

2003 No. 71

SUPREME COURT, NORTHERN IRELAND

CROWN COURT

**The Crown Court (Amendment) Rules
(Northern Ireland) 2003**

Made - - - - - *12th February 2003*

Coming into operation *24th March 2003*

To be laid before Parliament

We, the Crown Court Rules Committee, in exercise of the powers conferred upon us by section 52(1) of the Judicature (Northern Ireland) Act 1978(a), and sections 239, 351(2), 362(2), 369(2) and 375(1) of the Proceeds of Crime Act 2002(b), paragraph 5(1) of Schedule 6A to Terrorism Act 2000(c) and of all the other powers enabling us in that behalf, hereby with the concurrence of the Lord Chancellor, make the following Rules: –

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Crown Court (Amendment) Rules (Northern Ireland) 2003 and, subject to paragraph (2) shall come into operation on 24th March 2003.

(2) Rule 3(d) shall come into operation on the same day as section 156 of the Proceeds of Crime Act 2002 comes into force.

2. In these Rules, references to “the principal Rules” shall mean the Crown Court Rules (Northern Ireland) 1979(d) and a reference to a rule by number shall mean a rule so numbered in the principal Rules.

Amendment to the principal Rules

3.—(1) The principal Rules shall be amended as follows –

(a) by substituting in rule 34 for paragraph (v) the following new paragraph –

“(v) be served on the chief clerk and, subject to rule 36A, at the same time on the accused, together with any accompanying documents.”;

(b) by substituting for rule 36 the following new rule –

“**36.**—(1) The accused may, within fourteen days of service of the application under rule 34, serve on the chief clerk –

(a) a written submission giving his reasons for opposing the application; or

(a) 1978 c. 28
(b) 2002 c. 29
(c) 2000 c. 11
(d) S.R. 1979 No. 90

- (b) an application in writing for leave to make oral submissions, and shall at the same time, serve a copy on the opposite party to the proceedings.
- (2) An application for leave under paragraph (1)(b) shall be determined by a judge who may direct a hearing and the chief clerk shall notify the parties of the time and place of any such hearing.
- (3) The chief clerk shall notify all parties of the decision of the court on the application for leave to make oral submissions and, where leave is granted, the notification shall state the time and place at which the submissions will be made.
- (4) Notwithstanding paragraph (1), the judge may, if he thinks fit before deciding the application –
- (a) require written or oral submissions from the applicant or the accused;
 - (b) require the attendance of the applicant, the accused or any of the witnesses.
- (5) Any application for leave to respond orally or in writing to written submissions made under paragraphs (1) or (4) shall be made in writing, specifying the grounds for the application, and served on the chief clerk within seven days of service of the written submission and at the same time, a copy thereof shall be served on the opposite party to the proceedings.
- (6) An application for leave under paragraph (5) shall be determined by a judge who may direct a hearing and the chief clerk shall notify the parties of the time and place of any such hearing.
- (7) The chief clerk shall notify all parties of the decision of the court on an application made under paragraph (5) and –
- (a) where leave is granted for oral submissions to be made, the notification shall state the time and place at which the submissions will be made;
 - (b) where leave is granted for written submissions to be made, the notification shall state the period within which the written submission shall be lodged with the chief clerk and served on the opposite party.
- (8) Where oral submissions are made under paragraphs (1) or (4)(a) or the applicant, accused or any of the witnesses attends under paragraph (4)(b) –
- (a) the attendance before the judge shall not be in open court;
 - (b) unless the judge gives a direction to the contrary, the applicant or the accused may attend by a solicitor or by counsel.
- (9) Where the application under rule 34 for leave to prefer an indictment is determined otherwise than at an oral hearing, the chief clerk shall forthwith notify the parties of the judge's decision.
- (10) The period of 14 days in paragraph (1) or the period of seven days in paragraph (5) or the time period specified in a notice given under paragraph (7)(b) may be extended, either before or after it expires, on an application made in writing specifying the grounds for the application and served on the chief clerk and a copy of the application shall be served by the applicant on every other party to the proceedings.
- (11) An application for extension of time under paragraph (10) shall be determined by a judge who may direct a hearing and the chief clerk shall notify the parties of the time and place of any such hearing.
- (12) The chief clerk shall notify all the parties of the decision of the court on the application for extension of time.”;
- (c) by inserting, after rule 36, the following new rule –
- “**36A.**—(1) An application to the judge for leave to dispense with service under rule 34 on the accused shall be made in writing and shall be served on the chief clerk.
- (2) Any application made under paragraph (1) shall specify the grounds for the application.”;
- (d) by adding after Part X the new Part XI set out in the Schedule to these Rules.

