

*Rules made by the Lord Chancellor, laid before Parliament under paragraph 7 of Schedule 4 to the Terrorism Prevention and Investigation Measures Act 2011, for approval by resolution of each House of Parliament within forty days beginning with the day on which the Rules were made, subject to extensions for periods of dissolution, prorogation or adjournment for more than four days*

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STATUTORY RULES OF NORTHERN IRELAND

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**2011 No. 422**

**COURT OF JUDICATURE, NORTHERN IRELAND**

**COUNTER-TERRORISM**

**The Rules of the Court of Judicature (Northern Ireland)  
(Amendment No.4) 2011**

*Made - - - - 14th December 2011*

*Laid before Parliament 15th December 2011*

*Coming into force in accordance with rule 1*

The Lord Chancellor, in exercise of the power conferred by paragraph 7 of Schedule 4 to the Terrorism Prevention and Investigation Measures Act 2011(a) to make rules of court under section 55 and 55A of the Judicature (Northern Ireland) Act 1978 (b), and paragraphs 2 to 4 and 6 of Schedule 4 to the Terrorism Prevention and Investigation Measures Act 2011, and after consulting the Lord Chief Justice of Northern Ireland in accordance with paragraph 7(2)(b) of that Schedule, makes the following Rules:

**Citation, commencement and interpretation**

1. These Rules may be cited as the Rules of the Court of Judicature (Northern Ireland) (Amendment No.4) 2011 and shall come into force the day after the day on which they are made.

2. In these Rules a reference to an Order or rule by number alone means the Order or rule so numbered in the Rules of the Court of Judicature (Northern Ireland) 1980 (c).

**Amendments to the Rules of the Court of Judicature (Northern Ireland) 1980**

3. In Order 1, for “Order 116A, rule 2(1) and Order 116B, rule 2(1)” substitute “Order 116A, rule 2(1), Order 116B, rule 2(1) and Order 116C, rule 2(1)”.

4. After Order 116B, insert Order 116C (Proceedings under the Terrorism Prevention and Investigation Measures Act 2011), as set out in Schedule 1.

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(a) 2011 c.23

(b) 1978 c.23; to which the most recent relevant amendments were made by paragraphs 29 and 30 of Schedule 5 to the Constitutional Reform Act 2005 (c.4) and by Article 15 of and Schedule 17 to the Northern Ireland (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010 No. 976).

(c) S.I.1980/346; to which the most recent relevant amendments were made by S.R. 2008 No.479 and S.R. 2009 No.264

5. In the Appendix 1, after Form 37B, insert new Form 37C, as set out in Schedule 2.

Signed by the authority of the Lord Chancellor

*J Djanogly*  
Parliamentary Under-Secretary of State  
Ministry of Justice

Dated 14th December 2011

# SCHEDULE 1

Rule 4

## “ORDER 116C

### PART 1

#### Application of this Order

##### **Scope and interpretation**

- 1.—(1) This Order contains rules about—
  - (a) TPIM 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 the virtue of section 17(2) of the Act, the rules in this Order shall apply with any modification which the Court considers necessary.
- (3) In this Order—
  - (a) “the Act” means the Terrorism, Prevention and Investigation Measures Act 2011;
  - (b) “closed material” means any relevant material that the Secretary of State objects to disclosing to a relevant party on the grounds that it is contrary to the public interest;
  - (c) “extension notice” means a notice issued under section 5(2) of the Act, extending a TPIM notice;
  - (d) “legal representative” is to be construed in accordance with paragraph 4(4)(b) of Schedule 4 to the Act;
  - (e) “measures” means terrorism prevention and investigation measures (which has the same meaning as in section 2 of the Act);
  - (f) “open material” means any relevant material that the Secretary of State does not object to disclosing to a relevant party on the grounds it is contrary to the public interest;
  - (g) “relevant material” means the material described in paragraph 3(1)(a) to (c) of Schedule 4 to the Act;
  - (h) “relevant party” means any party to the proceedings other than the Secretary of State;
  - (i) “revival notice” means a notice issued under section 13(6) of the Act, reviving a TPIM notice;
  - (j) “special advocate” is a person appointed under paragraph 10(1) of Schedule 4 to the Act;
  - (k) “TPIM notice” has the same meaning as in section 2(1) of the Act;
  - (l) “TPIM proceedings” has the same meaning as in section 30(1) of the Act;
  - (m) “TPIM subject” means an individual on whom the Secretary of State has imposed, or is proposing to impose, measures by means of a TPIM notice;
  - (n) “variation notice” means a notice issued under section 12(1)(c) of the Act, varying the TPIM notice without the individual’s consent.
- (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 2**

### *Permissions Applications, References and Appeals to the High Court Relating to TPIM Notices*

#### **Scope of this Part**

3. This Part of this Order contains rules about—

- (a) applications under section 6(1)(b) of the Act (application for permission to impose a TPIM notice);
- (b) references under paragraph 3(1) of Schedule 2 to the Act (references of a TPIM notice imposed without permission); and
- (c) appeals to the High Court under section 16 of the Act (appeals relating to TPIM notices).

