

## 1980 No. 433

SUPREME COURT  
PROCEDURE

## Rules of the Supreme Court (Northern Ireland) (No. 3) 1980

*Made* . . . . . 26th November 1980

*Coming into operation* . . . . . 1st January 1981

*To be laid before Parliament*

We, the 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 pleading, 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:

1. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (No. 3) 1980 and shall come into operation on 1st January 1981.

2. The Orders set out in the Schedule hereto shall be inserted in the Rules of the Supreme Court (Northern Ireland) 1980(b) in the places appropriate to their numbers and the titles of these Orders shall be inserted in the Arrangement of Orders in the places appropriate to their numbers.

3. Appendix 3 to Order 62 of the Rules of the Supreme Court (Northern Ireland) 1980 shall be amended as follows:—

(1) In the Scale of Basic Costs in Part I for the figures “£17·25”, “27·50” and “40·85” (which indicate the amounts currently allowed by way of basic costs where the amount of the debt recovered is not less than £1,200) there shall be substituted the figures “42·00”, “60·00” and “90·00” respectively.

(2) Column (ii) of the Scale of Additional Costs (which indicates the additional costs to be allowed where the amount recovered is not less than £1,200) shall be amended as follows—

- (a) against paragraph (1) (which allows for service on an additional defendant) for the figure “2·05” there shall be substituted the figure “5·50”;
- (b) against paragraph (2) (which allows for substituted service) for the figure “7·75” there shall be substituted the figure “22”;
- (c) against paragraph (4) (which allows for service out of the jurisdiction) for figures (a) “11·15” and (b) “17·20”, there shall be substituted the figures (a) “29·50” and (b) “32·50”;
- (d) against paragraph (5) (which allows for proof of service where notice of appearance is not given on the day on which appearance is entered) for the figure “3·40” there shall be substituted the figure “8·00”;
- (e) against paragraph (6) (which allows for the proof of service of a summons under Order 14) for the figure “3·40” there shall be substituted the figure “8·00”;

(a) 1978 c. 23

(b) S.R. 1980 No. 346

(f) against paragraph (7) (which allows for the cost of an adjournment of a summons under Order 14) for the figure "2.05" there shall be substituted the figure "10".

(3) Paragraphs (3) and (8) of the Scale of Additional Costs shall be omitted and the paragraphs currently numbered (4), (5), (6) and (7) shall be renumbered (3), (4), (5) and (6).

(4) Paragraph 2 of Part 2 (which provides for the costs to be allowed on judgment without trial for possession of land) shall be amended by omitting the figure and words "£350 but less than".

(5) Paragraph 1 of Part 3 (which provides for the costs to be allowed on signing judgment for costs under rule 10) shall be amended by substituting for the sum of "£2.15" the sum of "£5.00".

(6) Paragraph 2 of Part 3 (which provides for the costs to be allowed on the registration of a certificate of a judgment) shall be amended by substituting for the sum of "£9.45" the sum of "£19.50".

Dated 13th November 1980.

*Lowry*  
*E. W. Jones*  
*John MacDermott*  
*Donald Murray*  
*J. B. E. Hutton*  
*R. D. Carswell*  
*J. J. Sheil*  
*Owen Catchpole*  
*James McFarland*

I concur

*Hailsham of St. Marylebone, C.*

Dated 26th November 1980.

## SCHEDULE

## ORDER 74

ALTERATION OF MAINTENANCE AGREEMENTS:  
DECLARATION AS TO MATRIMONIAL STATUS

## PART I

## GENERAL

*Definition*

1.—(1) In this Order—

“the Office” means the Probate and Matrimonial Office

“the Order” means the Matrimonial Causes Order (Northern Ireland) 1978(c);

“a patient” means a person suffering or appearing to be suffering from mental disorder as defined in section 7 of the Mental Health Act (Northern Ireland) 1961(d).

