



STATUTORY INSTRUMENTS.

S.I. No. 156 of 2017



RULES OF THE SUPERIOR COURTS (EUROPEAN ACCOUNT
PRESERVATION ORDER) 2017

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, 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, and 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 23rd day of February, 2017.

Sean Ryan

Peter Kelly

Mary Laffoy

Mary Finlay Geoghegan

Michael Peart

Anthony Barr

Mary Cummins

Noel Rubotham

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

Dated this 13th day of April, 2017.

FRANCES FITZGERALD,
Minister for Justice and Equality.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 21st April, 2017.*

S.I. No. 156 of 2017

RULES OF THE SUPERIOR COURTS (EUROPEAN ACCOUNT
PRESERVATION ORDER) 2017

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (European Account Preservation Order) 2017, shall come into operation on 15 May 2017.

(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 2017.

2. The Rules of the Superior Courts are amended:

(i) by the insertion immediately following Order 42D of the Order set out in Schedule 1;

(ii) by the substitution for rule 2 of Order 61 of the following rule:

“2. (1) Every appeal under Part IV of the Act shall, subject to Regulation 4(2) of the European Union (European Account Preservation Order) Regulations 2016 (S.I. No. 645 of 2016), be by notice of appeal which shall be served on every party directly affected by the appeal within ten days from the date on which the judgement or order appealed from was pronounced in open court. The notice shall state whether the whole or part only of such judgement or order is appealed from and in the latter case shall specify such part. The notice shall, in the case of appeals to the High Court sitting in Dublin, be for the first opportunity after the expiration of ten days from the date of service, and, in the case of appeals to the High Court on Circuit, be for the next sitting of the High Court on Circuit after the expiration of the said ten days. Such notice of appeal shall be either in the Form No. 1 or the Form No. 2 (as the case may be) in Appendix I.

(2) Every appeal to the Court under Article 21.1 of the EAPO Regulation (within the meaning of Order 42E) against a decision of the Circuit Court rejecting the application in whole shall be by motion of appeal ex parte (in the Form No. 1 or the Form No. 2 in Appendix I, with the necessary modifications, to which shall be appended a copy of the original application for a Preservation Order), which shall be lodged in the Central Office within the time prescribed by Article 21.2 of the EAPO Regulation.

(3) Every appeal to the Court under Article 37 of the EAPO Regulation (within the meaning of Order 42E) shall be in the form of the completed application form set out in Annex IX to

the Implementing Regulation (within the meaning of Order 42E).”;

(iii) by the substitution for rule 8 of Order 86A of the following rule:

“8. (1) An appeal to the Court of Appeal to which this Part applies shall be brought by the lodgment in the Office for issue of a notice (in this Part called the “notice of expedited appeal”) in the Form No. 4, which shall set out:

- (i) particulars of the decision that it is sought to appeal;
- (ii) the category of expedited appeal in rule 7(1) to which the appeal relates;
- (iii) the grounds of the appeal;
- (iv) the orders sought from the Court of Appeal;
- (v) a list of the documents intended to be relied on by the appellant in the appeal, and
- (vi) particulars of the appellant and of the respondent.

(2) Every notice of expedited appeal under Article 21.1 of the EAPO Regulation (within the meaning of Order 42E) shall have appended a copy of the original application for a Preservation Order.”, and

(iv) by the insertion immediately following sub-rule (2) of rule 12 of Order 86A of the following sub-rule:

“(3) Every appeal to the Court of Appeal under Article 37 of the EAPO Regulation (within the meaning of Order 42E) shall be in the form of the completed application form set out in Annex IX to the Implementing Regulation (within the meaning of Order 42E).”.

Schedule 1

“Order 42E

European Account Preservation Order

I. Preliminary and general

1. In this Order:-

“2016 Regulations” means the European Union (European Account Preservation Order) Regulations 2016 (S.I. No. 645 of 2016).

