



STATUTORY INSTRUMENTS.

S.I. No. 316 of 2018



RULES OF THE SUPERIOR COURTS (PROCEEDS OF CRIME AND
FINANCING OF TERRORISM) 2018

S.I. No. 316 of 2018

RULES OF THE SUPERIOR COURTS (PROCEEDS OF CRIME AND
FINANCING OF TERRORISM) 2018

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, and the Courts of Justice Act 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), the Courts (Supplemental Provisions) Act 1961, section 14, the European Communities (Rules of Court) Regulations 1972 (S.I. No. 320 of 1972) and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 14th day of December, 2017.

Frank Clarke
Sean Ryan
William McKenchnie
Elizabeth Dunne
Michael Peart
Gerard Hogan
Anthony Barr

Deirdre Murphy
Conor Dignam
Stuart Gilhooly
Michael Kavanagh
Mary Cummins
Noel Rubotham
John Mahon

I concur in the making of the following Rules of Court.

Dated this 2nd day of August, 2018.

CHARLES FLANAGAN,
Minister for Justice and Equality.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 10th August, 2018.*

S.I. No. 316 of 2018

RULES OF THE SUPERIOR COURTS (PROCEEDS OF CRIME AND
FINANCING OF TERRORISM) 2018

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Proceeds of Crime and Financing of Terrorism) 2018, shall come into operation on the 2nd day of September 2018.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2018.

2. Order 136 of the Rules of the Superior Courts is amended:

(i) by the insertion immediately following rule 1 thereof, of the following:

“Orders under section 1B of the Principal Act

1A. (1) Any application under section 1B of the Principal Act to discharge or vary an authorisation granted under section 1A of the Principal Act, shall be made by originating notice of motion grounded on an affidavit or affidavits sworn by or on behalf of the applicant.

(2) The originating notice of motion shall be entitled in the matter of section 1B of the Principal Act and shall name the applicant as applicant and the Chief Bureau Officer as respondent. Unless the Court abridges the time for service, notice of the application shall be given by delivering copies of the said originating notice of motion and grounding affidavit and any exhibits thereto to the respondent not later than four clear days before the return date of such originating notice of motion.

(3) In addition to any other order which may be made on the hearing of the originating notice of motion, the Court may, at such hearing:

(a) make such orders or give such directions as seem appropriate for the delivery of further affidavits and for the determination of the application;

(b) make such orders or give such directions as seem appropriate as to the means by which notice of the application may be given to any other person mentioned in section 1B(1) of the Principal Act.”,

(ii) by the substitution for rule 9 thereof, of the following:

“9. (1) An application for compensation under section 1C or section 16 of the Principal Act shall be made by originating notice of motion

in which the person seeking compensation shall be the plaintiff and the defendants shall be:

- (i) the Minister, and
- (ii) in a case referred to in section 1C(1)(b) or section 16 of the Principal Act, the person on whose application the order under section 2(1) or section 3(1) of the Principal Act was refused or, as the case may be, made, or
- (iii) in a case referred to in section 1C(1)(a) of the Principal Act, the Chief Bureau Officer.

(2) The originating notice of motion shall be grounded on an affidavit or affidavits sworn by or on behalf of the plaintiff and shall be entitled:

“The High Court
Proceeds of Crime

In the Matter of section 1C or, as the case may be, section 16
of the Proceeds of Crime Act 1996

Between

AB

Plaintiff

and

CD

Defendants”.

(3) Notice of the application shall be given, unless the Court otherwise directs, by delivering copies of the originating notice of motion and grounding affidavit and any exhibits thereto to the defendant not later than four clear days before the initial return date of the originating notice of motion.

(4) Save where otherwise directed by the Court, any defendant to such originating notice of motion may deliver a replying affidavit within two weeks of the delivery to him or her of copies of the said originating notice of motion and of any grounding affidavit.

(5) The applicant may deliver a further affidavit within two weeks of the delivery of any replying affidavit.

(6) In addition to any other order which may be made on the hearing of the originating notice of motion, the Court may, at such hearing:

- (a) make such orders or give such directions as seem appropriate for the delivery of affidavits and for the determination of the application;

(b) make such orders or give such directions as seem appropriate as to the means by which notice of the application may be given to any person;

(c) direct that the application be determined by way of plenary hearing, if it considers it appropriate in the circumstances of the case, and make such orders or give such directions as seem appropriate for the delivery of pleadings and the conduct of the proceedings.”

(iii) by the substitution for rules 15 to 17 inclusive of the following rules:

“15. In Part III (comprising rules 15 to 25 inclusive) of this Order:

“the Act of 1994” means the Criminal Justice Act 1994;

“the Act of 2005” means the Criminal Justice (Terrorist Offences) Act 2005;

“the 2017 Regulations” means the European Union (Freezing and Confiscation of Instrumentalities and Proceeds of Crime) Regulations 2017 (S.I. No. 540 of 2017);

unless the context otherwise requires, words and phrases have the same meaning as in the Act of 1994.