(2) Proceedings under Part II of this Order shall be assigned to the Family Division and all business connected therewith shall be transacted in the Office.

## PART II

## ALTERATION OF MAINTENANCE AGREEMENT AFTER DEATH OF ONE PARTY

*Application for alteration of maintenance agreement after death of one party*

2.—(1) An application under Article 38 of the Order for the alteration of a maintenance agreement after the death of one of the parties to it shall be made by originating summons issued out of the Office. Order 7, rule 2(2), shall not apply to seek a summons.

(2) There shall be filed in support of the summons an affidavit by the applicant exhibiting a copy of the agreement and an office copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof.

(3) The affidavit referred to in paragraph (2) shall state—

(a) whether the deceased died domiciled in Northern Ireland;

(b) the place and date of the marriage between the parties to the agreement and the name and status of the wife before the marriage;

(c) the name of every child of the family and of any other child for whom the agreement makes financial arrangements, and—

(i) the date of birth of each such child who is still living (or, if it be the case, that he has attained 18 years), and the place where the person with whom any such minor child is residing;

(ii) the date of death of any such child who has died since the agreement was made;

(d) whether there have been in any court any, and if so what, previous proceedings with reference to the agreement or to the marriage or to the children of the family or to any other children for whom the agreement makes financial arrangements, and the date and effect of any order or decree made in such proceedings;

(e) whether there have been in any court any proceedings by the applicant against the deceased's estate under the Inheritance (Provision for Family and Dependents) (Northern Ireland) Order 1979(e) or any statutory provision

(c) S.I. 1978/1045 (N.I. 15)

(d) 1961 c. 15 (N.I.)

(e) S.I. 1979/924 (N.I. 8)

repealed by that Order and the date and effect of any order made in such proceedings;

- (f) in the case of an application by the surviving party, the applicant's means;
- (g) in the case of an application by the personal representatives of the deceased, the surviving party's means, so far as they are known to the applicants, and the information mentioned in sub-paragraphs (a), (b) and (c) of rule 4(3);
- (h) the facts alleged by the applicant as justifying an alteration in the agreement and the nature of the alteration sought;
- (i) if the application is made after the end of the period of six months from the date on which representation in regard to the deceased's estate was first taken out, the grounds on which the court's permission to entertain the application is sought.

(4) A copy of the affidavit referred to in paragraph (2) shall be served with the summons.

*Service of summons, etc., out of jurisdiction*

3. The summons mentioned in rule 2 and any other document in the matter may be served out of the jurisdiction without leave either in the manner prescribed for service within the jurisdiction or in accordance with Order 11, rules 5 and 6 (which relate to the service of process out of the jurisdiction).

*Further proceedings on application under rule 2*

4.—(1) The Court may at any stage of the proceedings direct that any person be added as a respondent to an application under rule 2.

(2) Order 15, rule 13 (which enables the court to make representation orders in certain cases) shall apply to the proceedings as if they were mentioned in paragraph (1) of that rule.

(3) A respondent who is a personal representative of the deceased shall, within 14 days after the time limited for entering an appearance, file an affidavit in answer to the application stating—

- (a) full particulars of the value of the deceased's estate for probate, after providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout, including the amount of the capital transfer tax and interest thereon;
- (b) the person or classes of person beneficially interested in the estate (giving the names and addresses of all living beneficiaries) and the value of their interests so far as ascertained; and
- (c) if such be the case, that any living beneficiary (naming him) is a minor or a patient.

(4) If a respondent who is a personal representative of the deceased does not file an affidavit stating the matters mentioned in paragraph (3), the Court may order him to do so.

(5) A respondent who is not a personal representative of the deceased may, within 14 days after the time limited for entering an appearance, file an affidavit in answer to the application.

(6) Every respondent who files an affidavit in answer to the application shall serve a copy of the affidavit on the applicant.

