

2005 No. 191

SUPREME COURT, NORTHERN IRELAND

PREVENTION OF TERRORISM

**The Rules of the Supreme Court (Northern Ireland)
(Amendment No. 3) 2005**

Made - - - - - 5th April 2005

Coming into operation in accordance with Rule 1

To be laid before Parliament

The Lord Chancellor, having power by virtue of paragraph 3 of the Schedule to the Prevention of Terrorism Act 2005^(a) to make rules of court under section 55 of the Judicature (Northern Ireland) Act 1978^(b) and paragraphs 4 and 5 of the Schedule to the Prevention of Terrorism Act 2005 and after consulting the Lord Chief Justice of Northern Ireland in accordance with paragraph 3(3) of the Schedule to 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) 2005 and shall come into operation forthwith.

(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 means the Order so numbered 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 116, the following new entry –

“**116A.** Prevention of Terrorism Act 2005”.

Amendment to the principal Rules

3. The principal Rules shall be amended by inserting –

(a) after Order 1, rule 1A(3) the following new paragraph –

“(4) Paragraph (3) above shall apply subject to the provisions in Order 116A, rule 2(1).”

(b) after Order 1, rule 11(j) the following new paragraph –

“(k) proceedings under the Prevention of Terrorism Act 2005.”; and

(a) 2005 c. 2

(b) 1978 c. 23

(c) S.R. 1980 No. 346 to which the most recent relevant amendments were made by S.R. 2005 No. 163

(c) after Order 116 the new Order 116A, as set out in Schedule 1 to these Rules.

4. Appendix A shall be amended by inserting after Form No. 37A, the new Form 37B set out in Schedule 2 to these Rules.

Dated 5th April 2005

Falconer of Thoroton, C.

SCHEDULE 1

Rule 3

“ORDER 116A

PREVENTION OF TERRORISM ACT 2005

PART I

PRELIMINARY

Application and interpretation

1.—(1) This Order applies to –

- (a) control order 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 the case of proceedings brought by virtue of section 11(2) of the Act, the rules in this Order shall apply with any modification which the Court considers necessary.

(3) In this Order –

“the Act” means the Prevention of Terrorism Act 2005;

“closed material” means any relevant material that the Secretary of State objects to disclosing to a relevant party;

“control order proceedings” has the same meaning as in section 11(6) of the Act;

“controlled person” has the same meaning as in section 15(1) of the Act;

“legal representative” is to be construed in accordance with paragraph 11 of the Schedule to the Act;

“open material” means any relevant material that the Secretary of State does not object to disclosing to a relevant party;

“relevant law officer” has the same meaning as in paragraph 7(6) of the Schedule to the Act;

“relevant material” has the same meaning as in paragraph 4(5) of the Schedule to the Act;

“relevant party” has the same meaning as in paragraph 11 of the Schedule to the Act;

“special advocate” means a person appointed under paragraph 7 of the Schedule to the Act.

(4) For the purposes of this Order, disclosure is contrary to the public interest if it is made contrary to the interests of national security, the international relations of the United Kingdom, the detection and prevention of crime, or in any other circumstances where disclosure is likely to harm the public interest.

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 must ensure that information is not disclosed contrary to the public interest.

(3) Subject to paragraph (2), the Court must satisfy itself that the material available to it enables it properly to determine proceedings.

PART II

APPLICATIONS TO THE HIGH COURT RELATING TO DEROGATING CONTROL ORDERS

Application of this Part

3. This Part of this Order applies to applications relating to derogating control orders.

Applications for the making of a derogating control order

4. An application for the making of a derogating control order under section 4(1) of the Act must be made by lodging with the Court –

- (a) a statement of reasons to support the application for –
 - (i) making such an order, and
 - (ii) imposing each of the obligations to be imposed by that order;
- (b) all relevant material;
- (c) any written submissions; and
- (d) a draft of the order sought.

Directions for a full hearing on notice

- 5.—(1) When the Court makes a derogating control order under section 4(3) of the Act it must –
- (a) immediately fix a date, time and place for a further hearing at which the controlled person, his legal representative and a special advocate (if one has been appointed) can be present; and
 - (b) unless the Court otherwise directs, that date must be no later than 7 days from the date that the order is made.
- (2) At the hearing referred to in paragraph (1)(a), the Court must give directions –
- (a) for the holding of a full hearing under section 4(1)(b) of the Act to determine whether to confirm the control order (with or without modifications), or to revoke it; and
 - (b) specifying the date and time by which the parties and special advocate must lodge and serve any written evidence or written submissions in accordance with rule 33 of this Order.
- (3) When giving directions under paragraph (2), the Court must have regard to the need to expedite the full hearing.