#### **Application for permission to impose measure**

4. An application under section 6(1)(b) of the Act for permission to impose measures must be made by the Secretary of State lodging with the Court—

- (a) a statement of reasons to support the application;
- (b) any relevant material of which the Secretary of State is aware at that stage;
- (c) any written submissions; and
- (d) the proposed TPIM notice.

#### **Reference of measures imposed without permission**

5. A reference under paragraph 3(1) of Schedule 2 to the Act of the imposition of measures imposed without permission is made by the Secretary of State lodging with the Court-

- (a) a statement of reasons for imposing measures and for imposing the measures specified in the TPIM notice;
- (b) any relevant material of which the Secretary of State is aware at that stage;
- (c) any written submissions; and
- (d) the TPIM notice.

#### **Directions for hearing on application for permission or on a reference**

6.—(1) If the Court gives permission on an application under section 6(1)(b) of the Act or confirms a TPIM notice on a reference under paragraph 3(1) of Schedule 2 to the Act, the Court must give directions for a directions hearing at which the TPIM subject, the TPIM

subject's legal representative, the special advocate (if one has been appointed) and the Secretary of State's legal representative may be present.

(2) In a case where permission is given (following an application under section 6(1)(b) of the Act), the date to be fixed for the directions hearing must, unless the court otherwise directs, be no later than 7 days after the date on which the TPIM notice is served on the TPIM subject.

(3) In a case where the TPIM notice is confirmed (following a reference under paragraph 3(1) of Schedule 2 to the Act), the date to be fixed for the directions hearing must, unless the Court otherwise directs, be no later than 7 days after the date on which the Court confirms the TPIM notice.

(4) At the directions hearing, the Court must give directions—

- (a) for a review hearing under section 9(1) of the Act; and
- (b) specifying a date and time by which the parties and special advocate must lodge and serve any written evidence or written submissions in accordance with rule 29.

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

(6) Rules 27 and 28 will apply where any closed material is lodged by the Secretary of State.

#### **Appeals under section 16 of the Act**

7.—(1) This rule and rules 8 to 10 apply to an appeal under section 16 of the Act (appeals relating to a TPIM notice).

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

(3) Order 59, rule 10 applies to appeals under section 16 of the Act subject to —

- (a) rule 2 of this Order; and
- (b) the rules in Part 4 of this Order.

#### **Notice of appeal**

8.—(1) The TPIM subject must give notice of appeal by—

- (a) lodging a notice of appeal in Form 37C with the Court; and
- (b) serving a copy of that 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 TPIM subject, and
  - (ii) the TPIM subject's legal representative (if any).

(3) A notice of appeal may include an application under rule 18 for an order requiring anonymity for the TPIM subject.

(4) The notice of appeal must be lodged with a copy of the TPIM notice imposing measures on the TPIM subject and (as relevant)—

- (a) a copy of the extension notice, revival notice or variation notice that is the subject of the appeal;
- (b) a copy of the application to the Secretary of State—
  - (i) for permission in connection with a measure in the TPIM notice,
  - (ii) for the revocation of the TPIM notice, or

- (iii) for the variation of a measure imposed by the TPIM notice;
- (c) a copy of the Secretary of State's decision on such an application.

### **Time limit for appealing**

**9.**—(1) Subject to paragraph (2), the TPIM subject must give notice of appeal no later than 28 days after receiving—

- (a) the extension notice, revival notice or variation notice that is the subject of the appeal; or
- (b) notice of the Secretary of State's decision on an application for permission in connection with a measure specified in the TPIM notice, for the revocation of the TPIM notice or for the variation of a measure specified in the TPIM notice.

(2) In a case where the Secretary of State has failed to determine an application for permission in connection with a measure specified in the TPIM notice, for the revocation of the TPIM notice or for the variation of a measure specified in the TPIM notice, the TPIM subject must lodge the notice of appeal—

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

after the date on which the Secretary of States received the application.