Dated 5th February 2003.

R. D. Carswell
J. M. Nicholson
A. R. Hart
J. Wilson
Paul Copeland
Barra McGrory

I concur
Dated 12th February 2003.

Irvine of Lairg, C.

SCHEDULE

Rule 3(d)

“PART XI

APPLICATIONS UNDER SCHEDULE 6A TO THE TERRORISM ACT 2000 AND THE PROCEEDS OF CRIME ACT 2002

Interpretation

74. In this Part of these Rules: –

“the Act” means the Proceeds of Crime Act 2002 and a reference to a section by number is a reference to the section so numbered in the Act;

expressions which are defined in the Act have the same meaning as in the Act;

unless the context otherwise requires “the chief clerk” means the chief clerk of the Court at the place where the defendant was –

- (a) committed for trial; or
- (b) committed to under section 218,

and includes such other member of the Court Service as may be authorised to act on his behalf for the purpose in question;

“county court division” means a county court division specified under Article 3(1) of the County Courts (Northern Ireland) Order 1980.

Agency staff: pseudonyms

75. Where a member of staff of the Assets Recovery Agency in relation to whom a direction under section 449 has effect gives written or oral evidence under the Act, a copy of the certificate issued under section 449(3) shall be lodged with the chief clerk.

Time for payment

76.—(1) Notice of an application under section 161 shall be made to the chief clerk in writing.

(2) On receiving a notice under paragraph (1) the chief clerk shall –

- (a) forthwith send a copy to the prosecutor or, if the Director was appointed as the enforcement authority under section 184, the Director; and
- (b) notify the parties of the date and time of the hearing.

Postponement

77.—(1) Notice of an application under section 164(7) shall be made to the chief clerk in writing and at the same time a copy served on the opposite party who shall within 28 days notify the applicant and the chief clerk, in writing, whether or not he proposes to oppose the application, giving the reason for any such opposition.

(2) After the expiry of the period referred to in paragraph (1), the Court shall determine whether the application is to be dealt with –

- (a) without a hearing, or
- (b) at a hearing at which the parties may be represented,

and the chief clerk shall inform the parties accordingly.

(3) Where the Court makes an order pursuant to an application under section 164(7), the chief clerk shall forthwith send a copy of the order to the applicant and to the opposite party.

Statements in connection with the making of confiscation orders

78.—(1) Where the prosecutor or the Director is required or proposes to give to the Court a statement under section 166 or section 168, he shall serve it within such time as the Court may direct on the chief clerk and at the same time serve a copy thereof on the defendant.

(2) Any statement given to the court by the prosecutor or the Director under section 166 or 168 shall include the following particulars –

- (a) the name of the defendant and the Crown Court case number;

- (b) the name of the person by whom the statement is given, and if different, the name of the person by whom it is made;
- (c) the date on which the conviction for the offence occurred; and
- (d) the matters relied on in support of any allegation made or matter indicated.

79. Where under section 167 the defendant is ordered to indicate the extent to which he accepts any allegation contained within a statement given by the prosecutor or the Director, unless the Court directs otherwise, he shall indicate so in writing to the chief clerk, and at the same time serve a copy on the opposite party.

80. Where under section 168 the defendant is ordered by the Court to provide information, unless the Court directs otherwise, the information shall be provided in writing to the chief clerk, and at the same time served on the opposite party.

Reconsideration of case or benefit

81.—(1) Notice of an application under section 169, section 170 or section 171 shall be made in writing to the chief clerk.

