2000 No. 393

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment No. 3) 2000

Made . . . . . 13th December 2000

Coming into operation . . 8th January 2001

To be laid before Parliament

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(**a**) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers as follows:—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 3) 2000 and shall come into operation on 8th January 2001.

(2) In these Rules an Order referred to by number or an Appendix referred to by letter means the Order so numbered or the Appendix so lettered in the Rules of the Supreme Court (Northern Ireland) 1980(**b**).

Arrangement of Orders

2. The arrangement of Orders at the beginning of the Rules of the Supreme Court (Northern Ireland) 1980 shall be amended by adding after the entry relating to Order 121 the following—

"**122.** The Competition Act 1998(**c**)".

Business of the Supreme Court

3. Order 1, rule 10 shall be amended by adding after paragraph (*g*) the following new paragraphs—

"(*h*) applications under sections 28, 62 or 63 of the Competition Act 1998;

(**a**) 1978 c. 23
(**b**) S.R. 1980 No. 346; to which the most recent relevant amendments were made by S.R. 1999 No. 493 and S.R. 2000 No. 243
(**c**) 1998 c. 41

(*i*) proceedings under Part III of the Fair Trading Act 1973(**a**).".

Appeal on a point of law

4. Order 61 shall be amended by adding after rule 16 the following new rules—

"*Application for leave to appeal to the Court of Appeal under section 49(1)(a) of the Competition Act 1998*

17.—(1) In this rule and rule 18—

"the Act" means the Competition Act 1998(**b**); and

"the appeal tribunal" means the appeal tribunal established under section 48(1) of the Act and constituted in accordance with the provisions of Part III of Schedule 7 to the Act.

(2) An application for leave to appeal to the Court of Appeal under section 49(1)(*a*) of the Act shall be made within 28 days of the appeal tribunal's decision to refuse leave to appeal.

(3) Such an application shall be made ex-parte by lodging the following documents in the Central Office, namely—

(*a*) a certified copy of the appeal tribunal's decision to refuse to grant leave to appeal and

(*b*) a statement of the grounds of the application.

(4) The proper officer shall notify the parties of the determination of the Court of Appeal.

(5) Where leave to appeal has been granted the applicant shall notify the Chairman of the appeal tribunal.

Appeal from the appeal tribunal

18.—(1) Where leave to appeal to the Court of Appeal under section 49(1)(*a*) of the Act has been granted by the appeal tribunal or by the Court of Appeal, the time limit specified in rule 1(2)(*a*) for lodging the requisition to state the case shall be calculated from the date leave was so granted.

(2) On entering an appeal for hearing a copy of the order granting leave to appeal by the appeal tribunal or by the Court of Appeal must be lodged in the Central Office together with the case stated and the requisition for hearing.".

5. Order 94, rule 2 shall be amended by adding after paragraph (xii) the following new paragraph—

"(xiii) section 92(1) of the Northern Ireland Act 1998(**c**);

(xiv) section 49(1)(*a*) of the Competition Act 1998.".

(**a**) 1973 c. 41
(**b**) c. 41
(**c**) 1998 c. 47

Amendment of Order 121

6. Order 121, rule 7 shall be amended by substituting for paragraph (2) the following new paragraph—

"(2) The notice referred to in paragraph (1) shall be in writing and—

(*a*) shall be filed in the Central Office, not later than 21 days, or such other period as the Court may specify, after the date of service of notice under rule 6;

(*b*) a copy shall be served on each of the parties to the proceedings as soon as practicable thereafter; and

(*c*) where a Minister has nominated a person or government department under section 9(5) of the Act, shall be accompanied by a copy of that nomination in writing.".

Application for warrant

7.—(1) After Order 121 there shall be added the Order set out in Schedule 1 to these Rules.

(2) After Form No. 68 in Appendix A there shall be added the Forms set out in Schedule 2 to these Rules.

