

1990 No. 441

EMERGENCY PROVISIONS

**Emergency Provisions (Compensation) (Amendment No. 2)
Rules (Northern Ireland) 1990**

Made 11th December 1990

Coming into operation 1st March 1991

The Lord Chief Justice in exercise of the powers conferred on him by section 28A(1) of the Northern Ireland (Emergency Provisions) Act 1978(a) after consultation with the Secretary of State, hereby makes the following rules:—

Citation, commencement and interpretation

1.—(1) These rules may be cited as the Emergency Provisions (Compensation) (Amendment No. 2) Rules (Northern Ireland) 1990 and shall come into operation on 1st March 1991.

(2) In these rules “the principal rules” means the Emergency Provisions (Compensation) Rules (Northern Ireland) 1988(b), and a reference to a Form by number is a reference to the Form so numbered in Schedule 1 to the principal rules.

Revocation

2. The Emergency Provisions (Compensation) (Amendment) Rules (Northern Ireland) 1990(c) are hereby revoked.

Lodging of appeals to the County Court

3. In rule 3 of the principal rules—

(a) paragraph (2) shall be omitted;

(b) in paragraph (3) the words “and shall state the sitting at which the appeal is to be heard in accordance with paragraph (2)” shall be omitted;

(c) in paragraph (4) the words “and the chief clerk shall forthwith upon receipt of the notice enter the appeal for hearing at the sitting specified in paragraph (2)” shall be omitted;

(d) the following new paragraphs shall be inserted after paragraph (6)—

“(6A) The appellant shall request the chief clerk to enter the appeal for hearing by delivering to the chief clerk at his office a certificate of readiness in Form 18 and the appellant shall serve a copy

(a) 1978 c. 5 as substituted by section 12 of 1987 c. 30

(b) S.R. 1988 No. 221

(c) S.R. 1990 No. 61

on the Secretary of State at the address of the department dealing with claims for compensation under the Act.

(6B) Upon receipt of a certificate of readiness the chief clerk shall enter the appeal for hearing at the first sitting he deems practicable, and shall cause notice of such hearing to be given to the parties.

(6C) Without prejudice to paragraph (6B) the chief clerk may enter an appeal for hearing and shall cause notice of such hearing to be given to the parties notwithstanding that a certificate of readiness has not been delivered by the appellant.”

Payment into court by respondent, acceptance etc.

4.—(1) In rule 4 of the principal rules for paragraphs (1) and (4) there shall be substituted the following paragraphs—

“(1) The respondent may at any time within 21 days from service of the copy of the notice of appeal upon him make a payment into court by lodging in court—

- (a) such sum of money as the respondent thinks sufficient to satisfy the appellant’s claim to compensation under section 28 of the Act or so much of it as is the subject of the appeal; and
- (b) a written undertaking to pay to the appellant any costs or expenses reasonably incurred by him between the date on which the respondent served on him notice of his decision under section 28(5)(a) or (b) of the Act and the date of the lodging.

(4) The appellant may, either before the expiration of a period of 21 days commencing on the date of service upon him of the notice in Form 10 or before the commencement of the sittings in which the appeal is to be heard, whichever first occurs, or subsequently with the consent of the respondent, sign and serve on the respondent and lodge with the chief clerk a notice in Form 11 accepting the amount in satisfaction of his claim.”

(2) For Forms 1-3 there shall be substituted the Forms 1-3 in Schedule 1 to these rules.

(3) After Form 17 there shall be inserted the Form 18 in Schedule 1 to these rules.

Increase in party and party costs

5. For Schedule 2 to the principal rules there shall be substituted the new Schedule set out in Schedule 2 to these rules.

Dated 11th December 1990.

Brian Hutton
Lord Chief Justice
of Northern Ireland

NEW FORM 1 TO BE INSERTED IN PRINCIPAL RULES

FORM No. 1

Rule 3(3)

Notice of appeal to county court under section 28(4) of the Northern Ireland (Emergency Provisions) Act 1978 to extend the time to apply for compensation

IN THE COUNTY COURT/RECORDER'S COURT for the Division of

IN THE MATTER OF an appeal under section 28(4) of the Northern Ireland (Emergency Provisions) Act 1978.