- (2) The notice under paragraph (1) shall –
 - (a) state the name and address of the defendant and the Crown Court case number;
 - (b) give the date on which any relevant conviction occurred;
 - (c) give the date on which any relevant confiscation order was made, or as the case may be, varied;
 - (d) give full particulars of the matters relied upon in support of the application.
- (3) On receiving a notice under paragraph (1) the chief clerk shall –
 - (a) forthwith send a copy to the defendant; and
 - (b) notify the parties of the date and place of the hearing.

(4) Where the Court makes an order pursuant to an application under section 169, section 170 or section 171, the chief clerk shall forthwith send a copy of the order to the applicant and to the defendant.

Reconsideration of available amount

82.—(1) Notice of an application under section 172 shall be made in writing to the chief clerk.

- (2) The notice under paragraph (1) shall –
 - (a) state the name and address of the defendant and the Crown Court case number;
 - (b) give the date on which any relevant conviction occurred;
 - (c) give the date on which any relevant confiscation order was made, or as the case may be, varied;
 - (d) give full particulars of the matters relied upon in support of the application.

(3) The chief clerk shall, not less than seven days before the date fixed for the hearing, send a copy of the notice received under paragraph (1) together with notification of the date and place of the hearing to –

- (a) the defendant;
- (b) where the applicant is the prosecutor or the Director, the receiver if appointed;
- (c) where the receiver is the applicant –
 - (i) the prosecutor; or
 - (ii) the Director, if he has been appointed under section 184

and shall notify the applicant of the date and place of the hearing.

(4) Where the Court makes an order pursuant to an application under section 172, the chief clerk shall forthwith send a copy of the order to every person to whom the notice was sent under paragraph (3).

Variation: inadequacy of available amount

83.—(1) Notice of an application under section 173 shall be made to the chief clerk in writing.

(2) The chief clerk shall, not less than seven days before the date fixed for the hearing, send a copy of the notice received under paragraph (1) together with notification of the date and place of the hearing to –

- (a) the prosecutor, or if the Director is appointed under section 184, the Director;

- (b) the defendant, if he is not the applicant;
 - (c) the receiver, where one has been appointed in the matter and he is not the applicant;
- and shall notify the applicant of the date and place of the hearing.

(3) Where the Court makes an order pursuant to an application under section 173, the chief clerk shall forthwith send a copy of the order to every person to whom notice was sent under paragraph (2).

Discharge

- 84.—(1) Notice of an application made under section 174 or 175 shall be made in writing and shall –
- (a) give details of the confiscation order;
 - (b) specify the amount outstanding under the confiscation order; and
 - (c) give full particulars of the matters relied upon in support of the application.

- (2) The applicant shall serve the notice on –
- (a) the chief clerk, where he is not the applicant;
 - (b) the defendant;
 - (c) the prosecutor, where he is not the applicant; and
 - (d) the receiver, where one has been appointed.

(3) Any party served with a notice under paragraph (2) may, within seven days of receiving the notice, inform the chief clerk in writing that he wishes to make representations.

- (4) After the expiry of the period referred to in paragraph (3), the Court shall determine whether an application under paragraph (1) is to be dealt with –
- (a) without a hearing, or
 - (b) at a hearing at which the parties may be represented,
- and the chief clerk shall inform the parties accordingly.

(5) Where the Court makes an order discharging the confiscation order, the chief clerk shall forthwith serve a copy of the order on the defendant, the prosecutor and if appointed, the receiver.

Application to proceed where defendant absconds

85. Notice of an application under section 177 or 178 shall be made to the chief clerk in writing and shall, at the same time, be served on any person of whom the applicant is aware who may be affected by the application.

Application for variation of confiscation order made against absconder

86.—(1) Notice of an application under section 179 shall be made to the chief clerk in writing.

- (2) The notice under paragraph (1) shall include particulars of the following –
- (a) the relevant confiscation order;
 - (b) the circumstances in which the defendant ceased to be an absconder;
 - (c) the defendant’s conviction of the offences concerned;
 - (d) the reasons why the defendant believes the amount required to be paid is too large.

