

2018 No. 24

COURT OF JUDICATURE, NORTHERN IRELAND

CROWN COURT

The Crown Court (Amendment) Rules (Northern Ireland) 2018

Made - - - - - *29th January 2018*

Laid before Parliament *1st February 2018*

Coming into operation in accordance with Rule 1

The Crown Court Rules Committee makes the following Rules in exercise of the powers conferred by sections 52(1) and 53A of the Judicature (Northern Ireland) Act 1978(a) and regulation 61 of the Criminal Justice (European Investigation Order) Regulations 2017(b).

Citation, commencement and interpretation

1. These Rules shall be cited as the Crown Court (Amendment) Rules (Northern Ireland) 2018 and shall come into operation on the twenty-first day after the date upon which this instrument is laid before Parliament.

2. In these Rules “the principal Rules” means the Crown Court Rules (Northern Ireland) 1979(c), and a reference to a rule is a reference to that rule so numbered in the principal Rules.

Amendment to the Principal Rules

3. In the principal Rules, after Rule 62B, insert the new Part VIIIA set out in the Schedule to these Rules.

(a) 1978 c.23, to which the most recent relevant amendments were made by paragraphs 26 and 28 of the Constitutional Reform Act 2005 (c.4); paragraph 6 of Schedule 17 to, and paragraphs 14 and 26 of Schedule 18 to, the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976); and paragraph 2 of the Schedule to the Northern Ireland (Miscellaneous Provisions) Act 2014 (c.13).

(b) S.I. 2017/730.

(c) S.R. 1979 No. 90, to which the most recent relevant amendments were made by S.R. 2004 No. 233, S.R. 2010 No. 133 and S.R. 2011 No. 230.

*Declan Morgan
Seamus Treacy
Brian Archer
Joseph O'Keefe
Martin Rodgers*

Dated 18th August 2017

In exercise of the powers conferred upon me by section 53A of the Judicature (Northern Ireland) Act 1978, I allow these Rules.

David Gauke
Lord Chancellor
Ministry of Justice

Date 29th January 2018

“PART VIIIA

APPLICATIONS UNDER THE CRIMINAL JUSTICE (EUROPEAN
INVESTIGATION ORDER) REGULATIONS 2017**Interpretation**

62C. In this Part of these Rules—

“business day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is, or is to be observed as, a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971;

“chief clerk” means the chief clerk of the Court at the place where the proceedings under the Criminal Justice (European Investigation Order) Regulations 2017 are to be heard and includes such other civil servant in the Department of Justice as may be authorised to act on his behalf for the purpose in question;

“the Directive” means Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters;

“the Regulations” means the Criminal Justice (European Investigation Order) Regulations 2017, a reference to a regulation, Part or Schedule by number is a reference to the regulation, Part or Schedule so numbered in the Regulations; and

expressions which are defined in the Regulations have the same meaning as in the Regulations.

Application for European investigation order

62D.—(1) This Rule applies to an application under regulation 6 for a European investigation order.

(2) Subject to paragraph (7), the application shall be made by giving notice in writing to the chief clerk and shall state—

- (a) the particulars of the alleged offence or the grounds for suspecting that an offence has been committed;
- (b) whether proceedings in respect of the alleged offence have been instituted or that the alleged offence is being investigated;
- (c) the investigative measure or measures in respect of which the order is sought;
- (d) the participating State; and
- (e) the grounds for the application.

(3) The application shall be supported by an affidavit—

- (a) stating the particulars of the alleged offence or the grounds for suspecting that an offence has been committed;
- (b) stating whether proceedings in respect of the alleged offences have been instituted or that the alleged offence is being investigated;
- (c) stating, in respect of each investigative measure sought, the grounds for the deponent’s belief that—
 - (i) such measure is necessary and proportionate for the purposes of the investigation or proceedings in question; and

- (ii) such measure could lawfully be ordered or undertaken under the same conditions in a similar domestic case, having regard to regulation 11; and
- (d) stating the grounds for the application.
- (4) The application shall be accompanied by a draft of the order sought in the form set out in Annex A to the Directive.
- (5) The application may be heard ex parte.
- (6) The judge may direct that notice of the application be served on any person who, in the opinion of the judge, is directly affected by the application.
- (7) The judge may direct that paragraphs (2) and (3) need not be complied with if he is satisfied that the applicant has good reason to make the application as soon as possible and that it is not practicable to comply with those paragraphs.