Applications on notice

6.—(1) An application under section 4(9) of the Act for the renewal, or under section 7(4) of the Act, for the revocation of a control order or for the modification of obligations imposed by such an order, must be made in accordance with this rule.

- (2) An application by the Secretary of State must be made by –
- (a) lodging with the Court –
 - (i) a statement of reasons to support the application,
 - (ii) all relevant material,
 - (iii) any written submissions, and
 - (iv) a draft of the order sought; and
 - (b) serving on the controlled person or his legal representative any open material.
- (3) An application by the controlled person must be made by lodging with the Court and serving on the Secretary of State –
- (a) a statement of reasons to support the application;
 - (b) any written evidence upon which he relies;
 - (c) any written submissions; and
 - (d) where appropriate, a draft of the order sought.
- (4) If the controlled person wishes to oppose an application made under this rule, he must as soon as practicable lodge with the Court, and serve on the Secretary of State, any written evidence and any written submissions upon which he relies.
- (5) If the Secretary of State wishes to oppose an application made under this rule, he must as soon as practicable –
- (a) lodge with the Court –
 - (i) all relevant material, and
 - (ii) any written submissions; and
 - (b) serve on the controlled person any open material.
- (6) Rules 31 and 32 of this Order shall apply where any closed material is lodged by the Secretary of State.

PART III

LEAVE APPLICATIONS, REFERENCES AND APPEALS TO THE HIGH COURT RELATING TO NON-DEROGATING CONTROL ORDERS

Application of this Part

7. This Part of this Order applies to –
- (a) applications under section 3(1)(a) of the Act for leave to make a non-derogating control order;
 - (b) references under section 3(3) of the Act of a non-derogating control order made without leave; and
 - (c) appeals to the High Court under section 10 of the Act relating to non-derogating control orders.

Application for leave to make non-derogating control order

8. An application under section 3(1)(a) of the Act for leave to make a non-derogating control order must be made by the Secretary of State by lodging with the Court –

- (a) a statement of reasons to support the application;
- (b) all relevant material;
- (c) any written submissions; and
- (d) the proposed control order.

References under section 3(3) of the Act

9.—(1) This rule shall apply where the Secretary of State makes a reference under section 3(3) of the Act (reference of a non-derogating control order).

(2) The Secretary of State must promptly lodge with the Court –

- (a) a statement of the reasons for –
 - (i) making the control order, and
 - (ii) imposing the obligations imposed by that order;
- (b) all relevant material; and
- (c) any written submissions.

Directions for hearing on an application for leave or on a reference

10.—(1) This rule applies where the Court gives directions under section 3(2)(c) or (6)(b) or (c) of the Act.

(2) The Court must immediately –

- (a) fix a date, time and place for a further hearing at which the controlled person, his legal representative and a special advocate (if one has been appointed) can be present; and
- (b) unless the Court otherwise directs, that date must be no later than 7 days from the date (as the case may be) –
 - (i) of its determination on the reference, or
 - (ii) on which it grants leave.

(3) At the hearing referred to in paragraph (2), the Court must give directions –

- (a) for a hearing under section 3(10) of the Act; and
- (b) specifying the date and time by which the parties and special advocate must lodge and serve any written evidence or written submissions in accordance with rule 33 of this Order.

(4) When giving directions under paragraph (3), the Court must have regard to the need to expedite that hearing.

(5) Rules 31 and 32 of this Order shall apply where any closed material is lodged by the Secretary of State.

Appeals under section 10 of the Act

11.—(1) This rule and rules 12 to 14 of this Order apply to appeals under section 10 of the Act (appeals relating to a non-derogating control order).

(2) With the exception of rule 16 thereof, Part II of Order 55 shall not apply to appeals under section 10 of the Act.

(3) Order 59, rule 10 applies to appeals under section 10 of the Act subject to –

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

Notice of appeal

12.—(1) The controlled person must give notice of appeal in Form 37B by –

- (a) lodging it with the Court; and
- (b) serving a copy of the notice and any accompanying documents on the Secretary of State.