(3) The chief clerk shall, not less than seven days before the date fixed for the hearing, send a copy of the notice received under paragraph (1) –

- (a) to the prosecutor, or if the Director is appointed under section 184, on the Director; and
- (b) notify the parties of the date and place appointed for the hearing.

Application for discharge of confiscation order made against absconder

87.—(1) Notice of an application under section 180 shall be made to the chief clerk in writing.

- (2) The notice under paragraph (1) shall include particulars of the following –
- (a) the relevant confiscation order;
 - (b) the date on which the applicant ceased to be an absconder;
 - (c) the acquittal of the defendant for the offence concerned, if the defendant has been acquitted; and
 - (d) if the defendant has not been acquitted –
 - (i) the undue delay in continuing the proceedings; or
 - (ii) any indication given by the prosecutor that he does not intend to continue the proceedings.

(3) The chief clerk shall, not less than seven days before the date fixed for the hearing, send a copy of the notice received under paragraph (1) –

- (a) to the prosecutor, or if the Director is appointed under section 184, the Director; and
- (b) notify the parties of the date and place appointed for the hearing.

Application for increase in term of imprisonment

88.—(1) Notice of an application under section 188(5) to increase the term of imprisonment or detention fixed in default of payment of a confiscation order shall be made to the chief clerk in writing.

(2) The notice under paragraph (1) shall –

- (a) state the name and address of the defendant;
- (b) give full particulars of the matters relied upon in support of the application;
- (c) give details of any enforcement measures taken; and
- (d) include a copy of the confiscation order.

(3) On receiving a notice under paragraph (1) the chief clerk shall –

- (a) forthwith send a copy of said notice to the defendant; and
- (b) notify the parties of the date and place appointed for the hearing of the application.

(4) Where the Court makes an order pursuant to an application under section 188(5), the chief clerk shall forthwith send a copy of the order to the parties and where the defendant is in custody at the time of making of the order, the person having custody of him.

Compensation

89.—(1) Notice of an application for compensation under section 220 shall be made to the chief clerk in writing.

(2) The chief clerk shall, not less than seven days before the date fixed for the hearing, send a copy of the notice received under paragraph (1) together with notification of the date and place of the hearing to –

- (a) the person alleged to be in default; and
- (b) the person by whom the compensation would be payable under section 220(9); and

notify the applicant of the date and place of the hearing.

90.—(1) Notice of an application for compensation under section 221 shall be made to the chief clerk in writing.

(2) The notice under paragraph (1) shall include –

- (a) details of the confiscation order and its variation or discharge;
- (b) full particulars of the realisable property held by the applicant;
- (c) details of the loss suffered by the applicant as a result of the making of the order.

(3) The chief clerk shall, not less than seven days before the date fixed for the hearing –

- (a) send a copy of the notice received under paragraph (1) to the prosecutor or, if the Director has been appointed under section 184, the Director; and
- (b) notify the parties of the date and place of the hearing of the application.

Appointment of a receiver

91.—(1) Notice of an application under section 198 for the appointment of a receiver shall be made to the chief clerk in writing.

(2) The notice shall be supported by an affidavit –

- (a) giving full particulars of the matters relied upon in support of the application;
- (b) stating the name, address and position of the proposed receiver;
- (c) giving, to the best of the deponent's ability, full particulars of the realisable property in respect of which the order is sought and specifying the person holding such property;
- (d) if the proposed receiver is not a member of staff of the Assets Recovery Agency, the Department of Director of Public Prosecutions (Northern Ireland) or the Commissioners of Her Majesty's Customs and Excise and the applicant is asking the court to allow the receiver to act without giving security or before he has given security or satisfied the court that he has security in place, explain the reasons why that is necessary.

(3) Subject to paragraph (4), the applicant shall, not less than seven days before the date fixed for the hearing of the application, serve copies of the notice and accompanying affidavit, together with notice in writing of the date and place appointed for the hearing of the application on -

- (a) the defendant;
- (b) any person who holds realisable property to which the application relates; and
- (c) any other person of whom the applicant is aware who may be affected by the application.

