

## 1991 No. 327

## SUPREME COURT, NORTHERN IRELAND

## CROWN COURT

The Crown Court (Amendment) Rules  
(Northern Ireland) 1991

*Made* . . . . . 25th July 1991

*Coming into operation* . . . . . 2nd September 1991

*To be laid before Parliament*

We, the Crown Court Rules Committee, in exercise of the powers conferred on us by section 52(1) of the Judicature (Northern Ireland) Act 1978(a) and Article 31(6) of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(b), hereby with the concurrence of the Lord Chancellor make the following Rules:—

1. These Rules may be cited as the Crown Court (Amendment) Rules (Northern Ireland) 1991 and shall come into operation on 2nd September 1991.

2. The Crown Court Rules (Northern Ireland) 1979(c) shall be amended by inserting after Rule 50 the new Parts set out in the Schedule.

Dated 25th June 1991

*Brian Hutton*  
*Basil Kelly*  
*Robert Porter*  
*A. R. Hart*  
*V. Care*  
*Jimmy Wall*  
*J. O. Brady*

I concur,

*Mackay of Clashfern, C.*

Dated 25th July 1991

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(a) 1978 c. 23

(b) S.I. 1990/2588 (N.I. 17)

(c) S.R. 1979 No. 90; to which there are amendments not relevant to these Rules

## SCHEDULE

“PART VII—APPLICATIONS UNDER THE CRIMINAL JUSTICE (CONFISCATION)  
(NORTHERN IRELAND) ORDER 1990

*Interpretation*

51. In this Part of these Rules:—

“the 1990 Order” means the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(a); an Article referred to by number is a reference to the Article so numbered in the 1990 Order; and expressions which are defined in the 1990 Order have the same meaning as in the 1990 Order.

*Statements, etc. relevant to making confiscation orders under the 1990 Order*

52.—(1) Where a defendant has been convicted of an offence to which the 1990 Order applies and the prosecutor or the defendant proposes to tender to the Court any statement or other document under Article 9 (statements etc. relevant to making confiscation orders) he shall serve it within such time as the Court may require on the chief clerk and shall at the same time serve a copy thereof on the opposite party.

(2) Any statement tendered to the Court by the prosecutor or the defendant under Article 9 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 tendered and, if different, the name of the person by whom it is made;
- (c) the date on which and the place where the conviction for the offence occurred; and
- (d) the facts relied on in support of any allegation made or matter indicated.

*Application for increase in term of imprisonment in default of payment*

53.—(1) The following provisions of this rule shall have effect for the purposes of applications under paragraph (2) of Article 11 (interest on sums unpaid under confiscation orders).

(2) Notice of application under Article 11(2) to increase the term of imprisonment or detention fixed in default of payment of the confiscation order by a person (“the defendant”) shall be made by the prosecutor in writing to the chief clerk of the Court at the place where the confiscation order was made.

(3) The notice under paragraph (2) shall—

- (a) state the name and address of the defendant;
- (b) specify the grounds of the application;
- (c) give details of any enforcement measures taken; and
- (d) include a copy of the confiscation order.

(4) On receiving a notice under paragraph (2), the chief clerk shall—

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

- (5) Where the Court makes an order pursuant to an application under Article 11(2), the chief clerk shall send forthwith a copy of the order—
- (a) to the applicant;
  - (b) to the defendant;
  - (c) where the defendant is in custody at the time of the making of the order, to the person having custody of him.

*Investigation into drug trafficking — discharge and variation of order*

54.—(1) Where an order has been made under Article 31(2), the person required to comply with the order may apply to the county court judge who made the order or, where that judge is not available, to any other judge, to have the order discharged or varied.

(2) An application under paragraph (1) shall be made in writing, setting out the grounds of the application and shall be served on—

- (a) the chief clerk of the county court division in which the material the subject of the order is situated; and
- (b) the constable who obtained the order.

(3) The application may be determined by the judge either 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.

(4) The judge may direct that paragraph (2) need not be complied with if he is satisfied that the applicant has good reason to seek a discharge or variation of the order as soon as possible and it is not practicable to comply with that paragraph.