Variation or revocation of a European investigation order

62E.—(1) This Rule applies to an application under regulation 10 to vary or revoke a European investigation order.

(2) The application shall be made in writing, giving full particulars of the matters relied upon in support of the application, and subject to paragraph (4), shall be served on—

- (a) the chief clerk; and
- (b) where relevant, the prosecuting authority or constable who obtained the order.

(3) Where the application is for variation of a European investigation order, the application shall be accompanied by a draft of the order sought in the form set out in Annex A to the Directive.

(4) The judge may direct that the application be served on any person who, in the opinion of the judge, is directly affected by the application.

(5) The application may be determined by the judge either with or without a hearing.

(6) If a hearing is directed under paragraph (5), the chief clerk shall notify the applicant and any other person served with the application of the time and place of the hearing.

(7) A person notified in accordance with paragraph (6) may be present at the hearing and may be heard.

(8) The chief clerk shall, as soon as reasonably practicable, after the determination of an application under paragraph (2), notify all parties of the decision.

(9) Where the judge makes an order to vary or revoke a European investigation order, the chief clerk shall without delay send a copy of that order to the central authority or, as the case may be the appropriate executing authority of the executing State, as so directed by the judge.

Proceedings before a nominated court

62F. In proceedings before a court nominated under Part 3, the Court may—

- (a) determine who may appear to take part in the proceedings and whether a party to the proceedings is entitled to be legally represented; and
- (b) if it thinks it necessary to do so in the interests of justice, direct that all or any persons not being members of 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.

Record of proceedings before a court nominated to receive evidence

62G.—(1) In proceedings before a court nominated under regulation 35(2), the chief clerk shall make a record of the evidence received by the Court and the information prescribed in paragraph (2).

- (2) The information referred to in paragraph (1) is—
- (a) details of the request in respect of which the court was nominated;
 - (b) the date on which, and place at which, the proceedings under Schedule 5 in respect of that request took place;
 - (c) the name of any witness who gave evidence at the proceedings in question;
 - (d) the name of any person who took part in the proceedings as a legal representative or as an interpreter;
 - (e) whether a witness was required to give evidence on oath or after making a solemn affirmation; and
 - (f) whether the opportunity to cross-examine any witness was refused.

Interpreter for the purposes of proceedings involving a videoconference or other audiovisual transmission or telephone conference

62H.—(1) This rule applies where a court is nominated under regulation 36(2) or regulation 37(2).

(2) Where it appears to the chief clerk that the witness to be heard in the proceedings under Part 1 or Part 2 of Schedule 6 (“the relevant proceedings”) is likely to give evidence in a language other than English, he shall make arrangements for an interpreter to be present at the relevant proceedings to translate what is said into English.

(3) Where it appears to the chief clerk that the witness to be heard in the relevant proceedings is likely to give evidence in a language other than that in which the proceedings of the court referred to in regulation 36(1) or, as the case may be, regulation 37(1), (“the external court”) will be conducted, he shall make arrangements for an interpreter to be present at the relevant proceedings to translate what is said into the language in which the proceedings of the external court will be conducted.

(4) Where the evidence in the relevant proceedings is given in a language other than English and is not translated into English by an interpreter, the Court shall adjourn the proceedings until such time as an interpreter can be present to provide a translation into English.

Record of videoconference or other audiovisual transmission before a nominated court

62I.—(1) In proceedings before a court nominated under regulation 36(2), the chief clerk shall make a record of the evidence given in the presence of the Court and the information prescribed in paragraph (2).