(4) An application under paragraph (1) may be made ex parte if -

- (a) it is urgent; or
- (b) there are reasonable grounds to believe that the giving of notice would cause a reasonable apprehension of dissipation of the realisable property which is the subject of the application.

(5) Where the Court makes an order for the appointment of a receiver, the applicant shall serve copies of the order and affidavit in support on -

- (a) the defendant;
- (b) the receiver;
- (c) any person who holds realisable property to which the application relates; and
- (d) any other person of whom the applicant is aware who may be affected by the order.

Application for conferment of powers

92.—(1) Notice of an application for an order for the conferment of powers on a receiver under section 199 or 201 shall be made to the chief clerk in writing.

(2) The notice shall be supported by an affidavit, which shall include -

- (a) full particulars of the matters relied upon in support of the application;
- (b) to the best of the deponent's ability, full particulars of the realisable property in respect of which the order is sought and details of the person holding such property.

(3) Subject to paragraph (4), the applicant shall, not less than seven days before the date fixed for the hearing of the application, serve copies of the notice and accompanying affidavit, together with notice in writing of the date and place appointed for the hearing of the application on -

- (a) the defendant;
- (b) the receiver, if already appointed;
- (c) any person who holds realisable property to which the application relates; and
- (d) any other person of whom the applicant is aware who may be affected by the application.

(4) Except where section 199(8) or section 201(8) apply, an application under paragraph (1) may be made ex parte if the application is to confer on the receiver power to take possession of property and -

- (a) the case is one of urgency; or
- (b) the giving of notice would cause a reasonable apprehension of dissipation of the realisable property which is the subject of the application.

(5) Where the Court makes an order for the conferment of powers on the receiver, the applicant shall serve copies of the order and affidavit in support on -

- (a) the defendant;
- (b) the receiver;
- (c) any person who holds realisable property to which the application relates; and
- (d) any other person of whom the applicant is aware who may be affected by the order.

Application for leave

93.—(1) Notice of an application for leave under section 207(2) or section 208(2) shall be made to the chief clerk in writing.

(2) The applicant shall, not less than seven days before the date fixed for the hearing of the application, serve copies of the notice, together with notice in writing of the date and place appointed for the hearing of the application on -

- (a) the tenant;
- (b) the receiver;
- (c) the person against whom the confiscation order has been made; and
- (d) any other person of whom the applicant is aware who may be affected by the application.

Application for discharge or variation and applications for other orders

94.—(1) Notice of an application under section 210(3) or section 211(1) shall be made to the chief clerk in writing.

(2) The applicant shall, not less than seven days before the date fixed for the hearing of the application, serve copies of the notice and accompanying affidavit, together with notice in writing of the date and place of the hearing on –

- (a) the person who applied for the appointment of the receiver;
- (b) the defendant;
- (c) any person who holds realisable property in respect of which the receiver has been appointed;
- (d) the receiver; and
- (e) any other person of whom the applicant is aware who may be affected by the application,

where he is not the applicant.

(3) Where the Court makes an order under section 211(2), a copy of the order shall be served by the applicant on all those who were served with a copy of the application under paragraph (4).

Sums in the hands of receivers

95.—(1) Where the receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, notice of an application for directions as to the distribution of the sums in his hands shall be made to the chief clerk in writing.

(2) The applicant shall, not less than seven days before the date fixed for the hearing of the application, serve copies of the notice, together with notice in writing of the date and place of the hearing, on –

- (a) the defendant; and
- (b) any person who holds realisable property in respect of which the receiver has been appointed.

Security

96.—(1) This rule applies where a receiver is appointed under section 198 or 200 and the receiver is not a member of staff of the Assets Recovery Agency, the Department of the Director of Public Prosecutions (Northern Ireland) or the Commissioners of Her Majesty's Customs and Excise.

(2) An order for the appointment of a receiver may include such direction as the Court sees fit as to the giving of security by the person appointed.

(3) Where by virtue of an order appointing a receiver a person is required to give security in accordance with this rule, he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(4) Unless the Court otherwise directs, the security shall be by way of guarantee which must be lodged with the chief clerk who shall retain it until it is duly vacated.