PART VIII — APPLICATIONS UNDER THE CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990

*Interpretation*

55. In this Part of these Rules:—

“the 1990 Act” means the Criminal Justice (International Co-Operation) Act 1990(a); a reference to a section by number is a reference to the sections so numbered in the 1990 Act; and expressions which are defined in the 1990 Act have the same meaning as in the 1990 Act

*Service of summons or order outside the United Kingdom*

56. Where a summons is issued or an order is made which is to be served under section 2(1) it shall be sent by the chief clerk to the Secretary of State.

*Proof of service of summons outside the United Kingdom*

57.—(1) The service on any person under section 2(1) of a summons issued, or order made, may be proved in any proceedings by a certificate given by or on behalf of the Secretary of State.

- (2) A statement in any such certificate as is mentioned in paragraph (1):
- (a) that a summons or order has been served;
  - (b) of the manner in which service was effected;
  - (c) of the date upon which a summons or order was served;

shall be admissible as evidence of any facts so stated.

*Application for letter of request*

58.—(1) Notice of application under section 3(1) shall, subject to paragraph (4), be made by giving notice in writing to the chief clerk and shall—

- (a) state the particulars of the offence which it is alleged has been committed or the grounds upon which it is suspected that an offence has been committed;
- (b) state whether proceedings in respect of the offence have been instituted or the offence is being investigated; and
- (c) include particulars of the assistance requested in the form of a draft letter of request.

(2) An application under section 3(1) may be heard *ex parte*.

(3) The judge may direct that paragraph (1) need not be complied with if he is satisfied that the applicant has good reason to make the application as soon as possible and it is not practicable to comply with that paragraph.

*Sending of letter of request to Secretary of State*

59. Where a judge issues a letter of request under section 3(1) the chief clerk shall send it to the Secretary of State.

*Letters of request in urgent cases*

60. Where in a case of urgency a letter of request is sent by the chief clerk direct to any court or tribunal, pursuant to section 3(5), he shall forthwith notify the Secretary of State of this in writing and send with the notification a copy of the letter of request.

*Proceedings before a nominated court*

61. In proceedings before a nominated court in pursuance of a notice under section 4(2), the court may, if it thinks necessary in the interest of the administration of justice, direct that all or any persons not being members or officers of the Court or parties to the proceedings, their solicitors or counsel, or other persons directly concerned in the proceedings, be excluded from the court during the proceedings.

*Court Record*

62.—(1) Details of proceedings under section 3(1) or pursuant to a notice under section 4(2) shall be recorded by the chief clerk and such records shall be kept separately from records of other proceedings and, subject to paragraph (3), shall not be open to inspection by any person except with the leave of the Court.

(2) Where the Court receives evidence in proceedings pursuant to a notice under section 4(2), the chief clerk shall, in addition to making a record of the particulars of the proceedings, record—

- (a) which persons with an interest in the proceedings were present;
- (b) which of the said persons were represented and by whom; and
- (c) whether any of the said persons were denied the opportunity of cross-examining a witness as to any part of his testimony.

(3) If the Secretary of State requests a copy of the record relating to specific proceedings pursuant to a notice under section 4(2), the chief clerk shall forward this to him.”

## EXPLANATORY NOTE

*(This note is not part of the Rules.)*

The Rules amend the Crown Court Rules (Northern Ireland) 1979 to take account of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 and Part I of the Criminal Justice (International Co-operation) Act 1990. The Rules amend the 1979 Rules by the insertion of two new Parts.

Part VII contains rules which make provision for various matters arising under the 1990 Order, including:—

- (a) the statements and other documents to be tendered to the court under Article 9 of the 1990 Order (Rule 52);
- (b) applications under Article 11(2) of the 1990 Order for the term of imprisonment or detention fixed in default of payment of a confiscation order to be increased to take account of interest on the unsatisfied order (Rule 53);
- (c) applications for the discharge and variation of orders under Article 31(2) of the 1990 Order (Rule 54).

Part VIII contains rules providing for matters arising under Part I of the 1990 Act, including:—

- (a) the service of summonses or orders under section 2(1) of the 1990 Act outside the United Kingdom and proof of such service (Rules 56 and 57);
- (b) applications under section 3 of the 1990 Act for the issue of letters requesting the assistance of a court outside the United Kingdom in obtaining evidence for use in the Crown Court (Rules 58-60);
- (c) the procedure where the Crown Court has been nominated to receive evidence for use outside the United Kingdom under section 4(2) of the 1990 Act (Rule 61);
- (d) the court record of proceedings under the 1990 Act (Rule 62).