

2006 No. 10

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

**The Rules of the Supreme Court (Northern Ireland)
(Amendment) 2006**

Made - - - - - 19th January 2006

Coming into operation 13th February 2006

To be laid before Parliament

The Northern Ireland Supreme Court Rules Committee makes the following Rules in exercise of the powers conferred by section 55 of the Judicature (Northern Ireland) Act 1978(a) and section 446 of the Proceeds of Crime Act 2002(b). The Lord Chancellor has concurred in the making of these Rules:—

Citation and commencement

1. These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment) 2006 and shall come into operation on 13th February 2006.

Amendment of the Rules of the Supreme Court (Northern Ireland) 1980(c)

2. Order 123 shall be amended as follows—

(1) For rule 1, there shall be substituted the following new rule—

“Interpretation

1. In this Order—

“the Act” means the Proceeds of Crime Act 2002 and a section referred to by a number means the section so numbered in the Act, and expressions used have the same meaning in this Order as in the Act;

“the Order in Council” means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(d), and expressions used have the same meaning in this Order as in the Order in Council;

“civil recovery proceedings” means proceedings under Part 5 of the Act or, as the case may be, Part 5 of the Order in Council;

“Master” means the Master (Queen’s Bench and Appeals);

(a) 1978 c. 23

(b) 2002 c. 29; which is amended by the Serious Organised Crime and Police Act 2005 (c. 15)

(c) S.R. 1980 No. 346 to which the most recent relevant amendment was made by S.R. 2003 No. 54

(d) S.I. 2005/3181

“the Regulations” means the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) (Regulations) 2005(a);

“taxing master” means the Master (Taxing Office)”.

(2) In rule 2, after the words “the Act”, there shall be inserted the words “or Part 5 of the Order in Council”;

(3) For the title of Part II, there shall be substituted the following new title, namely “CIVIL RECOVERY PROCEEDINGS UNDER PART 5 OF THE ACT OR PART 5 OF THE ORDER IN COUNCIL”;

(4) In rule 4(1), after the words “the Act” there shall be inserted the words “or, as the case may be, Part 5 of the Order in Council”;

(5) For rule 5, there shall be substituted the following new rule—

“Application for a recovery order

5.—(1) An application by the Director for a recovery order under section 243 shall be made by originating summons.

(2) An application for a recovery order based on an external order shall include an application to register the external order (a copy of which shall accompany the application under paragraph (1)).

(3) An application under paragraph (1) shall be supported by an affidavit which shall contain the following—

- (a) full particulars of the matters relied upon in support of the application;
- (b) identify the property in respect of which the order is sought;
- (c) a statement of whether each piece of property is alleged to be recoverable or associated property;
- (d) details of any person who is alleged to hold the property; and
- (e) details of the person nominated by the Director under section 267 or Article 178 of the Order in Council to act as trustee for civil recovery.

(4) The application and affidavit in support shall be served in accordance with section 243(2) or, as the case may be, Article 143(2) of the Order in Council not less than seven days before the date fixed for the hearing of the application.

(5) Where the application under paragraph (1) includes an application to register an external order, and—

- (a) the sum specified in the external order is expressed in a currency other than sterling; and
- (b) there are not sufficient funds held in the United Kingdom in the currency in which the sum specified is expressed to satisfy the external order,

the application shall state the sterling equivalent of the sum specified (which shall, in accordance with Article 145(2) of the Order in Council, be calculated in accordance with the exchange rate prevailing at the end of the day on which the external order is made).”.

(6) In rule 6, after the words “section 243(2)(b)” there shall be inserted the words “or, as the case may be, Article 143(2)(b) of the Order in Council,”.

(7) For rule 7, there shall be substituted the following new rule—

“Application for a property freezing order or an interim receiving order

7.—(1) An application by the Director for—

- (a) a property freezing order under section 245A or, as the case may be, Article 147 of the Order in Council; or
- (b) an interim receiving order under section 246 or, as the case may be, Article 151 of the Order in Council,

may be made by summons.