### **Secretary of State's reply**

**10.** If the Secretary of State wishes to oppose an appeal made under section 16 of the Act, the Secretary of State must, no later than 14 days after being served with the notice of appeal—

- (a) lodge with the Court—
  - (i) any relevant material of which the Secretary of State is aware at that stage, and
  - (ii) any written submissions; and
- (b) serve on the TPIM subject any open material.

## **PART 3**

### *Appeals to the Court of Appeal*

#### **Application**

**11.**—(1) Order 59 applies to an appeal to the Court of Appeal against an order of the High Court in TPIM proceedings, subject to—

- (a) rule 2;
- (b) the rules in Part 4 of this Order; and
- (c) paragraphs (2) and (3) of this rule.

(2) Order 59, rules 3(1), (2), (4) and (5), 4 to 6, 9, 11, 14 and 16 to 18 do not apply to appeals to the Court of Appeal against an order of the High Court in TPIM proceedings.

(3) Rules 8 and 10 of this Order shall apply with appropriate modifications.

#### **Leave to appeal**

**12.**—(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 decisions 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 may 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**

**13.—**(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 notice of appeal and setting aside or imposing conditions on leave to appeal**

**14.—**(1) The Court of Appeal may —

- (a) strike out the whole or any 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 may 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 the 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**

**15.**—(1) The provisions of this rule apply without prejudice to the generality of the provisions in Order 59, rule 10.

(2) Every 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 consider that, in the circumstances of the 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 before the High Court.

## **PART 4**

### *General Provisions*

#### **Scope of this Part**

**16.** This Part of this Order applies to—

- (a) TPIM 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**

**17.** Any TPIM proceedings must be issued at the Central Office, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF.

#### **Applications for anonymity**

**18.**—(1) The TPIM subject or the Secretary of State may apply for an order requiring the anonymity of the TPIM subject.

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

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

(4) The reference in this rule to an order requiring anonymity for the TPIM subject is to be construed in accordance with paragraph 6(3) of Schedule 4 to the Act.

#### **Notification of hearing**

**19.** Unless the Court directs 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 had been appointed for the purposes of the hearing, the special advocate or those instructing the special advocate.



## Hearings

**20.**—(1) The following proceedings must be determined at a hearing—

- (a) a review hearing under section 9(1) of the Act (review hearing);
- (b) an appeal under section 16 of the Act (appeal relating to a TPIM notice);
- (c) an appeal to the Court of Appeal from an order of the High Court made in the proceedings mentioned in sub-paragraph (a) or (b) above; and
- (d) a hearing under rule 28(2) (consideration of the Secretary of State’s objection or application).

(2) Paragraph (1)(a) does not apply where the court discontinues the review hearing in accordance with section 9(3) of the Act.

(3) Paragraph (1)(b) does not apply where—

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

(4) Paragraph (1)(c) does not apply where —

- (a) the Court of Appeal grants a request by the appellant to dismiss the appeal;
- (b) the Court of Appeal allows the appeal with consent; or
- (c) the Court of Appeal strikes out the appeal.

## Hearings in private

**21.**—(1) If the Court considers it necessary for any relevant party and any relevant party’s 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 the relevant party’s 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

**22.**—(1) Subject to paragraph (2), the Secretary of State must immediately give notice of the proceedings to the Advocate General (who under paragraph 10(1) of Schedule 4, has the power to appoint a special advocate) on —

- (a) making an application under section 6(1)(b) of the Act (application for permission to impose a TPIM notice);
- (b) making a reference under paragraph 3(1) of Schedule 2 to the Act (reference of a TPIM notice imposed without permission); or
- (c) 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 application, claim or appeal; 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 24.

(3) 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 Advocate General to appoint a special advocate.

### **Functions of a special advocate**

**23.** 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 (or parts of hearing) from which the relevant party and the relevant party's legal representatives are excluded;
- (b) adducing evidence and cross-examining witnesses at any such hearings (or parts of hearing); and
- (c) making written submissions to the Court.

### **Special advocate: communicating about proceedings**

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

(2) After the Secretary of State serves the 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 (6)(b) or with 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 the Secretary of State;
- (c) the Advocate General, or any person acting for the Advocate General; or
- (d) any other person, except the relevant party or the relevant party's legal representative, with whom it is necessary for administrative purposes for the special advocate to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from the Court authorising him or her to communicate with the relevant party or the relevant party's 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 the Secretary of State 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 closed material on the special advocate, but—

- (a) the relevant party may only communicate with the special advocate through the relevant party's 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 the special advocate may without such

directions send a written acknowledgment of receipt to the relevant party's legal representative.