Between

Appellant

of

and

The Secretary of State
Respondent

TAKE NOTICE that the appellant hereby appeals to the County Court/Recorder's Court for the above-named Division sitting at _____ on a date to be notified to the parties by the chief clerk against the refusal of a request made to the respondent by the appellant in writing on the _____ day of _____ to allow the appellant to extend the period during which an application for compensation under section 28(2) of the Northern Ireland (Emergency Provisions) Act 1978 may be made to him.

The grounds of appeal are as follows—
(Here state grounds of appeal)

Dated this _____ day of _____

Signature of Appellant/
Solicitor for Appellant
Name and address of
Agent/Solicitor

To:—

- (a) The Chief Clerk at
(address of courthouse)
- (b) The Secretary of State at
(address of Department)
- (c) The following person(s)
(name(s) and address(es)) having an estate or interest in the property in respect of which an application for compensation has been made.

Note:

Attached to this notice served on the chief clerk must be—

- (a) any certificate of posting;
- (b) a copy of the notice served on the appellant by the Secretary of State under section 28(4) of the Act endorsed with a certificate as to the date of service of the notice on the appellant;
- (c) a copy of the application made to the Secretary of state under section 28(2) of the Act.

NEW FORM 2 TO BE INSERTED IN PRINCIPAL RULES

FORM NO. 2

Rule 3(3)

Notice of appeal to county court under section 28(5) of the Northern Ireland (Emergency Provisions) Act 1978 against the amount of compensation awarded by the Secretary of State

IN THE COUNTY COURT/RECORDER'S COURT for the Division of

IN THE MATTER OF an appeal under section 28(5) of the Northern Ireland (Emergency Provisions) Act 1978.

Between

Appellant

of

and

The Secretary of State
Respondent

Application No.

TAKE NOTICE that the appellant hereby appeals to the County Court/Recorder's Court for the above-named Division sitting at _____ on a date to be notified to the parties by the chief clerk against the decision of the Secretary of State under the above section served on [the appellant] on the _____ day of _____ awarding [the appellant] the sum of £ _____ as compensation.

The appeal is made on the following grounds:—

(Here state the precise grounds on which appeal is based and, where the appeal is against so much of the award as relates to specified items which are the subject of compensation, set out those items in numerical order giving the ground for appealing against the amount of the award relating to each item.)

Dated this _____ day of _____ .

Signature of Appellant/
Solicitor for Appellant
Name and address of
Agent/Solicitor

To:—

- (a) The Chief Clerk at
(address of courthouse)
- (b) The Secretary of State at
(address of Department)
- (c) The following person(s)
(Name(s) and address(es)) having an estate or interest in the property in respect of which an application for compensation has been made.

Note:

Attached to this notice served on the chief clerk must be—

- (a) any certificate of posting;
- (b) a copy of the notice served on the appellant by the Secretary of State under section 28(5)(a) of the Act endorsed with a certificate as to the date of service of the notice on the appellant;
- (c) a copy of the application made to the Secretary of State under section 28(2) of the Act.

NEW FORM 3 TO BE INSERTED IN PRINCIPAL RULES

FORM NO. 3

Rule 3(3)

**Notice of appeal to county court under section 28(5) of the Northern
Ireland (Emergency Provisions) Act 1978 against the decision of the
Secretary of State to refuse an application for compensation**

[Title as in Form No. 2]

Application No.

TAKE NOTICE that the appellant hereby appeals to the County Court/Recorder's Court for the above-named Division sitting at _____ on a date to be notified to the parties by the chief clerk against the decision of the Secretary of State stated in a notice under section 28(5)(b) of the Northern Ireland (Emergency Provisions) Act 1978 served on [the appellant] on the _____ day of _____ refusing an application for compensation.

The appeal is made on the following grounds:—

(Here state the precise grounds on which the appeal is based.)

Dated this _____ day of _____

Signature of Appellant/
Solicitor for Appellant
Name and address of
Agent/Solicitor

To:—

- (a) The Chief Clerk at
(address of courthouse)
- (b) The Secretary of State at
(address of Department)
- (c) The following person(s)
(name(s) and address(es)) having an estate or interest in the property in
respect of which an application for compensation has been made.

Note:

Attached to this notice served on the chief clerk must be—

- (a) any certificate of posting;
- (b) a copy of the notice served on the appellant by the Secretary of State under section 28(5)(b) of the Act endorsed with a certificate as to the date of service of the notice on the appellant;
- (c) a copy of the application made to the Secretary of State under section 28(2) of the Act.