- (2) An application under paragraph (1) shall be supported by an affidavit, which shall:
 - (a) give full particulars of the matters relied upon in support of the application;
 - (b) to the best of the deponent's ability, give full particulars of the property in respect of which the order is sought;
 - (c) state whether each piece of property is alleged to be recoverable or associated property and the matters relied upon in support of those allegations;
 - (d) state who is believed to hold the property or, if the Director has not established the identity of the person who holds it, specify the steps that have been taken to do so.
- (3) In the case of an application for an interim receiving order, the affidavit under paragraph (2) shall also—
 - (a) specify the person nominated by the Director under section 246 or, as the case may be, Article 151 of the Order in Council to act as interim receiver (“the nominee”);
 - (b) where the Director wishes the Court to authorise the nominee to act without the giving of security or before he has given security, specify the reasons why the Director considers this to be necessary;
 - (c) have exhibited thereto, the written consent of the nominee to act, if appointed; and
 - (d) have exhibited thereto, an affidavit by a deponent who knows the nominee, stating that he believes that the nominee is a suitable person to be appointed as receiver and the grounds for that belief.
- (4) Where a property freezing order or an interim receiving order is made, unless the Court directs otherwise, the Director shall serve a copy of the order and the affidavit in support of the defendant and any other person of whom the Director is aware who may be affected by the order.”
- (8) After rule 7, there shall be inserted the following new rule—

“Initial exclusion from property freezing order or interim receiving order

7A.—(1) Where the Court makes a property freezing order or interim receiving order on an ex parte application, it may make an exclusion from the order (in this rule referred to as an “initial exclusion”) for the purpose of enabling a person to meet his reasonable legal expenses so that he may—

- (a) take advice in relation to that order;
- (b) prepare a statement of assets in accordance with rule 10A(3); and
- (c) apply for the order to be varied or set aside.

(2) The total amount specified in the initial exclusion shall not, unless the Court otherwise directs, exceed £3,000.

(3) Where the Court makes a property freezing order or interim receiving order before an application for a recovery order has been made, it may make an exclusion from that order for the purpose of enabling a person to meet his reasonable legal expenses so that—

- (a) when an application for a recovery order is made, he may enter an appearance and file any affidavit evidence on which he intends to rely;
- (b) he may apply for a further exclusion for the purpose of enabling him to meet his reasonable legal expenses in respect of any civil recovery proceedings.”

(9) In rule 9(1), after the words “section 251” there shall be inserted the words “or, as the case may be, Article 156 of the Order in Council”;

(10) For rule 10, there shall be substituted the following new rule—

“Application to vary or set aside property freezing order or interim receiving order

10.—(1) An application to vary or set aside a property freezing order or an interim receiving order (which may include an application for an exclusion from the order) shall be made by summons.

(2) Unless the Court otherwise directs, the summons and any affidavit in support shall, not less than two days before the date fixed for the hearing of the summons, be filed in the Central Office and be served on—

- (a) the other party or parties to the proceedings;
- (b) in the case of an application to vary or set aside an interim receiving order, the interim receiver (where he is not the applicant); and
- (c) any other person of whom the applicant is aware who may be affected by the Court's decision.

(3) Where the application under paragraph (1) includes an application for an exclusion for the purpose of enabling a person to meet his reasonable legal expenses, the affidavit in support shall—

- (a) contain full details of the stage or stages in civil recovery proceedings in respect of which the expenses in question have been or shall be incurred;
- (b) include an estimate of the expenses which the person has incurred and shall incur in relation to each stage to which the application relates;
- (c) include a statement of assets containing the information set out in rule 10A(3), unless the person has previously filed such a statement in the same civil recovery proceedings;
- (d) where the Court has previously made an exclusion in respect of any stage to which the application relates, explain why the person's expenses shall exceed the amount specified in the exclusion for that stage; and
- (e) state whether the terms of the exclusion have been agreed with the Director."

(11) After rule 10, there shall be inserted the following new rules—

“Exclusions for the purpose of meeting legal expenses: general provisions

10A.—(1) Where the Court makes or varies a property freezing order or an interim receiving order, it shall at the same time consider whether it is appropriate to make an exclusion for the purpose of enabling any person to meet his reasonable legal expenses.

(2) Before making an exclusion for the purpose of enabling a person to meet his reasonable legal expenses, other than an initial exclusion under rule 7A(1), the Court shall require that person to file in the Central Office a statement of assets.

(3) A statement of assets shall be contained in an affidavit and shall set out all the assets which the maker of the statement owns, holds or controls, giving the value, location and details of those assets, and information given in any such statement shall only be used for the purpose of the civil recovery proceedings.

(4) The Court shall normally refer to the taxing master any question relating to the amount which an exclusion should allow for reasonable legal expenses in respect of proceedings or a stage in proceedings.