### **Modification of the general rules of evidence and disclosure**

**25.**—(1) Orders 24 and 38 and Order 39, rules 1 and 2 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 hearing or part of a hearing from which that party and that party's legal representative are not excluded.

(6) A special advocate shall be entitled to adduce evidence and to cross-examine witnesses.

(7) The Court may require a witness to give evidence on oath.

### **Lodging and service of relevant material**

**26.**—(1) 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.

(2) The duty to search for, file and serve material under paragraph (1) continues until the proceedings in question have been determined.

### **Closed material**

**27.**—(1) The Secretary of State—

- (a) must apply to the Court for permission to withhold closed material from a relevant party or the relevant party's 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, at such time as the Court directs, serve on the special advocate—

- (a) the closed material;
- (b) a statement of the Secretary of State's reasons for withholding that material from the relevant party; and
- (c) if the Secretary of State considers it possible to provide a summary of 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 permission of the Court.

### **Consideration of the Secretary of State's objection**

**28.**—(1) This rule applies where the Secretary of State has—

- (a) objected under rule 24(5)(b) to a proposed communication by the special advocate;  
or
- (b) applied under rule 27 for permission 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 or she does not challenge the objection or application;
- (b) the Court has previously considered—
  - (i) an objection under rule 24(5)(b) to the same or substantially the same communication, or
  - (ii) an application under rule 27(1) for permission to withhold the same or substantially the same material, and

is satisfied that it would be just to uphold that objection or to give permission 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 or she must give notice of that fact to the Court and the Secretary of State no later than the end of 14 days after the date the Secretary of State serves on the special advocate a notice under rule 24(5)(b) or material under rule 27(2), or such other period as the Court may direct.

(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 also—

- (a) give brief reasons for their contentions in relation to each issue; and
- (b) set out any proposals for the Court to resolve those issues.

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

(6) Where the Court gives permission 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 the relevant party's 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 permission 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, the relevant party or the relevant party's legal representative—

- (a) the Secretary of State shall not be required to serve that material or summary; but
- (b) if the Secretary of State 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 is withdrawn from its consideration or that the Secretary of State makes such concessions or takes such other steps as the Court specifies, 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 permission 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 of lodging and serving material and written submissions**

**29.**—(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 of which the Secretary of State is aware;
- (b) the Secretary of State must serve on—
  - (i) the relevant party or the relevant party’s legal representative; and
  - (ii) the special advocate (as soon as one is appointed) or those instructing the special advocate,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 the special advocate any written evidence which the relevant party 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 the relevant party’s legal representative; and
  - (ii) the special advocate (as soon as one is appointed) or those instructing the special advocate,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 file and serve any written submissions as directed by the Court.

(2) Rules 27 and 28 will apply where any closed material is lodged by the Secretary of State.

### **Failure to comply with directions**

**30.**—(1) Where a party or the special advocate fails to comply with a direction of the Court, the Court may serve on that person a notice which states—

- (a) the respect in which that person 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 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**

**31.**—(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 the Secretary of State for reconsideration of decision**

**32.**—(1) If 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 judgment

then 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.

(2) The Secretary of State may, within 5 days of being served with notice under paragraph (1), apply to the Court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if the Secretary of State considers that—

- (a) the Secretary of State’s 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.

(3) Where the Secretary of State makes an application under paragraph (2), the Secretary of State must at the same time serve on the special advocate, if one has been appointed—

- (a) a copy of the application; and
- (b) a copy of the notice served on the Secretary of State pursuant to paragraph (1).

(4) Rule 28 (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 (2) of this rule.

(5) 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 (2) has expired.

**Supply of court documents**

**33.** Unless the Court otherwise directs, Order 66, rules 3 to 5 shall not apply to any proceedings to which this Order applies.”

SCHEDULE 2

Rule 5

Form 37C

NOTICE OF APPEAL UNDER SECTION 16 OF THE TERRORISM PREVENTION AND INVESTIGATION MEASURES ACT 2011

(Order 116C, r.8)

In the High Court of Justice in Northern Ireland

20 , No

IN THE MATTER OF

Take notice that I hereby appeal to the High Court against a decision of the Secretary of State on the day of [to extend a TPIM] [revive a TPIM] [in relation to variation of a TPIM][in relation to revocation of a TPIM][in relation to permission in respect of a prohibition on a TPIM]\*, in particular –

(please specify the grounds of the appeal)

\*Delete as appropriate.

Full name .....

Address .....

Dated 20

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

To: The Principal Clerk, Appeals and Lists Office, Central Office, Royal Courts of Justice, Belfast, BT1 4JA.