(7) Subject to the provisions of this rule, the provisions of the matrimonial causes rules relating to the investigation by the Master of an application for ancillary relief and the making of an order thereon shall apply, with the necessary modifications, to an application under Article 38 of the Order or if it were an application for ancillary relief.

## PART III

## DECLARATIONS AS TO MATRIMONIAL STATUS

*Application for declaration as to matrimonial status*

5.—(1) Where the proceedings are proceedings for a declaration involving a determination as to the validity or subsistence of a marriage of the petitioner, the proceedings shall be begun by petition filed in the Office.

(2) The petition shall state—

- (a) the names of the parties and the residential address of each of them at the date of presentation of the petition;
- (b) the place and date of any ceremony of marriage to which the application relates;
- (c) whether there have been any previous proceedings in any court in Northern Ireland or elsewhere between the parties with reference to the marriage or the ceremony of marriage to which the application relates or with respect to the matrimonial status of either of them, and, if so, the nature of those proceedings;
- (d) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which he alleges that the court has jurisdiction to make it;

and shall conclude with a prayer setting out the declaration sought and any claim for costs.

(3) Nothing in the foregoing provisions shall be construed—

- (a) as conferring any jurisdiction to make a declaration in circumstances in which the court could not otherwise make it, or
- (b) as affecting the power of the court to refuse to make a declaration notwithstanding that it has jurisdiction to make it.

(4) The petition shall also state whether there are any proceedings continuing in any country outside Northern Ireland which relate to the marriage or are capable of affecting its validity or subsistence and, if so, shall give—

- (i) particulars of the proceedings, including the court in or tribunal or authority before which they were begun,
- (ii) the date when they were begun,
- (iii) the names of the parties,
- (iv) the date or expected date of any trial in the proceedings, and
- (v) such other facts as may be relevant to the question whether the proceedings on the petition should be stayed under Schedule 1 to the Order

and such proceedings shall include any which are not instituted in a court of law in that country, if they are instituted before a tribunal or other authority having power under the law having effect there to determine questions of status, and shall be treated as continuing if they have been begun and have not been finally disposed of.

(5) Subject to the provisions of this rule, the provisions of the matrimonial causes rules relating to proceedings commenced by petition shall apply with the necessary modifications to the proceedings.

## ORDER 79

## BAIL APPLICATIONS TO HIGH COURT AND COURT OF APPEAL

*Interpretation*

1. In this Order, save where the context otherwise requires:—

“application” means an application to the High Court or the Court of Appeal in relation to bail;

“surrender to custody” means, in relation to a person released on bail, surrendering himself into the custody of the Court or other proper authority (according to the requirements of the order admitting him to bail) at the time and place appointed for him to do so.

*Applications to the High Court*

2.—(1) Every application to the High Court, other than an application made during the hearing of any proceedings, must be made by delivering to the Central Office a notice setting out the grounds of the application and referring to any earlier application to the Court or a magistrate’s court in the same proceedings.

(2) An application by a defendant must be in Form No. 38 in Appendix A and an application by any other person must be in Form No. 39.

(3) The proper officer in the Central Office on receiving the notice shall—

(a) furnish a copy thereof to the prosecutor, unless he is the applicant, and at the same time inform him by telephone of the terms of the notice;

(b) ask the appropriate chief clerk or clerk of petty sessions, as the case may be, to send him forthwith all documents in his possession which are relevant to the application;

(c) where the application has been made by the prosecutor or a surety in respect of a defendant who is on bail, give a copy of the notice to that defendant; and

(d) subject to any direction of the Court, list the application for hearing for a time not later than 7 days from the date on which he received the notice and inform the defendant, the prosecutor, the governor or keeper of the prison or other place in which the defendant is detained and, where he is the applicant, the surety of the time and place of hearing.

*Admission to bail*

3.—(1) Where a defendant is admitted to bail under rule 2, the proper officer must forthwith file the order admitting the defendant to bail.

(2) The proper officer must give a copy of the order to the defendant by handing it to the person having custody of him.