“EAPO Regulation” means Regulation (EU) No. 655/2014 of the European Parliament and the Council of 15 May 2014 (OJ L 189/59 of 27 June 2014);

“competent authority” means the Minister for Justice and Equality;

“creditor” and “debtor” each has the same meaning as in the EAPO Regulation;

“Implementing Regulation” means Commission Implementing Regulation (EU) 2016/1823 of 10 October 2016 establishing the forms referred to in Regulation (EU) No 655/2014 of the European Parliament and of the Council establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ L283/1 of 19 October 2016);

“information authority” means the Minister for Justice and Equality;

“judgment” has the same meaning as in the 2016 Regulations;

“Member State” means a member state of the European Union but does not include Denmark or the United Kingdom;

“Member State of enforcement” means the Member State in which the bank account to be preserved is maintained, and

“Preservation Order” has the same meaning as in the EAPO Regulation.

2. (1) All notifications by the registrar to the creditor required under this Order or in accordance with Regulation 5 of the 2016 Regulations may be by telephone (if subsequently confirmed in writing by electronic mail, facsimile or letter sent by ordinary prepaid post) or by electronic mail or by such other means as the Registrar considers sufficient.

(2) All notifications or requests by the registrar to the information authority required under this Order or in accordance with the 2016 Regulations may be by electronic mail or by such other means as the registrar shall agree with the information authority.

(3) A notice required under Regulation 10(2) of the 2016 Regulations to be given by the registrar of the Court to the Property Registration Authority shall be given by the transmission by the registrar of the Court to the Registrar of Titles of a certified copy of the relevant order of the Court.

(4) A notice required under Regulation 10(4) of the 2016 Regulations to be given by the registrar of the Court to the Registrar of Companies shall be given by the transmission by the registrar of the Court to the Registrar of Companies of a certified copy of the relevant order of the Court.

(5) A decision referred to in Article 10.2 or, as the case may be, Article 36.5 of the EAPO Regulation shall be transmitted to the competent authority of the Member State of enforcement, in the appropriate form set out in Annex III or, as the case may be, Annex VIII to the Implementing Regulation by the transmission by the proper officer of the Court to the competent authority of the Member State of enforcement of a certified copy of the relevant decision by electronic mail, facsimile or such other means as the proper officer shall agree with the competent authority of the Member State of enforcement.

II. Application to the Court for a Preservation Order

3. (1) An application to the Court by a creditor for a Preservation Order shall be made:

- (a) in the case of an application to which Article 5(a) of the EAPO Regulation applies, by the lodgment in the Central Office of the completed application in the form set out in Annex I to the Implementing Regulation which shall be treated as a motion *ex parte* in the intended action;
- (b) in the case of an application to which Article 5(b) of the EAPO Regulation applies, by the lodgment in the Central Office of the completed application in the form set out in Annex I to the Implementing Regulation, which shall be treated as a motion *ex parte* in the action, which may be lodged on or after the delivery of judgment by the Court;
- (c) in the case of an application to which Article 6.2 of the EAPO Regulation applies, by the lodgment in the Central Office of the completed application in the form set out in Annex I to the Implementing Regulation which shall be treated as an originating motion *ex parte*.

(2) Every application made in accordance with sub-rule (1) shall be grounded upon the verification by the applicant of the completed application form in the form set out in Annex I to the Implementing Regulation and any evidence submitted with that application.

(3) The creditor shall lodge with the application a draft of the Preservation Order in the form set out in Annex II to the Implementing Regulation with Part A completed in the terms sought.

(4) The creditor shall, where:

- (a) he has obtained an equivalent national order against the same debtor to secure the same claim during the proceedings for the issuing of a Preservation Order, file an affidavit without delay setting out the terms of the equivalent national order against the debtor which has been obtained and exhibiting a copy of that order and a certified translation thereof into Irish or English, and providing details of any subsequent execution of the national order granted;
- (b) where he has made any application for an equivalent national order which has been rejected as inadmissible or unfounded, file an affidavit without delay providing particulars of the same.

