2(7) amends rule 6 of Order 116 to allow the prosecution to apply, in urgent cases, to vary or discharge the domestic freezing order certificate;
- Rule 2(8) inserts new rules 15A-15D into Order 116 to prescribe—
 - (a) the timescale by which the High Court, on receipt of an overseas freezing order certificate from the Secretary of State, must consider whether to give effect to the order;
 - (b) the procedure for registering that order in court; and
 - (c) the procedure to vary or cancel the registration of an overseas freezing order.

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STATUTORY RULES OF NORTHERN IRELAND

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