*Application to the Court of Appeal under Criminal Appeal Act*

4.—(1) Every application to the Court of Appeal under the provisions of the Criminal Appeal (Northern Ireland) Act 1980(f) by an appellant pending the determination of his appeal must be made by delivering to the Central Office a notice in Form No. 40 in Appendix A setting out the grounds for his application.

(2) Unless notice of appeal or an application for leave to appeal has previously been given, the Form No. 40 in Appendix A must accompany the notice of appeal.

(3) The proper officer on receiving notice of an application must submit it to a single Judge of the Court of Appeal and notify the appellant of the result of the application, unless the application is heard in Court.

(4) An application under section 7(2) or 35 of the Criminal Appeal (Northern Ireland) Act 1980 for bail pending re-trial or an appeal to the House of Lords may be made in Court without prior notice following the decision of the Court to order a re-trial or grant leave to appeal, as the case may be.

*Other applications to the Court of Appeal*

5.—(1) Every application to the Court of Appeal, other than an application made during the hearing of any proceedings or an application to which rule 4 applies, must be made by delivering to the Central Office a notice in Form No. 41 in Appendix A setting out the grounds of the application.

(2) The proper officer in the Central Office on receiving the notice shall submit it to a single judge of the Court of Appeal and the judge may grant the application or give such directions as may be appropriate for the hearing of the application in Court.

(3) The proper officer shall notify the applicant of the result of the application or of any directions given by the judge.

*Persons to take recognizances*

6.—(1) Where bail is granted by the High Court, it may direct that a recognizance shall be entered into or other security given before—

- (a) a clerk of petty sessions;
- (b) an officer serving in the Supreme Court; or
- (c) the governor or keeper of any prison or other place of detention where the person granted bail is confined.

(2) Where bail is granted by the Court of Appeal, it may direct that a recognizance shall be entered into or other security given before—

- (a) an officer serving in the Supreme Court; or
- (b) the governor or keeper of any prison or other place of detention where the person granted bail is confined.

*Manner in which recognizances to be entered into*

7. Recognizances may be entered into or security given before a person specified in rule 6 on the production to him of a copy of the order admitting the defendant, appellant, or applicant, as the case may be, to bail with or without sureties of such number and amount as the Court may direct.

*Estreat of recognizances*

8.—(1) Where a recognizance, has been duly entered into for the appearance of a defendant at a Crown Court or a magistrates' court, the recognizance may be estreated by the court at which he is to appear.

(2) Where a recognizance has been duly entered into following a direction by the Court of Appeal and it appears to that Court that default has been made in performing any condition of the recognizance, the Court may either of its own motion or on the application of the prosecutor order the recognizance to be estreated in any such sum not exceeding the amount of the recognizance as it thinks fit to order.

(3) Upon ordering the estreat of a recognizance under paragraph (2) the Court may issue a warrant to levy the amount forfeited by distress and sale of the property of any person bound by the recognizance and in default of distress to commit such person to prison as if for default in the payment of a sum adjudged to be paid by a conviction, and accordingly the period for which such person may be committed shall not exceed that specified in Schedule 4 to the Magistrates' Courts Act (Northern Ireland) 1964(g).

*Forfeiture of security*

9.—(1) Where security has been duly given by or on behalf of a defendant for his surrender to custody to a Crown Court or a magistrates' court, as the case may be, such security may be forfeited by the court to which he is to surrender.

(2) Where security has been duly given by or on behalf of a defendant to the Court of Appeal for his surrender to custody and that court is satisfied that he failed to surrender to custody, then unless it appears to the Court that he had reasonable cause for his failure, the Court may either of its own motion or on the application of the prosecutor order the forfeiture of the security in any such sum not exceeding the value thereof, as it thinks fit to order.