4. (1) Having considered the application, the Court, in accordance with the time limits set out in Article 18 of the EAPO Regulation:

- (a) in a case to which Article 12.1 of the EAPO Regulation applies, unless, in accordance with Article 12.1 of the EAPO Regulation, it considers that the provision of security is inappropriate in the circumstances of the case and dispenses with such requirement, or in a case to which Article 12.2 of the EAPO Regulation applies, where it considers it necessary and appropriate in the circumstances of the case, shall fix the amount of security required and form or forms of security acceptable;
- (b) where the Court considers in accordance with Article 9.1 of the EAPO Regulation that the evidence provided is insufficient, may direct the delivery of further documentary evidence verified by affidavit or, subject to Article 9.2 of the EAPO Regulation, oral evidence and the nature of the evidence which the Court requires for the purpose of its determining the application, and direct the proper officer of the Court to notify the creditor accordingly;
- (c) where the Court considers in accordance with Article 17.3 of the EAPO Regulation that the application is incomplete, may fix the time within which and the means by which the creditor may complete or rectify the application and direct the proper officer of the Court to notify the creditor accordingly;
- (d) in a case to which Article 14.3 of the EAPO Regulation applies, may direct the proper officer of the Court to transmit a request for information to the information authority;
- (e) in every case, may give such directions and make such orders for the conduct of the proceedings on the application as appear convenient for the determination of the proceedings consistently with

the requirements of the EAPO Regulation and in a manner which is just, expeditious and likely to minimise the costs of those proceedings, and

(f) shall determine the application and order accordingly.

(2) The proper officer of the Court shall notify the creditor of all directions as to the amount and form of security required in respect of a Preservation Order.

(3) The Court's decision on the application for a Preservation Order and, where appropriate, the date by which any appeal may be made against the decision, shall be notified to the creditor by the proper officer.

(4) Where security is required, the creditor shall lodge proof of entry into the security with the proper officer.

(5) Where the Court makes a Preservation Order, the order shall, following the lodgment of proof of entry into any security required, issue to the creditor in the form in Annex II to the Implementing Regulation.

(6) The creditor shall be the person responsible in accordance with Article 23.3 of the EAPO Regulation for the transmission of Part A of the Preservation Order to the competent authority of the Member State of enforcement.

(7) The creditor shall be the person responsible in accordance with Article 28.3 of the EAPO Regulation for the transmission of the documents referred to in Article 28.1 of the EAPO Regulation to the competent authority of the Member State in which the debtor is domiciled.

III. Issue of proceedings on the substance of the claim

5. (1) In the case of an application to which Article 5(a) of the EAPO Regulation applies, the creditor shall deliver to the proper officer within the time prescribed by Article 10.1 of the EAPO Regulation a copy of the originating summons in the proceedings on the substance of the matter issued out of the Central Office.

(2) In the case of an application to which Article 6.2 of the EAPO Regulation applies, the creditor shall deliver to the proper officer within the time prescribed by Article 10.1 of the EAPO Regulation a copy of the issued originating document together with a certified translation, where necessary, into Irish or English, or such other evidence as the Court deems sufficient of the initiation of proceedings on the substance of the matter before the court having jurisdiction.

(3) An application for an extension of time in accordance with Article 10.1 of the EAPO Regulation shall be by motion on notice in the intended action, which need not be grounded upon an affidavit.

6. Where evidence of the initiation of proceedings on the substance of the matter has not been delivered to the proper officer within the time prescribed by Article 10.1 of the EAPO Regulation and no extension of time has been permitted, the application shall be listed before the Court and, if the Court has not received proof of the initiation of proceedings within the time period referred to in Article 10.1 of the EAPO Regulation, the Court shall revoke the Preservation Order and shall issue an order of revocation in the form in Annex III to the Implementing Regulation.