(5) An exclusion for the purpose of enabling a person to meet his reasonable legal expenses shall be made subject to the required conditions specified in Part 2 of the Regulations.

(6) An exclusion made for the purpose of enabling a person to meet his reasonable legal expenses shall specify—

- (a) the stage or stages in civil recover proceedings to which it relates;
- (b) the maximum amount which may be released in respect of legal expenses for each specified stage; and
- (c) the total amount which may be released in respect of legal expenses pursuant to that exclusion.

(7) Where the person to whose legal expenses an exclusion relates becomes aware that—

- (a) his legal expenses in respect of any stage in civil recover proceedings have exceeded or shall exceed the total amount specified in the exclusion for that stage; or
- (b) his total legal expenses in respect of all the stages to which the exclusion applies have exceeded or shall exceed the total amount that may be released pursuant to the exclusion,

he shall, as soon as reasonably practicable, make an application under rule 10(1) for a further exclusion.

Assessment of expenses where recovery order is made

10B.—(1) Where the Court—

- (a) makes a recovery order in respect of property which was the subject of a property freezing order or interim receiving order; and
- (b) had made an exclusion from the property freezing order or interim receiving order for the purpose of enabling a person to meet his reasonable legal expenses;

the Court shall make provision under section 266(8A) or, as the case may be, Article 177(10) of the Order in Council in the recovery order for the payment of those expenses.

(2) Where the Court makes a recovery order which provides for the payment of the reasonable legal expenses which a person has incurred in civil recovery proceedings, it shall direct that the expenses be taxed by the taxing master.

Registers

10C. There shall be kept in the Central Office, under the direction of the Master a register of external orders which the High Court has ordered to be registered.”

Brian Kerr

J M Nicholson

Anthony Campbell

Paul Girvan

Dated 16th December 2005

Signed by the authority of the Lord Chancellor

I concur

Bridget Prentice

Parliamentary Under-Secretary of State, Department for Constitutional Affairs

Dated 19th January 2006

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend Order 123 of the Rules of the Supreme Court (Northern Ireland) 1980 so as to prescribe the practice and procedure to be used in the High Court in relation to—

- applications for property freezing orders under sections 245A to 245D of the Proceeds of Crime Act 2002 (“the 2002 Act”);
- exclusions from property freezing orders and interim receiving orders to enable a person to meet his reasonable legal expenses in respect of those civil recovery proceedings; and
- applications under Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (“the Order in Council”), which makes provision for giving effect in the United Kingdom to external orders by means of civil recovery.

Rule 2(1) substitutes a new rule 1 into Order 123 which defines a number of expressions used in the Rules. *Rule 2(2)* amends rule 2 of Order 123 to assign civil recovery proceedings in relation to external orders under Part 5 of the Order in Council to the Queen’s Bench Division.

Rule 2(3) amends the title to Part II of Order 123 to insert a reference to Part 5 of the Order in Council. *Rule 2(4)* amends rule 4 of Order 123 to prescribe the manner in which an originating summons in relation to civil recovery proceedings under Part 5 of the Order in Council shall be entitled.

Rule 2(5) substitutes a new rule 5 into Order 123 to prescribe the procedures which apply in relation to an application for a recovery order under both the 2002 Act and Part 5 of the Order in Council. *Rule 2(6)* amends rule 6 of Order 123 so that its provisions apply to recovery orders under both the Order in Council and the 2002 Act.

Rule 2(7) substitutes a new rule 7 into Order 123 which prescribes the procedures which apply to an application for a property freezing order or an interim receiving order.

Rule 2(8) inserts new rule 7A into Order 123. *New rule 7A* makes provision enabling a Court, in certain circumstances, to make an initial exclusion from a property freezing order or interim receiving order to enable a person to meet reasonable legal expenses.

Rule 2(9) amends rule 9(1) of Order 123 to provide that an application for directions as to the exercise of an interim receivers functions shall be made by way of summons. *Rule 2(10)* substitutes a new rule 10 into Order 123 which prescribes the procedure to be followed on an application to vary or set aside a property freezing order or interim receiving order.

Rule 2(11) inserts new rules 10A to 10C into Order 123 which make further provision about exclusions for the purpose of meeting legal expenses (*new rule 10A*) and for the assessment of those expenses following the making of a recovery order (*new rule 10B*). *New rule 10C* provides that a register of external orders registered by the Court shall be kept in the Central Office.