Remuneration

97.—(1) This rule applies where a receiver is appointed under section 198 or 200 and the receiver is not a member of staff of the Assets Recovery Agency, the Department of the Director of Public Prosecutions (Northern Ireland) or the Commissioners of Her Majesty's Customs and Excise.

(2) A person appointed as receiver shall be allowed such remuneration, if any, as may be authorised by the Court and the Court may direct that such remuneration shall be fixed by reference to such scales or rates of professional charges as it thinks fit.

Accounts

98.—(1) A receiver shall submit such accounts to such parties at such intervals or on such dates as the Court may direct.

(2) Any party to whom a receiver is required to submit accounts may, after giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to such accounts.

(3) Any party who is dissatisfied with the accounts of the receiver may give notice in writing specifying the item to which objection is taken and requiring the receiver within not less than fourteen days to lodge his accounts with the Court and a copy of such notice shall be lodged with the chief clerk.

(4) Following an examination by the Court of an item or items in an account to which objection is taken, the result of such examination must be certified by the Court and an order may be made as to the incidence of any costs or expenses incurred.

Default by receiver

99.—(1) Where a receiver fails to comply with any order of the Court or any obligation under these Rules, the Court may order him to attend a hearing to show cause for his failure.

- (2) At a hearing under paragraph (1), the Court may make any order it thinks proper including –
- (a) an order for discharge of the receiver and appointment of another receiver;
 - (b) an order reducing or disallowing any remuneration claimed by the receiver; and
 - (c) an order for the payment of costs.

Production orders: discharge and variation

100.—(1) An application under section 351(3)(b) shall be made in writing, giving full particulars of the matters relied upon in support of the application, and shall be served on –

- (a) the chief clerk for the county court division in which the material which is the subject of the production order is situated; and
- (b) a constable at the police station specified in the production order; or
- (c) where the production order which is the subject of the application was not obtained by a constable, the office of the appropriate officer who obtained the order, as specified in the order.

(2) An application under paragraph (1) may be determined with or without a hearing and if a hearing is directed the chief clerk shall notify the parties of the time and place of the hearing.

Disclosure orders: discharge and variation

101. An application under section 362(3)(b) shall be made in writing, giving full particulars of the matters relied upon in support of the application, and shall be served on –

- (a) the chief clerk for the county court division in which the applicant resides; and
- (b) the Director.

Customer information orders and account monitoring orders: discharge and variation

102.—(1) This rule applies to applications –

- (a) by a person other than a police officer under paragraph 4(1) of Schedule 6A to the Terrorism Act 2000^(a) for the discharge or variation of an account monitoring order; and
- (b) under section 369(3)(b) for the discharge or variation of a customer information order; and
- (c) under section 375(2)(b) for the discharge or variation of an account monitoring order.

(2) Notice of an application under paragraph (1) shall be made in writing, giving full particulars of the matters relied upon in support of the application, and shall be served on –

- (a) the chief clerk for the county court division in which the applicant resides or has its principal place of business in Northern Ireland; and
- (b) a constable at the police station specified in the order which is the subject of the application; or
- (c) where the order which is the subject of the application was not obtained by a constable,

the office of the appropriate officer who obtained the order, as specified in the order.

Application for letter of request

103.—(1) Notice of an application under section 376 shall, be made to the chief clerk for the county court division of Belfast in writing and shall –

- (a) state the grounds of the confiscation investigation and give particulars of any related criminal proceedings;
- (b) include particulars of the assistance requested in the form of a draft letter of request.

(2) An application under paragraph (1) may be heard ex parte.

(a) 2000 c. 11

Sending a letter of request

104. Where a judge issues a letter of request under section 376(2) the chief clerk shall send it to the Secretary of State.”

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the Crown Court Rules (Northern Ireland) 1979 to provide:

- the procedure for applications to the Court under Parts 4 and 8 of the Proceeds of Crime Act 2002;
- for an application for leave to prefer a voluntary bill of indictment under section 2(2)(e) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 to be served on the accused who may make submissions; and
- the procedure for the variation and discharge of account monitoring orders made under the Terrorism Act 2000.

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