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The Rules of the Supreme Court (Northern Ireland) 1980

Amended up to and including Supplement No. 20 (July 1992)

BELFAST: HMSO

NOTE

The note in square brackets at the end of a rule in any of the following Orders does not form part of these Rules. It refers to a rule in the corresponding Order (with which it may be identical) of the Rules of the Supreme Court 1965, which apply in England and Wales. However, the note in square brackets at the end of a rule in Order 74 (Alteration of maintenance agreements, etc.) refers to a rule in the (English) Matrimonial Causes Rules 1977, in Order 97 (Non-Contentious Probate) to a rule in the (English) Non-Contentious Probate Rules 1954 and in Order 109 (Patient's Affairs) to as rule in the (English) Court of Protection Rules 1984.

This reprint states the Rules in force as at 1st September 1992.

STATUTORY RULES OF NORTHERN IRELAND

1980 No. 346

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Revision) 1980

Made	*1st October 1980*
Coming into operation . .	*1st January 1981*
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 pleading, practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise these powers and all other powers enabling us in that behalf as follows:

1. The Rules set out in Schedule1 hereto are hereby made.

2.—(1) The Rules and Orders specified in Part I of Schedule 2 hereto are, with the exception of the provisions specified in column 1 of Part II thereof, hereby revoked, but subject to rule 4 hereof and the provision in relation to the said Part I made at the end of that Part.

(2) The provisions specified in column 1 of Part II of Schedule 2 shall have effect with such modifications as are specified in column 2 thereof.

3. The provisions specified in column 1 of Schedule 3 hereto are hereby repealed or revoked to the extent specified in column 2 of that Schedule.

4. As respects proceedings commenced before 1st January 1981, the times for entering an appearance and service of pleadings shall continue to be those prescribed in the Rules of the Supreme Court (Northern Ireland) 1936(**b**).

5. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Revision) 1980 and shall come into operation on 1st January 1981.

Dated the 25th day of September 1980.

Lowry
John MacDermott
Donald Murray
R. D. Carswell
J. J. Sheil
Owen Catchpole
James McFarland

I concur — *Hailsham of St. Marylebone*, C

Dated the 1st day of October 1980.

(**a**) 1978 c. 23
(**b**) S.R. & O. 1936 No. 74 (II, p. 2554)

SCHEDULE 1

The Rules of the Supreme Court (Northern Ireland) 1980

PRELIMINARY

ORDER 1

CITATION, [(**a**) OVERRIDING OBJECTIVE], APPLICATION, INTERPRETATION AND FORMS: BUSINESS OF THE COURT OF JUDICATURE [(**b**) MEDIATION]

PART 1

CITATION, [(**a**) OVERRIDING OBJECTIVE], APPLICATION, INTERPRETATION AND FORMS:

Citation

1. These Rules may be cited as the Rules of the Court of Judicature (Northern Ireland) 1980.

[*E.r. 1*]

[(**c**) *The overriding objective*

1A.—(1) The overriding objective of these Rules is to enable the Court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable—

(*a*) ensuring that the parties are on an equal footing;

(*b*) saving expense;

(*c*) dealing with the case in ways which are proportionate to —

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issue; and

(iv) the financial position of each party;

(*d*) ensuring that it is dealt with expeditiously and fairly; and

(*e*) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

(3) The Court must seek to give effect to the overriding objective when it—

(*a*) exercises any power given to it by the Rules; or

(*b*) interprets any rule.].

[(**d**) (4) Paragraph (3) above shall apply subject to the provisions in [(**e**) Order 116A, rule 2(1), Order 116B, rule 2(1) [(**f**), Order 116C, rule 2(1) and Order 126 rule 2(1)].

Application

2.—(1) Subject to the following provisions of this rule, these shall have effect in relation to all proceedings in the Court of Judicature.

[(**g**) (2) These Rules, other than Part II of this Order and Order 4, Order 59 and Order 62 shall not have effect in relation to —

(*a*) proceedings under the Bankruptcy Acts (Northern Ireland) 1857 to 1980;

(*b*) matrimonial proceedings [(**h**) and proceedings under the Civil Partnership Act 2004 (**i**)].

(2A) These Rules, other than Part II of this Order, shall not have effect in relation to—

(**a**) Words inserted by S.R. 2001 No. 254 with effect from 5.9.01
(**b**) Word inserted by S.R. 2011 No. 62 with effect from 25.03.11
(**c**) Rule inserted by S.R. 2001 No. 254 with effect from 5.9.01
(**d**) Paragraph inserted by S.R. 2005 No. 314 with effect from 27.06.05
(**e**) Words substituted by S.R. 2011 No. 422 with effect from 15.12.11
(**f**) Words substituted by S.R. 2013 No. 175 with effect from 27.06.13
(**g**) Paragraphs substituted by S.R. 1991 No. 232 with effect from 1.10.91
(**h**) Word inserted by S.R. 2007 No. 189 with effect from 16.04.07
(**i**) 2004 c.33

(*a*) proceedings under Part VIII of the Companies (Northern Ireland) Order 1986(**a**);

(*b*) proceedings under Part XX and XXI of the Companies (Northern Ireland) Order 1986;

(*c*) proceedings under Part II of the Companies (Northern Ireland) Order 1989(**b**);

(*d*) proceedings under the Insolvency (Northern Ireland) Order 1989(**c**);

(3) These Rules shall not have effect in relation to any criminal proceedings other than any criminal proceedings to which Order 53, Order 59, Order 62 or Order 79 applies.