Dated 29th November 2000

R. D. Carswell
Anthony Campbell
F. P. Girvan
Caroline McGonagle
Tony Caher
R. Weatherup
H. P. Kennedy
Brian Kerr

I concur *Irvine of Lairg,* C.

Dated 13th December 2000

SCHEDULE 1 Rule 7(1)

"ORDER 122

THE COMPETITION ACT 1998

Interpretation

1. In this Order—

"the Act" means the Competition Act 1998(**a**);

"Director" means the Director General of Fair Trading or any regulator having concurrent functions as provided by sections 54(1) and (2) of the Act;

"Respondent" means the occupier of the premises to which the warrant relates; and

expressions used have the same meaning as in the Act.

Exercise of jurisdiction

2. The jurisdiction of the court under section 28, 62 or 63 of the Act may be exercised by a judge in chambers.

Application for a warrant

3.—(1) An application for a warrant under section 28, 62 or 63 of the Act may be made ex-parte by originating summons.

(2) An originating summons under paragraph (1) shall be entitled in the matter of the respondent, naming him, and in the matter of the Act.

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

(*a*) that a warrant is sought and the section of the Act under which it is sought;

(*b*) the address or other identification of the premises to which the warrant relates and the connection between the Respondent and those premises;

(*c*) the details of any other possible occupants of those premises;

(*d*) the subject matter and purpose of the investigation to which the warrant relates, including the nature of the suspected infringement of the Chapter I or II prohibitions or of Articles 81 or 82 of the Treaty establishing the European Community;

(*e*) the anticipated date for the execution of the warrant;

(*f*) the name of the officer(s) of the Director who will execute the warrant and whose name will appear on the warrant;

(*g*) whether the named officer(s) of the Director will be accompanied by authorised officers of the European Commission;

(*h*) the position held by the named officer(s) of the Director; and

shall be accompanied by a draft of the warrant being sought.

(4) A copy of the authorisation containing the names of the named officer(s) of the Director shall be annexed to the affidavit.

(**a**) c. 41

(5) Unless the court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(6) The summons, affidavit and draft warrant shall be lodged with the Court not less than two clear days before the date fixed for hearing of the summons.

(7) A warrant issued under section 28 of the Act shall be in Form No. 69.

(8) A warrant issued under section 62 of the Act shall be in Form No. 70.

(9) A warrant issued under section 63 of the Act shall be in Form No. 71."

SCHEDULE 2 Rule 7(2)

No. 69

Warrant for entry of premises issued under section 28 of the Competition Act 1998

(O. 122 r. 3(7))

In the High Court of Justice in Northern Ireland 20 , No. Division

Applicant: [Director General of Fair Trading] [name of Regulator]

Respondent:

TO: [*insert name and address of Respondent or, if a company, its registered office and registered number*].

1. This Warrant was issued by a Judge of the High Court on the day of 2000, on the application of the [Director General of Fair Trading] [name of Regulator][1] ("the Director") under section 28(1) [(a)] [(b)] [(c)][1] of the Competition Act 1998 ("the Act"). The Warrant continues in force until the end of the period of one calendar month beginning with the day on which it is issued.

[1]Delete as appropriate

2. This Warrant is issued in respect of an investigation by the Director into [*set out the subject matter and purpose of the investigation*].

3. On production of this Warrant, [*insert name*], who is an officer of the Director ("the named officer") and [*insert name*], who is an officer of the Director authorised in writing by the Director to accompany the named officer, are authorised—

(*a*) to enter the premises at [*insert address*] ("the premises"), using such force as is reasonably necessary for the purpose;

(*b*) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application referred to in paragraph 1 of this Warrant was granted ("the relevant kind");

(*c*) to take possession of any documents appearing to be of the relevant kind if—

(i) such action appears to be necessary for preserving the documents or preventing interference with them; or

(ii) it is not reasonably practicable to take copies of the documents on the premises

provided that any document of which possession is taken may be retained for a period of three months;

(*d*) to take any other steps which appear necessary for the purpose mentioned in paragraph 3(*c*)(i) above;

(*e*) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;

(*f*) to require any information which is held in a computer and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—

(i) in which it can be taken away, and

(ii) in which it is visible and legible.