(2) The notice of appeal must –

- (a) set out the grounds of the appeal; and
- (b) state the name and address of –
 - (i) the controlled person, and

- (ii) any legal representative of that person.
- (3) A notice of appeal may include an application for an order under rule 22 requiring anonymity.
- (4) The notice of appeal must be lodged with –
 - (a) a copy of the order that is the subject of the appeal;
 - (b) a copy of the Secretary of State's decision on application for the revocation of the control order, or for the modification of an obligation imposed by such an order.

Time limit for appealing

13.—(1) Subject to paragraph (2), the controlled person must give notice of appeal no later than 28 days after receiving notice of –

- (a) the order that is the subject of the appeal; or
- (b) the decision by the Secretary of State on an application for the revocation of the control order, or for the modification of an obligation imposed by such an order.

(2) In a case where the Secretary of State has failed to determine an application for the revocation of the control order, or for the modification of an obligation imposed by such an order, the controlled person must lodge the notice of appeal –

- (a) no earlier than 28 days; and
- (b) no later than 42 days;

after the date the application was made.

Secretary of State's reply

14. If the Secretary of State wishes to oppose an appeal made under section 10 of the Act, he must no later than 14 days after he is served with the notice of appeal –

- (a) lodge with the Court –
 - (i) all relevant material, and
 - (ii) any written submissions; and
- (b) serve on the controlled person any open material.

PART IV

APPEALS TO THE COURT OF APPEAL

Application

15.—(1) Order 59 applies to appeals to the Court of Appeal against an order of the High Court in control order proceedings subject to –

- (a) rule 2 of this Order;
- (b) the rules in Part V of this Order; and
- (c) paragraph (2) of this rule.

(2) Order 59, rules 3(1), (2), (4) and (5), 4 to 6, 9, 11 and 14 to 18 do not apply to appeals to the Court of Appeal against an order of the High Court in control order proceedings.

- (3) Rules 12 and 14 of this Order shall apply with appropriate modifications.

Leave to appeal

16.—(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.

Time limit for appealing

17.—(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, 14 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.

Striking out notices of appeal and setting aside or imposing conditions on permission 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 totally 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 in an 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 of an order of the High Court.

PART V

GENERAL PROVISIONS

Scope of this Part

20. This Part of this Order applies to –

- (a) control order proceedings in the High Court; and
- (b) appeals to the Court of Appeal against an order of the High Court in such proceedings.

Address for issuing proceedings in the High Court

21. Any control order proceedings must be issued at the Central Office, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF.

Applications for anonymity

22.—(1) The controlled person or the Secretary of State may apply for an order requiring the anonymity of the controlled person.

(2) An application under paragraph (1) may be made at any time, irrespective of whether any control order proceedings have been commenced.

(3) An application may be made without notice to the other party.

(4) References in this rule to an order requiring anonymity for the controlled person are to be construed in accordance with paragraph 5(3) of the Schedule to the Act.

Notification of hearing

23. Unless the Court orders otherwise, it must serve notice of the date, time and place fixed for any hearing on —

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

Hearings

24.—(1) The following proceedings must be determined at a hearing –

- (a) a hearing pursuant to directions given under section 4(1)(b) of the Act in respect of derogating control orders;
- (b) a hearing pursuant to directions given under sections 3(2)(c) or (6)(b) or (c) of the Act in respect of non-derogating control orders;
- (c) an appeal under section 10 of the Act relating to a non-derogating control order;
- (d) an appeal to the Court of Appeal from an order of the High Court made in any of the above proceedings; and
- (e) a hearing under rule 32(2) of this Order.

(2) Paragraph (1)(c) and (d) do not apply where –

- (a) the appeal is withdrawn by the controlled person;
- (b) the Secretary of State consents to the appeal being allowed; or
- (c) the controlled person is outside the United Kingdom or it is impracticable to give him notice of a hearing and, in either case, he is unrepresented.

Hearings in private

25.—(1) If the Court considers it necessary for any relevant party and his 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, it must –

- (a) direct accordingly; and
- (b) conduct the hearing, or that part of it from which the relevant party and his legal representative are excluded, in private.

(2) The Court may conduct a hearing or part of a hearing in private for any other good reason.

