

**EXPLANATORY MEMORANDUM TO**  
**THE RULES OF THE COURT OF JUDICATURE (NORTHERN IRELAND)**  
**(AMENDMENT No.2) 2012**

**S.R. 2012 No. 273**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department of Justice to accompany the Rules of the Court of Judicature (Northern Ireland) (Amendment No.2) 2012 which are laid before the Northern Ireland Assembly.
- 1.2 These Rules are made under sections 55 and 55A of the Judicature (Northern Ireland) Act 1978 and are subject to negative resolution.

**2. Purpose**

- 2.1 These Rules amend the Rules of the Court of Judicature (Northern Ireland) 1980 (S.R. 1980/346) (“the RCJ”). The RCJ are the rules of court which govern practice and procedure in the High Court and the Court of Appeal in Northern Ireland.
- 2.2 Amendments are made to Order 116B of the RCJ (Counter Terrorism Act 2008 and Part 1 of the Terrorist Asset-Freezing Etc. Act 2010) to:
- address an earlier drafting error; and
  - align disclosure requirements under the two Acts.

**3. Matters of special interest**

- 3.1 Rule 2(a) of these Rules aims to address a drafting defect, identified by the Joint Committee on Statutory Instruments (“JCSI”), in Part 3 (Appeals) of Order 116B of the RCJ, at rule 13(2)(b).
- 3.2 Part 3 was inserted into Order 116B by the Rules of the Court of Judicature (Northern Ireland) (Amendment No.3) 2010 (S.R. 2010 No.430) (“the 2010 Rules”) following the making of the Terrorist Asset-Freezing Etc. Act 2010 (“the 2010 Act”). The 2010 Rules were made by the Lord Chancellor under section 29(2) of the 2010 Act (initial exercise of powers to make rules of court) and were subject to affirmative resolution before Parliament.
- 3.3 Rule 13(2)(b) (appellant’s notice) requires an appellant to file and serve evidence in support of “the application”. The JCSI asked what was meant by the reference to “the application”, given that there is no reference to

“application” elsewhere in the rule. The Department of Justice replied to the JCSI suggesting that although it felt the meaning was clear from the context, with hindsight, the word “appeal” might have been better. The Department undertook to ask the Northern Ireland Court of Judicature Rules Committee (“the NICJRC”) to consider an amendment to this effect at the next opportunity.

- 3.4 A second matter of special interest arises in relation to the procedure for making these Rules. Under section 55A of the Judicature (Northern Ireland) Act 1978 (“the 1978 Act”) this is a 2 stage procedure whereby the NICJRC makes the Rules, and a designated authority allows them. Prior to the devolution of policing and justice, the Lord Chancellor was the designated authority in all cases, but this role was restricted upon devolution to cases where the Rules bear on an excepted matter. In all other cases the Department of Justice is now the designated authority. These Rules deal with issues specific to the excepted matter of terrorism (prescribing procedures for court proceedings under the Counter Terrorism Act 2008 (“the 2008 Act”) and the 2010 Act), and so must be allowed by the Lord Chancellor.
- 3.5 Section 56(1) of the 1978 Act (Control and publication of rules) was amended by paragraph 16 of Schedule 18 to the Northern Ireland Act 1998 (Devolution of Policing and Justice) Order 2010, so that all rules made by the NICJRC shall be subject to negative resolution in accordance with section 41(6) of the Interpretation Act (NI) 1954. Section 41(6) requires the rules to be laid before the Northern Ireland Assembly. This amendment has created an unintended situation whereby those rules which are allowed by the Lord Chancellor may not be laid before Parliament at Westminster, as might otherwise be expected. An appropriate amendment to the 1978 Act will be made in due course to remedy this anomaly.

#### **4. Background**

- 4.1 Order 116B was inserted following the passage of the 2008 Act, to provide rules of court for proceedings relating to financial restrictions decisions (decisions of the Treasury which are binding on UK financial institutions restricting their dealings with individuals, businesses, or other governments believed to pose a risk to the national interests of the UK).
- 4.2 It was amended by the 2010 Rules to extend its effect, with some modifications, to applications relating to designation decisions made under the 2010 Act. Under that Act the Treasury can ‘designate’ a person who is believed to be involved in terrorism, and a range of offences are then applied to anyone having financial dealings with the designated person.

- 4.3 One of the modifications made by the 2010 Rules was effected by the insertion of rule 28(1A). This disapplied, in respect of appeals of designation decisions under the 2010 Act, the requirement under Order 116B, rule 28(b)(iii) for the disclosing party to lodge and serve material which it does not rely upon but which adversely affects the other party's case. This modification was intended to prevent the disclosure of sensitive information which, for reasons of public interest or national security, the Treasury does not intend to rely upon in appeals relating to designation decisions.
- 4.4 For the same reason (in addition to addressing the drafting error detailed in section 3 above), this instrument, at rule 2(b), amends Order 116B to omit rule 28(b)(iii) and (1A), thus aligning the disclosure requirements in relation to all proceedings to which rule 28 applies.

## **5. Consultation**

- 5.1 Due to the representative nature of the NICJRC (which makes these Rules subject to the Lord Chancellor allowing them) and the fact that these Rules are procedural in nature (and therefore of limited public interest) no formal consultation was considered necessary on this occasion.

## **6. Equality Impact**

- 6.1 This Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

## **7. Regulatory Impact**

- 7.1 This Statutory Rule does not require a Regulatory Impact Assessment as it does not impose any additional costs or savings on business, charities or voluntary bodies.

## **8. Financial Implications**

- 8.1 This Statutory Rule does not have any financial implications.

## **9. Section 24 of the Northern Ireland Act 1998**

- 9.1 This Statutory Rule is considered to be compliant with section 24 of the Northern Ireland Act 1998, including Community Law and Convention Rights as defined in the Human Rights Act 1998.

## **10. EU Implications European Convention on Human Rights**

10.1 There are no EU implications. The proposed changes are intra-UK and will not impact on any enforcement issues outside of the UK.

## **11. Parity or Replicatory Measures**

11.1 Equivalent amendments were made to Part 79 of the Civil Procedure Rules in England and Wales by the Civil Procedure (Amendment No.2) Rules 2011 (S.I. 2011 No. 1979 (L. 17)).

## **12. Additional Information**

12.1 None.