WARNING

4. Section 42(1) of the Act provides that a person is guilty of an offence if he fails to comply with a requirement imposed on him under section 28 of the Act.

5. If a person is charged with an offence under section 42(1) of the Act in respect of a requirement to produce a document, it is a defence for him to prove—

(*a*) that the document was not in his possession or under his control; and

(*b*) that it was not reasonably practicable for him to comply with the requirement.

6. If a person is charged with an offence under section 42(1) of the Act in respect of a requirement—

(*a*) to provide information,

(*b*) to provide an explanation of a document, or

(*c*) to state where a document is to be found,

it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.

7. A person guilty of an offence under section 42(1) of the Act is liable—

(*a*) on summary conviction, to a fine not exceeding the statutory maximum (currently £5,000);

(*b*) on conviction on indictment, to an unlimited fine.

8. Section 42(7) of the Act provides that a person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 28 of the Act is guilty of an offence and liable—

(*a*) on summary conviction to a fine not exceeding the statutory maximum;

(*b*) on conviction on indictment, to imprisonment for a term not exceeding two years and/or an unlimited fine.

9. Under section 43 of the Act, a person is guilty of an offence if, having been required to produce a document under section 28 of the Act—

(*a*) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or

(*b*) he causes or permits its destruction, disposal, falsification or concealment.

10. A person guilty of an offence under section 43 of the Act is liable—

(*a*) on summary conviction, to a fine not exceeding the statutory maximum;

(*b*) on conviction on indictment, to imprisonment for a term not exceeding two years and/or an unlimited fine.

11. Section 44(1) of the Act provides that, if information is provided by a person to the Director in connection with any function of the Director under Part I of the Act, that person is guilty of an offence if—

(*a*) the information is false or misleading in a material particular, and

(*b*) he knows that it is or is reckless as to whether it is.

12. By virtue of section 44(2) of the Act, a person who—

(*a*) provides any information to another person, knowing the information to be false or misleading in a material particular, or

(*b*) recklessly provides any information to another person which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the director in connection with any of is functions under Part I of the Act, is guilty of an offence.

13. A person who is guilty of an offence under section 44(1) or (2) of the Act is liable—

(*a*) on summary conviction, to a fine not exceeding the statutory maximum;

(*b*) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

14. Section 72 of the Act provides that, if an offence under sections 42 to 44 of the Act is committed by a body corporate and is proved—

(*a*) to have been committed with the consent or connivance of an officer, or

(*b*) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

"Officer", in relation to a body corporate means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

15. If the affairs of a body corporate are managed by its members, paragraph 14 above applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

16. In this Warrant—

"document" includes information recorded in any form;

"information" includes estimates and forecasts;

"premises" does not include domestic premises unless—

(*a*) they are also used in connection with the affairs of an undertaking, or

(*b*) documents relating to the affairs of an undertaking are kept there,

but does include any vehicle.

Dated the day of 2000

(signed)

No. 70

Warrant for entry of premises issued under section 62 of the Competition Act 1998

(O. 121 r. 3(8))

In the High Court of Justice in Northern Ireland 20 , No. Division

Applicant: Director General of Fair Trading

Respondent:

TO: [*insert name and address of Respondent or, if a company, its registered office and registered number*].

1. This Warrant was issued by a Judge of the High Court on the day of 2000, on the application of the Director General of Fair Trading ("the Director") under section 62(1) of the Competition Act 1998 ("the Act"). The Warrant continues in force until the end of the period of one month beginning with the day on which it is issued.

2. This Warrant is issued in respect of an investigation by the European Commission into [*set out the subject matter and purpose of the investigation*] and more fully particularised in a Decision of the European Commission dated the day of 2000, numbered in Case No. and addressed to , the Respondent.