Appointment of a special advocate

26.—(1) Subject to paragraph (2), the Secretary of State must immediately give notice of the proceedings to the relevant law officer upon –

- (a) making an application under section 4(1) of the Act in relation to a derogating control order;
- (b) making an application under section 3(1)(a) of the Act for leave to make a non-derogating control order;
- (c) making a reference under section 3(3) of the Act in relation to a non-derogating control order made without leave; or

(d) being served with a copy of any application, claim, or notice of appeal in proceedings to which this Order applies.

(2) Paragraph (1) applies unless –

(a) the Secretary of State does not intend to –

(i) oppose the appeal or application; or

(ii) withhold closed material from a relevant party; or

(b) a special advocate has already been appointed to represent the interests of the relevant party in the proceedings and that special advocate is not prevented from communicating with that party by virtue of rule 28.

(3) Where notice is given to the relevant law officer under paragraph (1), the relevant law officer may appoint a special advocate to represent the interests of the relevant party in the proceedings.

(4) Where any proceedings to which this Order applies are pending but no special advocate has been appointed, a relevant party or the Secretary of State may request the relevant law officer to appoint a special advocate.

Functions of special advocate

27. The functions of a special advocate are to represent the interests of a relevant party by –

(a) making submissions to the Court at any hearings from which the relevant party and his legal representatives are excluded;

(b) cross-examining witnesses at any such hearings; and

(c) making written submissions to the Court.

Special advocate: communicating about proceedings

28.—(1) The special advocate may communicate with the relevant party or his legal representative at any time before the Secretary of State serves closed material on him.

(2) After the Secretary of State 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 Secretary of State, or any person acting for him;

(c) the relevant law officer, or any person acting for him; or

(d) any other person, except for the relevant party or his legal representative, with whom it is necessary for administrative purposes for him to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from the Court authorising him to communicate with the relevant party or his legal representative or with any other person.

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

(a) the Court must notify the Secretary of State of the request; and

(b) the Secretary of State must, within a period specified by the Court, lodge with the Court and serve on the special advocate notice of any objection which he has to the proposed communication, or to the form in which it is proposed to be made.

(6) Paragraph (2) does not prohibit the relevant party from communicating with the special advocate after the Secretary of State has served material on him as mentioned in paragraph (1), but –

(a) the relevant 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 of the Court, except that he may without such directions send a written acknowledgement of receipt to the legal representative of the relevant party.

Modification of the general rules of evidence and disclosure

29.—(1) Orders 24 and 38 and Order 39, rules 1 and 2 of the principal Rules do not apply to any proceedings to which this Order applies.

(2) Subject to the other rules in this Order, the evidence of a witness may be given either –

(a) orally, before the Court; or

- (b) in writing, in which case it shall be given in such manner and at such time as the Court directs.
- (3) The Court may also receive evidence in documentary or any other form.
- (4) The Court may receive evidence that would not, but for this rule, be admissible in a court of law.
- (5) Every party shall be entitled to adduce evidence and to cross-examine witnesses during any part of a hearing from which he and his legal representative are not excluded.
- (6) The Court may require a witness to give evidence on oath.

Lodging and service of relevant material

30. The Secretary of State is required to make a reasonable search for relevant material and to lodge and serve that material in accordance with the rules in this Order.

Closed material

- 31.—(1) The Secretary of State –
- (a) must apply to the Court for leave to withhold closed material from a relevant party or his legal representative in accordance with this rule; and
 - (b) may not rely on closed material at a hearing on notice unless a special advocate has been appointed to represent the interests of the relevant party.
- (2) The Secretary of State 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 his reasons for withholding that material from the relevant party; and
 - (c) if he 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 relevant party.
- (3) The Secretary of State 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 Secretary of State’s objection

- 32.—(1) This rule applies where the Secretary of State has –
- (a) objected under rule 28(5)(b) of this Order to a proposed communication by the special advocate; or
 - (b) applied under rule 31 of this Order for leave to withhold closed material.
- (2) The Court must fix a hearing for the Secretary of State and the special advocate to make oral representations, unless –
- (a) the special advocate gives notice to the Court that he does not challenge the objection or application;
 - (b) the Court has previously considered –
 - (i) an objection under rule 28(5)(b) of this Order in relation to the proposed communication of an objection under paragraph (1)(a) above or a substantially similar communication, or
 - (ii) an application under rule 31(1) of this Order for leave to withhold the same or substantially the same material, and
 is satisfied that it would be just to uphold that objection or to give leave without a hearing; or
 - (c) the Secretary of State and the special advocate consent to the Court deciding the issue without a hearing.
- (3) If the special advocate does not challenge the objection or the application, he must give notice of that fact to the Court and the Secretary of State within 14 days, or such other period as the Court may direct, after the Secretary of State serves on him a notice under rule 28(5)(b) of this Order or material under rule 31(2) of this Order.
- (4) Where the Court fixes a hearing under this rule, the Secretary of State and the special advocate must before the hearing lodge with the Court a schedule identifying the issues which cannot be agreed between them, which must –
- (a) list the items or issues in dispute;
 - (b) give brief reasons for their contentions on each; and
 - (c) set out any proposals for the Court to resolve the issues in contention.

