**EXPLANATORY MEMORANDUM TO**

**THE RULES OF THE SUPREME COURT (NORTHERN IRELAND) (AMENDMENT No.3) 2008**

**2008 No. 479**

**1.** 1.1 This explanatory memorandum has been prepared by the Ministry of Justice (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument amends the Rules of the Supreme Court (Northern Ireland) 1980 (S.R. 1980/346) ("the principal Rules") to provide for the implementation of the financial restrictions proceedings provisions in Part 6 of the Counter-Terrorism Act 2008.

**3. Matters of special interest to the Joint Committee on Statutory Instruments.**

3.1 None.

**4. Legislative Context**

4.1 HM Treasury currently have powers under the following (collectively known as the "UN terrorism orders") to direct that a person be subject to an asset freeze and also has the power to issue licences (with or without conditions) to make exemptions from the asset freeze:

(a) the Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365);
(b) the Al-Qa'ida and Taliban (United Nations Measures) Order 2002 (S.I. 2002/111);
(c) the Al-Qaida and Taliban (United Nations Measures) Order 2006 (S.I. 2006/2657); and
(d) the Terrorism (United Nations Measures) Order 2006 (S.I. 2006/2952).

4.2 Under the current UN terrorism orders, any asset freezing decision may be challenged by way of an application to set aside either by the person whose assets have been frozen or by anyone else affected by the decision. HM Treasury can also make an asset freezing order by way of statutory instrument under the Anti-terrorism, Crime and Security Act 2001 ("the 2001 Act"). But as there is no provision in that Act to deal with challenges to such an asset freeze, any challenge had to be by way of judicial review.

4.3 The Counter-Terrorism Act 2008 removes the asset freeze challenge provisions from the UN terrorism orders and in Part 6 of the Act provides that any person affected by a decision of HM Treasury under the UN terrorism orders or by an freezing order under Part 2 of the 2001 Act may apply to the High Court to set aside the decision or order.

4.4 HM Treasury also have powers under Schedule 7 to the Counter-Terrorism Act 2008 to make directions/orders and licences, for example, in respect of terrorist financing or money laundering which are not asset freezing decisions. These directions/orders

and asset freezing decisions are now collectively referred to as "financial restrictions proceedings" in Part 6 of the Counter-Terrorism Act 2008.

4.5 The Act provides a power to make rules of court, in particular to ensure that in financial restrictions proceedings, information is not disclosed where such disclosure would be contrary to the public interest. The rule making powers in the Act therefore enable rules to be made which govern the use of “closed material” and special advocates (security-vetted barristers) to represent the interests of a person to whom closed material has not been disclosed or who is excluded from a hearing. The Act also includes, in Part 6, the power for the Lord Chancellor to make the rules in the first instance in order to implement these provisions after which, the power will revert to the Supreme Court Rules Committee of Northern Ireland.

4.6 The Act sets out in broad terms particular matters for which the rules made under the power must or may provide. These are listed in the following paragraphs:

4.7 Rules of court applying to financial restrictions proceedings must have regard to the need to secure that -

- the decisions that are the subject of the proceedings are properly reviewed; and
- disclosures of information are not made where they would be contrary to the public interest.

4.8 Rules of court must secure:

- that the Treasury have the opportunity to make an application to the court for permission not to disclose material to any one other than the court or the special advocate and that these applications are considered in the absence of the parties; and
- that if the court considers that the disclosure of the material would be contrary to the public interest it is required to give permission for material not to be disclosed, and shall consider requiring the Treasury to provide a summary of the material to each party to the proceedings.

The court is required to ensure that the summary does not contain material whose disclosure would be contrary to the public interest.

Where the Treasury did not receive the court’s permission to withhold material and elect not to disclose it, or decline to provide a summary of the material. If the court considers that the material may adversely affect the Treasury’s case or support the case of another party the court may direct that the Treasury shall not rely on such points in their case as the court may specify.

4.9 Rules may make provision about:

- the mode of proof and evidence;
- enabling or requiring the proceedings to be determined without a hearing;
- legal representation in the proceedings;

- enabling the proceedings to take place without full particulars of the reasons for the decisions to which the proceedings relate being given to a party or his legal representative (other than the Treasury);

- enabling the court to conduct proceedings in the absence of any party or his legal representative (other than the Treasury);

- the functions of a person appointed as a special advocate.

4.10 In order to implement the above and to make provision for the court procedure for financial restrictions proceedings, a new Order 116B is being inserted into the principal Rules.

## 5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland.

## 6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State, Bridget Prentice, MP has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Rules of the Supreme Court (Northern Ireland) (Amendment No.3) 2008 are compatible with the Convention Rights.

## 7. Policy background

7.1 There is currently no specific provision in the principal Rules to deal with financial restrictions proceedings. However rules are required as it is expected that such proceedings will involve the use of closed material and special advocates and the Act sets out what such rules must or may provide.

### Special Advocates

7.2 The use of special advocates was developed as a means of mitigating disadvantage to a party from whom information relevant to his case is withheld on the grounds that such disclosure would be contrary to the public interest or who has been excluded from a hearing. The special advocate who is appointed by the Attorney General represents the interests of such a party.

7.3 In relation to other proceedings, the government has established statutory procedures involving closed material and the use of special advocates. These include proceedings before the Special Immigration Appeals Commission and control order proceedings in the High Court (Order 116A of the principal Rules).

### Modification of the Rules of the Supreme Court (Northern Ireland) 1980

7.4 For the purposes of the new Order 116B some other provisions of the principal Rules are disapplied or modified. The overriding objective in Order 1 which requires the court to deal with cases justly is to be read as including a requirement that the court will ensure that information is not disclosed contrary to the public interest. Some general rules about evidence, disclosure and appeals are also disapplied in favour of the rules dealing with those matters in the new Order 116B.

## 8. Consultation outcome

8.1 The Lord Chancellor has consulted the Lord Chief Justice of Northern Ireland in respect of new Order 116B. The Lord Chief Justice raised only one issue which was satisfactorily resolved. Apart from that one issue he had no other comment to make. The Act does not require any other consultation on these rules.

## 9. Guidance

9.1 These rules will be published on the Northern Ireland Court Service website.

## 10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

## 11. Regulating small business

11.1 The legislation does not apply to small business.

## 12. Monitoring & review

12.1 These rules will form part of the Rules of the Supreme Court (Northern Ireland) 1980 which are kept under review by the Supreme Court Rules Committee. Any subsequent amendment to these rules will be made by the Supreme Court Rules Committee.

.

## 13. Contact

13.1 Una Corrigan at the Northern Ireland Court Service Tel: 028 9041 2205 or email: unacorrigan@courtsni.gov.uk can answer any queries regarding the instrument.