3. On production of this Warrant, [*insert name*], who is an officer of the Director ("the named officer") and [*insert name*], who is an officer of the Director authorised in writing by the Director to accompany the named officer, and [*insert name*], who is an official of the European Commission, are authorised to enter the premises at [*insert name*] ("the premises"), and to search for books and records which the official of the European Commission has power to examine, using such force as is reasonably necessary for the purpose.

WARNING

4. Section 65 of the Act provides that a person who intentionally obstructs any person in the exercise of his powers under a warrant issued under section 62 of the Act is guilty of an offence and liable—

(*a*) on summary conviction, to a fine not exceeding the statutory maximum (currently £5,000); or

(*b*) on conviction on indictment, to imprisonment for a term not exceeding two years and/or an unlimited fine.

5. Section 72 of the Act provides that, if an offence under section 65 of the Act is committed by a body corporate and is proved—

(*a*) to have been committed with the consent or connivance of an officer, or

(*b*) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

"Officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

6. If the affairs of a body corporate are managed by its members, Section 72 of the Act applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

7. In this Warrant, "premises" means any premises, land or means of transport which an official of the European Commission has power to enter in the course of the investigation.

Dated this day of 2000

(signed)

No. 71

Warrant for entry of premises issued under section 63 of the Competition Act 1998

(O. 121 r. 3(9))

In the High Court of Justice in Northern Ireland 20 , No. Division

Applicant: Director General of Fair Trading

Respondent:

TO: [*insert name and address of Respondent or, if a company, its registered office and registered number*].

1. This Warrant was issued by a Judge of the High Court on the day of 2000, on the application of the Director General of Fair Trading ("the Director") under section 63(1) of the Competition Act 1998 ("the Act"). The Warrant continues in force until the end of the period of one month beginning with the day on which it is issued.

2. This Warrant is issued in respect of an investigation into [*set out the subject matter and purpose of the investigation*] and more fully particularised in a Decision of the European Commission dated the day of 2000, numbered in Case No. .

3. On production of this Warrant, [*insert name*], who is an officer of the Director ("the named officer") [*insert name*], who is an officer of the Director authorised in writing by the Director to accompany the named officer, and [ ], who is a named official of the European Commission, are authorised to enter the premises at [*insert address*] ("the premises"), and to search for books and records which the named officer and other authorised officers have power to examine, using such force as is reasonably necessary for the purpose.

WARNING

4. Section 65 of the Act provides that a person who intentionally obstructs any person in the exercise of his powers under a warrant issued under section 63 of the Act is guilty of an offence and liable—

(*a*) on summary conviction, to a fine not exceeding the statutory maximum (currently £5,000); or

(*b*) on conviction on indictment, to imprisonment for a term not exceeding two years and/or an unlimited fine.

5. Section 72 of the Act provides that, if an offence under section 65 of the Act is committed by a body corporate and is proved—

(*a*) to have been committed with the consent or connivance of an officer, or

(*b*) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

"Officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

6. If the affairs of a body corporate are managed by its members, section 72 of the Act applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

7. In this Warrant, "premises" means any premises, land or means of transport which an official of the European Commission has power to enter if the investigation were being conducted by the European Commission.

Dated this day of 2000

(signed)

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 so as to:

(*a*) assign proceedings under the Competition Act 1998 ("the 1998 Act") and Part III of the Fair Trading Act 1973 to the Chancery Division;

(*b*) provide for the procedure on an application for a warrant under section 28, 62 or 63 of the 1998 Act and the form of a warrant;

(*c*) provide for the procedure on an application for leave to appeal to the Court of Appeal from the Appeal Tribunal established under section 48 of the 1998 Act and constituted under Part III of Schedule 7 to that Act;

(*d*) provide for an appeal to the Court of Appeal under section 92(1) of the Northern Ireland Act 1998 to be by way of case stated; and

(*e*) make a minor amendment to Order 121 (Human Rights Act 1998).

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