(5) A hearing under this rule shall take place in the absence of the relevant party and his legal representative.

(6) Where the Court gives leave to the Secretary of State to withhold closed material, the Court must –

- (a) consider whether to direct the Secretary of State to serve a summary of that material on the relevant party or his legal representative; but
- (b) ensure that no such summary contains information or other material the disclosure of which would be contrary to the public interest.

(7) Where the Court has not given leave to the Secretary of State to withhold closed material from, or has directed the Secretary of State to serve a summary of that material on, a relevant party or his legal representative –

- (a) the Secretary of State shall not be required to serve that material or summary; but
- (b) if he does not do so, at a hearing on notice the Court may –
 - (i) if it considers that the material or anything that is required to be summarised might be of assistance to the relevant party in relation to a matter under consideration by the court, direct that the matter be withdrawn from its consideration, and
 - (ii) in any other case, direct that the Secretary of State shall not rely in the proceedings on that material or (as the case may be) on what is required to be summarised.

(8) The Court must give leave to the Secretary of State to withhold closed material where it considers that the disclosure of that material would be contrary to the public interest.

Order for lodging and serving material and written submissions

33.—(1) Subject to any directions given by the Court, the parties must lodge and serve any material and written submissions, and the special advocate must lodge and serve any written submissions, in the following order –

- (a) the Secretary of State must lodge with the Court all relevant material;
 - (b) the Secretary of State must serve on –
 - (i) the relevant party or his legal representative; and
 - (ii) the special advocate (as soon as one is appointed) or those instructing him, any open material;
 - (c) the relevant party must lodge with the Court and serve on the Secretary of State and special advocate (if one is appointed) or those instructing him any written evidence which he wishes the Court to take into account at the hearing;
 - (d) the Secretary of State must lodge with the Court any further relevant material;
 - (e) the Secretary of State must serve on –
 - (i) the relevant party or his legal representative, and
 - (ii) the special advocate (as soon as one is appointed) or those instructing him, any open material lodged with the Court under paragraph (d);
 - (f) the Secretary of State must serve on the special advocate (if one has been appointed) any closed material;
 - (g) the parties and the special advocate (if one has been appointed) must lodge and serve any written submissions as directed by the Court.
- (2) Rules 31 and 32 of this Order apply where any closed material is lodged by the Secretary of State.

Failure to comply with directions

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

- (a) the respect in which he 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 the 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

35.—(1) When the Court gives judgment in any proceedings to which this Order applies, it may withhold any or part 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 must serve on the Secretary of State and the special advocate a separate written judgment including those reasons.

Application by Secretary of State for reconsideration of decision

36.—(1) This rule applies where the Court proposes, in any proceedings to which this Order applies, to serve notice on a relevant party of any –

- (a) order or direction made or given in the absence of the Secretary of State; or
- (b) any judgement.

(2) Before the Court serves any such notice on the relevant party, it must first serve notice on the Secretary of State of its intention to do so.

(3) The Secretary of State 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 he considers that –

- (a) his compliance with the order or direction; or
- (b) the notification to the relevant 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 Secretary of State makes an application under paragraph (3), he must at the same time serve a copy of it on the special advocate, if one has been appointed.

(5) Rule 32 of this Order (except for paragraphs (6) and (7)) shall, if a special advocate has been appointed, apply with any necessary modifications to the consideration of an application under paragraph (3) of this rule.

(6) The Court must not serve notice on the relevant party as mentioned in paragraph (1) before the time for the Secretary of State to make an application under paragraph (3) has expired.

Supply of Court documents

37. Unless the Court otherwise directs, Order 66, rules 3 to 5 of the principal Rules shall not apply to proceedings under this Order.”