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

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) If you are making an application for an extension of time to appeal or any other application, please give details.
- (3) 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 Solicitors' Office  
PO Box 410  
Royal Courts of Justice  
Belfast  
BT1 3JY

Please also send a sealed copy of this for to the Advocate General at the following address :

Advocate General's Office  
Royal Courts of Justice  
Belfast  
BT1 3JY



## EXPLANATORY NOTE

*(This note is not part of these Rules)*

These Rules amend the Rules of the Court of Judicature (Northern Ireland) 1980 (“the principal Rules”) by—

- (a) amending Order 1 rule 2, so that it is subject to Order 116C rule 2;
- (b) inserting a new Order 116C containing rules about proceedings under the Terrorism Prevention and Investigation Measures Act 2011 (“the Act”) (including the modification of the application of certain other Parts of the Principal Rules for the purposes of those proceedings);and
- (c) inserting new Form 37C to be used in appeal under section 16 of the Act.

The Act provides for the imposition of measures by way of a TPIM notice on individuals the Secretary of State reasonably believes to be, or to have been, involved in terrorism-related activity.

Part 1 of Order 116C contains rules about the scope and application of the Order. Order 116C rule 2 modifies the overriding objective for the purposes of Order 116C by placing a duty on the court to ensure that information is not disclosed contrary to the public interest and by requiring that the overriding objective be read and given effect in such a way which is compatible with that duty. This, and the rest of Order 116C, is however subject to paragraph 5(1) of Schedule 4 to the Act which provides that nothing in Order 116C is to be read as requiring the court to act in a manner inconsistent with the TPIM subject’s right to a fair trial under Article 6 of the European Convention on Human Rights.

Part 2 contains rules about—

- (a) applications by the Secretary of State for permission to impose measures;
- (b) references of measures imposed by the Secretary of State without permission;
- (c) the requirement for directions to be given for a review hearing following permission being granted or a TPIM notice being confirmed by the Court: and
- (d) appeals to the High Court against—
  - (i) the extension or revival of a TPIM notice;
  - (ii) the variation, without the consent of the TPIM subject, of a measure imposed by a TPIM notice; or
  - (iii) a decision by the Secretary of State on an application by the TPIM subject for permission in connection with a measure in the TPIM notice, for the revocation of a TPIM notice or for the variation of a measure imposed by a TPIM notice.

Order 116C rule 7 modifies the application of Order 55 of the principal Rules to appeals to the High Court relating to TPIM notices. Rules 9 and 10 prescribe the time limit giving notice of appeal and for the Secretary of State’s reply.

Part 3 contains a rule modifying the application of Order 59 to appeals to the Court of Appeal against an order of the High Court in TPIM proceedings and prescribes the procedures for applying for leave to appeal, the time limits for appeal, striking out an appeal and the hearing of it.

The rules in Part 4 are general provisions applying to all proceedings to which Order 116C applies. They include provision for—

- applications for an order requiring anonymity for the TPIM subject (rule 18);
- hearings (rules 19 to 21);
- notifying the Advocate General of proceedings, the functions of a special advocate and the special advocate’s communications with others (rules 22 to 24);
- the modification of the general rules of evidence and disclosure (rule 25);
- the filing and service of relevant material by the Secretary of State (rule 26);

- applications by the Secretary of State to withhold closed material from a relevant party (rules 27 and 28);
  - the order in which the filing and service of material and submissions must take place and directions of the court (rules 29 and 30);
  - the court to withhold any or part of its reasons when giving judgment if it is not possible to give reasons without disclosing information contrary to the public interest (rule 31);
  - applications by the Secretary of State for the court to reconsider the terms of any order or direction given in the Secretary of State's absence, or the terms of any judgment, to prevent the disclosure of information contrary to the public interest (rule 32).
- 

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*Rules made by the Lord Chancellor, laid before Parliament under paragraph 7 of Schedule 4 to the Terrorism Prevention and Investigation Measures Act 2011, for approval by resolution of each House of Parliament within forty days beginning with the day on which the Rules were made, subject to extensions for periods of dissolution, prorogation or adjournment for more than four days*

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STATUTORY RULES OF NORTHERN IRELAND

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**2011 No. 422**

**COURT OF JUDICATURE, NORTHERN IRELAND**

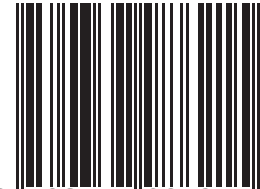
**COUNTER-TERRORISM**

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