IV. Subsequent proceedings

7. (1) Subject to the EAPO Regulation and the 2016 Regulations, any of the following applications to the Court by a creditor or debtor shall be made:

- (a) where there are no proceedings in being before the Court concerning either the substance of the matter or the Preservation Order, by originating notice of motion entitled in the matter of the EAPO Regulation as between the creditor and the debtor, or
- (b) where there are proceedings in being before the Court concerning either the substance of the matter or the Preservation Order, by notice of motion in the proceedings:
 - (i) any application by a debtor pursuant to Regulation 8 of the 2016 Regulations and Article 33 of the EAPO Regulation;
 - (ii) any application by a debtor pursuant to Regulation 9 of the 2016 Regulations and Article 34 of the EAPO Regulation;
 - (iii) any application by a debtor or a creditor pursuant to Regulation 9 of the 2016 Regulations and Article 35 of the EAPO Regulation.

(2) Every application made in accordance with sub-rule (1) shall—

- (a) be in the form set out in Annex VII to the Implementing Regulation and
- (b) be grounded upon an affidavit sworn by or on behalf of the moving party, which may be endorsed upon the completed application form, or if not so endorsed, which shall exhibit and verify the completed application form and shall exhibit and verify each other document relied upon in the application.

8. (1) Subject to the EAPO Regulation and the 2016 Regulations, any of the following applications shall be made:

- (a) where there are no proceedings in being before the Court concerning either the substance of the matter or the Preservation

Order, by originating notice of motion entitled in the matter of the EAPO Regulation as between the creditor and the debtor, or

- (b) where there are proceedings in being before the Court concerning either the substance of the matter or the Preservation Order, by notice of motion in the proceedings:
 - (i) any application by a creditor or debtor pursuant to Article 31 of the EAPO Regulation;
 - (ii) any application by a debtor pursuant to Article 38 of the EAPO Regulation;
 - (iii) any application by a third party pursuant to Article 39(3) of the EAPO Regulation;
 - (iv) any other application for relief pursuant to the 2016 Regulations, the EAPO Regulation or this Order.

(2) Every application made in accordance with sub-rule (1) shall be grounded upon an affidavit sworn by or on behalf of the moving party.

(3) Where such an application relates to a Preservation Order issued in accordance with the EAPO Regulation by a court of a Member State other than the State, the affidavit shall exhibit the Preservation Order and where necessary, a certified translation of the Preservation Order into Irish or English.

9. (1) Every person served with notice of an application made under rule 7 or rule 8 shall be at liberty to deliver a replying affidavit.

(2) On the return date of an originating notice of motion or notice of motion under rule 7 or rule 8 (or on any adjournment from such date), the Court shall give directions and make orders for the conduct of the proceedings on the application as appear convenient for the determination of the application consistently with the EAPO Regulation in a manner which is just, expeditious and likely to minimise the costs of those proceedings which, where appropriate, may include:

- (a) directions as to the service of notice of the application on any other person, including mode of service and the time allowed for such service (and the Court may for that purpose adjourn the hearing of the notice of motion or further hearing of such application to a date specified);
- (b) directions as to the filing and delivery of any further affidavits by any party or parties;
- (c) orders fixing time limits.

V. Miscellaneous

10. Subject to the EAPO Regulation, the provisions of these Rules, insofar as they apply to interim and interlocutory orders of the Court, shall apply to a Preservation Order issued in accordance with the EAPO Regulation by a court of a Member State other than the State, and the provisions of these Rules applicable to the enforcement of interim and interlocutory orders of the Court, shall, where the context so admits or requires, apply with any necessary amendments to the enforcement of such a Preservation Order.

11. Applications to the Court for Preservation Orders shall be assigned to such Judge or Judges of the High Court as the President of the High Court shall from time to time nominate.”

EXPLANATORY NOTE

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

These rules amend the Rules of the Superior Courts by the addition of a new Order 42E and amendment of Orders 61 and 86A to prescribe the procedure regulating applications and appeals in respect of a European Account Preservation Order under the European Union (European Account Preservation Order) Regulations 2016 (S.I. No. 645 of 2016).

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