(3) A security which has been ordered to be forfeited under paragraph (1) or (2) shall to the extent of the forfeiture:—

- (a) if it consists of money, be accounted for and paid in the same manner as a fine imposed by the court; and
- (b) if it does not consist of money be enforced by such magistrates' court as may be specified in the order.

*Procedure on estreat or forfeiture in Court of Appeal*

10. Where the Court of Appeal is to consider making an order under rule 8 or 9, the proper officer shall give notice to that effect to the person by whom the recognizance was entered into or security given indicating the time and place at which the matter will be considered, and no such order shall be made before the expiration of 7 days after the notice required by this rule has been given.

*Recommittal*

11. Where a person has been released on bail and on the application of the prosecutor or a surety it appears to the High Court or the Court of Appeal that—

- (a) he has failed to surrender to custody;
- (b) he is in breach of any other condition of his bail, or
- (c) he is unlikely to surrender to custody,

the Court may order that he be recommitted to custody and issue a warrant for his arrest.

*Variation of order admitting to bail*

12. Where the High Court or the Court of Appeal has admitted a person to bail, it may, on application by that person or the prosecutor or a surety:—

- (a) vary or dispense with any condition of bail or impose conditions in respect of bail to which the defendant has been admitted unconditionally;
- (b) increase or reduce the amount in which the defendant or any surety is bound; or
- (c) require sureties, or additional sureties, or dispense with any surety.

*Postponement of taking recognizances*

13. The court may, on making an order admitting to bail, direct that the taking of recognizances be postponed for such period as the court thinks fit.

## ORDER 94

## MISCELLANEOUS APPEALS BY WAY OF CASE STATED TO THE HIGH COURT AND COURT OF APPEAL

1. Appeals to the High Court under section 13(1) of the Tribunals and Inquiries Act 1971(h) (appeals from a value added tax tribunal and other tribunals in Schedule 1 to the Act) shall be brought by way of case stated in accordance with the provisions of Order 56.

*Appeals to the Court of Appeal*

2. Appeals to the Court of Appeal under the following statutory provisions shall be brought by way of case stated in accordance with the provisions of Order 61—

- (i) section 14 of the Industrial Training Act (Northern Ireland) 1964(i) (appeals from an industrial tribunal);
- (ii) section 14 of the Social Security Act 1980(j) (appeals from Social Security Commissioner).

*Case stated by tribunal in course of proceedings*

3.—(1) This rule applies to—

- (i) any tribunal mentioned in section 13(1) of the Tribunals and Inquiries Act 1971;
- (ii) the tribunal mentioned in section 14 of the Industrial Training Act (Northern Ireland) 1964.

(2) Any tribunal to which this rule applies may, of its own motion or at the request of any party to the proceedings before it, state in the course of those proceedings any question of law arising in the proceedings in the form of a special case for the decision of the High Court or the Court of Appeal, as the case may be.

(3) Any party to proceedings before any such tribunal who is aggrieved by the tribunal's refusal to state such a case may apply to the High Court or the Court of Appeal, as the case may be, for an order directing the tribunal to do so.

(4) A case stated by any such tribunal which has no chairman or member who acts as chairman must be signed by the member or members of the tribunal.

[E.r. 9]

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(h) 1971 c. 62

(i) 1964 c. 18 (N.I.)

(j) 1980 c. 30

EXPLANATORY NOTE

*(This note is not part of the Rules, but is intended to indicate their general purport.)*

Rule 2 of these rules adds three Orders to the Rules of the Supreme Court (Northern Ireland) 1980 and comes into operation on the same day as those Rules viz. 1st January 1981.

*Order 74* provides for certain matrimonial proceedings in the High Court which are excluded from the purposes for which Matrimonial Causes Rules may be made.

*Order 79* deals with bail applications to the High Court and Court of Appeal.

*Order 94* enables certain appeals to the High Court and Court of Appeal on a question of law to be brought by way of case stated.

Rule 3 revises the fixed costs which may be allowed under Appendix 3 to Order 62.