SCHEDULE 2

Rule 4

“No. 37B

NOTICE OF APPEAL UNDER S.10 OF THE PREVENTION OF TERRORISM ACT 2005
(O. 116A, r. 11)

In the High Court of Justice in Northern Ireland

20 , No.

IN THE MATTER OF

AND

IN THE MATTER

Take notice that I hereby appeal to the High Court against a decision of the Secretary of State on the day of 20 [to renew a non-derogating control order] [to modify an obligation imposed by a non-derogating control order without my consent] [in respect of an application to revoke a non-derogating control order] [in respect of an application to modify an obligation imposed by a non-derogating control order]⁽¹⁾

* Delete as appropriate

Full name

Address

PART A

And further take notice that the grounds of this application are as follows:⁽²⁾

PART B – Other applications⁽³⁾

Dated 20

.....
Solicitor for the above-named appellant

To: The Principal Clerk, Appeals and Lists Office,
Central Office, Royal Courts of Justice, Belfast

Served a true copy of the notice of appeal on the solicitor for the respondent [or on the respondent] and on the Attorney General (here set out particulars of service).⁽⁴⁾

Dated 20

Signed
Appellant or solicitor for appellant

NOTES

- (1) Please complete this form in English. It is in your interests to complete this form as thoroughly as possible and state all of your grounds in order for your appeal to be dealt with efficiently.
- (2) Please state the grounds on which you are appealing.
- (3) If you are making an application for an extension of time to appeal or any other application, please give details.
- (4) Please send the original form to the High Court. Please send a sealed copy of the form to the Crown Solicitor (acting for the Secretary of State) at the following address:

Crown Solicitor’s Office
PO Box 410
Royal Courts of Justice
Belfast
BT1 3JY

Please also send a sealed copy of this form to the Attorney General at the following address:

Attorney General’s Office
Royal Courts of Justice
Belfast
BT1 3JY”

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”) to prescribe the procedure relating to applications for control orders under the Prevention of Terrorism Act 2005.

Rule 2 amends the Arrangement of Orders at the beginning of the principal rules to take account of the insertion of a new Order 116A.

Rule 3 amends the principal rules by amending the rule relating to the overriding objective, providing for applications under the Act to be assigned to the Queen’s Bench Division of the High Court and inserting a new Order 116A, which makes provision for applications to the High Court and appeals to both the High Court and the Court of Appeal under the Act.

Rule 4 provides for a new Form 37B to be inserted into the Appendix to the principal rules.

Schedule 1 inserts a new Order 116A into the principal rules.

New Rule 1 contains interpretative provisions.

New Rule 2 modifies the overriding objective in Order 1 of the principal rules so that it shall be read and given effect in a manner compatible with the Court’s duty to ensure that information is not disclosed contrary to the public interest.

New Rule 3 introduces Part II of Order 116A, which applies to applications to the High Court in relation to derogating control orders.

New Rule 4 makes provision for the procedure to be followed in applying to the High Court for the making of a derogating control order.

New Rule 5 requires the Court, on making a derogating control order, to give directions for a further hearing at which all the parties may be present and at which the Court must give directions for a full hearing under section 4(1)(b) of the Act.

New Rule 6 makes provision for the procedure to be followed in respect of an application for the renewal or revocation of a derogating control order or for the modification of obligations imposed by such an order.

New Rule 7 introduces Part III of Order 116A, which relates to procedures before the High Court in relation to non-derogating control orders.

New Rule 8 makes provision for the procedure by which the Secretary of State must apply to the Court for leave to make a non-derogating control order.

New Rule 9 makes provision for the procedure by which the Secretary of State must refer to the Court a non-derogating control order that he has made without the leave of the Court.

New Rule 10 requires the Court, on granting leave for the making of a non-derogating control order or on confirming such an order that was made by the Secretary of State without leave of the Court, to give directions for a further hearing at which all the parties may be present and at which the Court must give directions for a full hearing under section 3(10) of the Act.

New Rule 11 relates to appeals to the High Court in respect of non-derogating control orders and modifies the application of Order 55 and Order 59 of the principal rules to such appeals.

New Rule 12 makes provision for the procedure by which a controlled person may lodge and serve a Notice of Appeal in the High Court.

New Rule 13 prescribes the time limit for giving notice of appeal.

New Rule 14 makes provision for the procedure to be followed by the Secretary of State if he wishes to oppose an appeal made by a controlled person.