NEW FORM 18 TO BE INSERTED IN PRINCIPAL RULES

FORM No. 18

Rule 3(6A)

Certificate of Readiness

[Title as in Form 2]

To the Chief Clerk

Sir,

I/We request that you enter this appeal for hearing.

I/We certify on behalf of the appellant—

- (1) that, so far as concerns the appellant, the appeal is ready for hearing; and
- (2) that the appellant estimates that the hearing will last not more than hour(s).*

Signed

Appellant/Solicitor for
the Appellant

(Date)

To: the Chief Clerk and to the Secretary of State (Respondent)

*Note: this information will assist the Chief Clerk in assessing the likely duration of the hearing.

SCHEDULE 2

Rule 5

AMENDMENT TO THE PRINCIPAL RULES

SCHEDULE 2

Rule 9(2)

**Party and party costs in appeals under section 28(5) of the Northern
Ireland (Emergency Provisions) Act 1978**

A. Appellant's Costs

<i>Where the amount awarded is greater than the Secretary of State's decision and does not exceed—</i>	<i>Solicitor's Costs</i>	<i>Counsel's Fee</i>
(1)	(2)	(3)
£	£	£
250	103	39
500	126	49
750	159	65
1,000	181	77
2,000	205	85
3,000	229	95
4,000	253	101
5,000	275	108
6,000	300	115
7,000	324	123
8,000	346	129
9,000	371	138
10,000	395	145
15,000	504	183
20,000	624	226
25,000	733	266
30,000	853	314
35,000	963	356
40,000	1,079	405
45,000	1,190	435
50,000	1,300	500

NOTES:

1. Subject to the discretion of the judge to certify otherwise, the scale of counsel's fees in column (3) above relates only to the item or items the subject of the appeal and not to the value of the claim as a whole.
2. Where a case is settled more than 2 days prior to the court hearing, 85% of the appropriate amount in column (3) of the above table is payable as counsel's fees.
3. Where the judge considers it was proper for an appellant to instruct senior as well as junior counsel, the senior counsel's fee will be one and a half times the appropriate figure in column (3) of the above table.
4. Where the amount awarded is in excess of £50,000 the judge shall, unless the parties otherwise agree, certify the amount of the solicitor's costs and the amount allowed for counsel's fees.

5. Where the case is one of exceptional complexity or difficulty the judge may certify an amount exceeding the scale figures in columns (2) or (3) of the above table.
 6. Nothing in this Schedule shall derogate from the provisions of rule 5.
 7. The scale of solicitor's costs in column (2) above is inclusive of any costs (but not expenses) payable by the Secretary of State in respect of making out and verifying the claim to compensation up to the date of service of notice of the Secretary of State's decision under section 28(5) of the Act.
 8. Where an Appeal under section 28(5) of the Act is in respect of an act authorised by or on behalf of the Secretary of State under section 19(2) of the Act and the judge considers that the scale of costs in this Schedule is inappropriate, the amount of solicitor's costs or of counsel's fees shall be in the discretion of the judge and, unless the parties otherwise agree, he shall certify the amount he allows for such costs and fees.
 9. (a) Where a solicitor conducts an appeal without counsel he shall, if the judge so allows, be entitled to an enhancement of his costs in addition to the scale costs in column (2) of the above table; and
(b) the amount of any enhancement so allowed shall be in the discretion of the judge, but shall not exceed 50% of the scale fee in column (3) of the above table to which counsel, if conducting the appeal, would have been entitled.
- B. *Respondent's costs*
1. Where an appeal is dismissed, the judge may order the appellant to pay to the Secretary of State an amount for his solicitor's costs or counsel's fees.
 2. Where he does so, that amount shall, in default of agreement, be such as the judge may determine, whether equal to or less than the costs actually incurred or the fees paid by the Secretary of State in resisting the appeal.

EXPLANATORY NOTE

(This note is not part of the Rules.)

These rules amend the Emergency Provisions (Compensation) Rules (Northern Ireland) 1988 so as to:—

- (a) revise the procedure for lodging an appeal to the county court;
- (b) introduce a new scale of costs payable to solicitors and counsel in appeals to the county court under section 28(5) of the Northern Ireland (Emergency Provisions) Act 1978;
- (c) provide for an enhancement of a solicitor's costs where he conducts such an appeal without counsel.