- (2) The information referred to in paragraph (1) is—
- (a) details of the request in respect of which the notice under regulation 36(2) was given;
 - (b) the date on which, and place at which, the proceedings under Part 1 of Schedule 6 in respect of that request took place;
 - (c) the technical conditions, such as the type of equipment used, under which the proceedings took place;
 - (d) the name of the witness who gave evidence;
 - (e) the name of any person who took part in the proceedings as a legal representative or as an interpreter; and
 - (f) the language in which the evidence was given.

(3) As soon as is reasonably practicable after the proceedings under Part 2 of Schedule 6, the chief clerk shall send to the issuing authority a copy of an extract of so much of the record as relates to the proceedings of that request.

Record of telephone conference before a nominated court

62J.—(1) In proceedings before a court nominated under regulation 37(2), the chief clerk shall make a record of the evidence given in the presence of the Court and the information prescribed in paragraph (2).

- (2) The information referred to in paragraph (1) is—
- (a) details of the request of which the notice under regulation 37(2) was given;
 - (b) the date on which, and place at which, the proceedings under Part 2 of Schedule 6 took place;
 - (c) the name of the witness who gave evidence;
 - (d) the name of any person who took part in the proceedings as a legal representative or as an interpreter; and
 - (e) the language in which the evidence was given.

(3) As soon as is reasonably practicable after the proceedings under Part 2 of Schedule 6, the chief clerk shall send to the issuing authority a copy of an extract of so much of the record as relates to the proceedings in respect of that request.

Consideration of European investigation order requiring a search warrant, production order, customer information order or account monitoring order

62K.—(1) This rule applies where a court is nominated under regulation 38(2) or regulation 43(2).

(2) The Secretary of State must serve on the chief clerk a draft warrant or, as the case may be, order to give effect to the European investigation order.

(3) Save in exceptional circumstances or as otherwise agreed, the Court shall consider whether to give effect to the European investigation order within 5 business days of receipt of a copy of the order from the Secretary of State.

(4) The Court shall not consider the European investigation order unless it is satisfied that the Chief Constable has—

- (a) been given notice of the order; and
- (b) had an opportunity to be heard.

(5) The Court may consider the European investigation order—

- (a) without a hearing; or
- (b) at a hearing in private or public.

Application to vary or revoke a search warrant or other order issued to give effect to a European investigation order or to authorise the release of evidence seized or produced

62L.—(1) This rule applies to an investigation order under regulation 41(1) or regulation 48(1).

(2) The application 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; and
- (b) as appropriate, the Chief Constable and any other person affected by the warrant or order.

(3) The application may be determined either with or without a hearing.

(4) If a hearing is directed under paragraph (3), the chief clerk shall notify applicant and any other person served with the application of the time and place of the hearing.

(5) The chief clerk shall as soon as reasonably practicable after the determination of the application notify the decision to all those who, under paragraph (2), were served with a copy of the application.

(6) Where on an application to which this rule applies, the Court—

- (a) varies a warrant or order, the chief clerk shall without delay send a copy of that warrant or order, as varied, to the Secretary of State;
- (b) makes an order revoking a warrant or order, the chief clerk shall without delay send a copy of that order to the Secretary of State.

Restriction on access to records

62M. The records kept under rules 62G, 62I and 62J shall not be open to inspection by any person except—

- (a) as authorised by the Secretary of State; or
- (b) with leave of the Court.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Crown Court Rules (Northern Ireland) 1979 (S.R. 1979 No. 90) to take account of the Criminal Justice (European Investigation Order) Regulations 2017 (S.I. 2017/730) which transpose Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. (OJ NO L 130, 1.5.2014, p.1).

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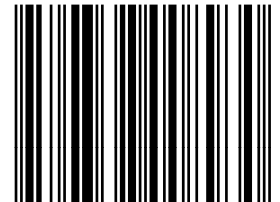
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