New Rule 15 modifies the application of Order 59 of the principal rules in respect of appeals to the Court of Appeal against an order of the High Court in control order proceedings.

New Rule 16 provides that a party to an appeal to the Court of Appeal requires leave to appeal and makes provision for the procedure to be followed on an application for leave.

New Rule 17 prescribes the time limit for both lodging and serving a notice of appeal to the Court of Appeal.

New Rule 18 makes provision for the Court of Appeal to strike out the whole or part of a notice of appeal, to set aside leave to appeal in whole or in part or to impose or vary conditions upon which an appeal may be brought.

New Rule 19 provides that an appeal to the Court of Appeal in connection with a control order will be limited to a review of the decision of the High Court, unless the Court of Appeal considers it in the interests of justice to hold a re-hearing. It further provides that the Court of Appeal will generally not receive either oral evidence or evidence that was not before the High Court and that the Court of Appeal will allow an appeal where the decision of the High Court was wrong or procedurally unjust.

New Rule 20 introduces Part V of Order 116A, which contains a number of general provisions that apply to all proceedings to which Order 116A applies.

New Rule 21 specifies that control order proceedings must be issued at the Central Office of the High Court.

New Rule 22 provides that the controlled person or the Secretary of State may apply for an order requiring the anonymity of the controlled person and that such an application may be made without notice to the other party to the control order proceedings.

New Rule 23 makes provision for the Court to notify all parties to any hearing under Order 116A of the date, time and place fixed for such a hearing.

New Rule 24 makes provision for those proceedings under the Act that must be determined by a hearing.

New Rule 25 provides that a Court may direct that a hearing or part of a hearing shall be held in private in order to secure that information is not disclosed contrary to the public interest or for any other good reason.

New Rule 26 makes provision for the appointment of a special advocate to represent the controlled person where the Secretary of State applies for a derogating control order, applies for leave to make a non-derogating control order, refers a non-derogating control order made without leave or is served with any application or appeal under Order 116A.

New Rule 27 describes the functions of the special advocate as making submissions to the Court at hearings from which the controlled person and his legal representatives are excluded, cross-examining witnesses at such hearings and making written submissions to the Court.

New Rule 28 provides that the special advocate may communicate with the controlled person or his legal representative at any time before the Secretary of State serves closed material on him and makes provision for restrictions on such communication after the Secretary of State has served such material on the special advocate.

New Rule 29 modifies the general rules on evidence and disclosure and provides for the Court to receive evidence in various forms.

New Rule 30 provides that the Secretary of State is required to make a reasonable search for relevant material and to lodge and serve that material in accordance with the rules in Order 116A.

New Rule 31 makes provision for the Secretary of State to apply to the Court for leave to withhold closed material from a controlled person or his legal representative and provides that he may not rely on such material unless a special advocate has been appointed to represent the controlled person.

New Rule 32 provides for the Court to fix a hearing where the Secretary of State has objected to a proposed communication by the special advocate with the controlled person or his legal representative or has applied to the Court for leave to withhold closed material.

New Rule 33 makes provision for the order in which parties to proceedings under Order 116A must lodge and serve any material and written submissions.

New Rule 34 provides that, where a party to proceedings or a special advocate fails to comply with a direction of the Court, the Court may serve notice of the manner in which he has failed to comply with the direction, impose a time limit for complying with the direction and may proceed to determine the proceedings before it if the party fails to comply with the direction.

New Rule 35 provides that the Court may withhold any or part of its reasons when giving judgment if there is a risk of disclosing information contrary to the public interest.

New Rule 36 makes provision for the Secretary of State to apply to the Court for it to reconsider the terms of any order or direction given in his absence, or review the terms of a proposed judgment in order to prevent the disclosure of information that is contrary to the public interest.

New Rule 37 modifies Order 66 of the principal rules in so far as it applies to the supply of Court documents.

Schedule 2 prescribes the content of new Form 37B.

© Crown Copyright 2005

Published and printed in the UK by The
Stationery Office Limited
under the authority and
superintendence of Carol
Tullo, Controller of
Her Majesty's Stationery
Office being the Government
Printer for Northern Ireland and
the Officer appointed to print the
Acts of the Northern Ireland Assembly
Dd. N2075. C2. 4/05. Gp. 130. 14567.
£3.00

ISBN 0-337-95981-1



9 780337 959813