Confiscation orders under the Act of 1994 and related applications

16. (1) An application by the Director of Public Prosecutions for the exercise by the Court of the power conferred by sub-section (2), sub-section (4) or sub-section (5B) of section 13 of the Act of 1994 (as amended by section 27 of the Act of 2005 and Regulation 10 of the 2017 Regulations) shall be made by originating motion *ex parte*. The said originating motion shall be entitled:

“The High Court

In the Matter of an Application under section 13 of the Criminal Justice Act 1994”.

(2) Such application shall be grounded upon an affidavit or affidavits sworn by or on behalf of the Director of Public Prosecutions.

(3) On the hearing of any such application, the Court may give such directions as seem appropriate:

(a) as to the service of copies of the originating motion, affidavit or affidavits and any exhibits thereto on any person appearing to the Court likely to be affected by the making of a confiscation order;

- (b) as to the service of copies of those documents by substituted or other service or for the substitution for the service of notice by advertisement or otherwise in accordance with Order 10;
- (c) as to the service of any document outside the jurisdiction in accordance with Order 11.

(4) Where a confiscation order made on an application commenced in accordance with this rule is served upon the defendant, there shall be endorsed upon the copy of the order served upon the defendant a memorandum in the following words or to the following effect: “If at any time after payment of a sum due under the within confiscation order has become enforceable in the manner provided for by section 19(1) of the Criminal Justice Act 1994, it is reported to the High Court by the Director of Public Prosecutions that any such sum or any part thereof remains unpaid, the High Court may order that you the defendant be imprisoned for a period not exceeding that set out in the Table to section 19 of the said Act.”

17. (1) Where a confiscation order has been made, any application to the Court

- (a) by the defendant or the Director of Public Prosecutions to substitute an amount under section 16 of the Act of 1994;
- (b) by the defendant or the Director of Public Prosecutions to make a fresh determination of value under section 17 of the Act of 1994 (as amended by section 28 of the Act of 2005 and Regulation 11 of the 2017 Regulations) and to vary an amount under section 17 of the Act of 1994 (as so amended);
- (c) by the Director of Public Prosecutions to substitute an amount under section 18 of the Act of 1994 (as amended by section 29 of the Act of 2005);
- (d) by the Director of Public Prosecutions seeking an order that the defendant be imprisoned under section 19(2) of the Act of 1994; or
- (e) by the Director of Public Prosecutions under section 20 of the Act of 1994 to exercise the powers conferred by sub-sections (2) to (6) of section 20 of the Act of 1994

shall be made by notice of motion in the proceedings commenced by the originating motion referred to in rule 16.

(2) Such motion shall be grounded upon an affidavit or affidavits sworn by or on behalf of the moving party. Notice of such application shall be given by delivering copies of the said notice of motion and

grounding affidavit and any exhibits thereto to the Director of Public Prosecutions or, as the case may be, to the defendant.

(3) Notice of such application shall be given:

(a) in the case of an application referred to in paragraph (d) of sub-rule (1), not later than 21 days before the return date for the motion;

(b) in the case of any other application referred to in sub-rule (1), not later than four clear days before the return date for the motion.

(4) In the case of an application referred to in paragraph (d) of sub-rule (1), the defendant may deliver a replying affidavit within two weeks of the delivery to him or her of copies of the notice of motion, grounding affidavit and any exhibits thereto and the Director of Public Prosecutions may deliver a further affidavit within two weeks of the delivery of any replying affidavit.

(5) In addition to any other order which may be made on the hearing of the notice of motion referred to in this rule, the Court may, at such hearing, make such orders or give such directions as seem appropriate:

(a) for the delivery of further affidavits and for the determination of the application;

(b) in the case of an application referred to in paragraph (b) or (e) of sub-rule (1), as to the service of copies of the notice of motion, affidavit or affidavits and any exhibits thereto on any person who it appears to the Court may hold any interest in the realisable property to which the application relates.”, and

(iv) by the substitution for rule 19 of the following rule:

“19. Where a freezing order is made, the freezing order shall include the reasons for the making of the order and the Court shall give such directions as seem appropriate, which shall be recited in the order, as to service of copies of the order upon, or the giving of notice of the making and contents of the order to, any person appearing to the Court likely to be affected by the making of the freezing order.”.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These rules amend Order 136 of the Rules of the Superior Court to facilitate the operation of the Criminal Justice Act 1994, as amended by the European Union (Freezing and Confiscation of Instrumentalities and Proceeds of Crime) Regulations 2017, and the Proceeds of Crime Act 1996, as amended by the Proceeds of Crime (Amendment) Act 2016.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€2.54