(4) In any case of the proceedings mentioned in [(**d**) paragraphs (2), 2A and 3] nothing in those paragraphs shall be taken as affecting any provisions of any rules (whether made under the Act or any other statutory provision) by virtue of which these Rules or any provisions thereof are applied in relation to any of those proceedings.

[*E.r. 2*]

Definitions

3.—(1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them namely—

"the Act" means the Judicature (Northern Ireland) Act 1978(**e**);

"an action for personal injuries" means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a persons' death, and "personal injuries" includes any disease and any impairment of a person's physical or mental condition;

[(**f**) "cause book" means the book or other record kept in the Central or other Supreme Court Office in which the number of, and other details relating to, a cause or matter are entered;"]

"Central Office" means the Central Office of the Supreme Court;

[(**g**) "European lawyer" has the meaning set out in Article 2 of the European Communities (Services of Lawyers) Order 1978;]

[(**h**) "FAX" means the making of a facsimile copy of a document by the transmission of electronic signals;]

[(**i**) "Long Vacation" means the interval between 30th June and 5th September;]

"master" means a master or registrar of the Supreme Court mentioned in the first column of Schedule 3 to the Act other than the Master (Taxing Office);

"the matrimonial cause rules" means rules made under Article 54 of the Matrimonial Causes (Northern Ireland) Order 1978(**j**)

"originating summons" means every summons other than a summons in a pending cause or matter;

"pleading" does not include a writ (except a statement of claim endorsed thereon), a petition, summons or preliminary act;

"probate action" has the meaning assigned to it by Order 76;

(**a**) S.I. 1986/1032 (N.I. 6)
(**b**) S.I. 1989/2404 (N.I. 18)
(**c**) S.I. 1989/2405 (N.I. 19)
(**d**) Words substituted by S.R. 1991 No. 232 with effect form 1.10.91
(**e**) 1978 c. 23
(**f**) Definition of "cause book" inserted by S.R. 1995 No. 462 with effect from 9.1.96
(**g**) Definition of "European lawyer" inserted by S.R. 2013 No. 202 with effect from 05.09.13
(**h**) Definition of "FAX" inserted by S.R. 1992 No. 399 with effect from 1.11.92
(**i**) Definition of "Long Vacation" inserted by S.R. 1981 No. 234 with effect from 1.9.81
(**j**) S.I. 1978/1045 (N.I. 15)

"receiver" includes a manager or consignee;

"vacation" means the interval between the end of any of the sittings mentioned in Order 64 rule 1, and the beginning of the next sittings,

"writ" means a writ or summons.

(2) In these Rules, unless the context otherwise requires, "the Court" means the High Court or any one or more judges thereof whether sitting in court or in chambers or any master, but the foregoing provision shall not be taken as affecting any provision of these Rules or, in particular, Order 32 rule 11, by virtue of which the jurisdiction of a master is defined and regulated.

[*E.r. 4*]

Construction of references to Order, Rules etc,

4.—(1) Unless the context otherwise requires, any reference in these Rules to a specified Order, rule or Appendix is a reference to that Order or rule of or that Appendix to, these Rules and any reference to a specified rule, paragraph or subparagraph is a reference to the rule of the Order, that paragraph of the rule, or that sub-paragraph of the paragraph in which the reference occurs.

(2) Any reference in these Rules to anything done under a rule of these Rules includes a reference to the same thing done before the commencement of that rule under any corresponding rule of court ceasing to have effect on the commencement of that rule.

(3) Except where the context otherwise-requires, any reference in these Rules to any statutory provision shall be construed as a reference to that provision as amended, extended or applied by or under any other statutory provision.

[*E.r. 5*]

Construction of references to action, etc. for possession of land

5. Except where the context otherwise requires, references in these Rules to an action or claim for the possession of land shall be construed as including references to proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or to the possession thereof.

[*E.r. 6*]

Construction for references to Lord Chief Justice

6. For references in these Rules to the Lord Chief Justice there shall be substituted references to the senior Lord Justice of Appeal in relation to any period during which the functions of the Lord Chief Justice are being exercised by the [(**a**) senior Lord Justice of Appeal] pursuant to section 11 of the Act.

[*E.r. 7*]

Construction of certain references to the Treasury [obsolete]

7. Any reference in these Rules to the Treasury shall, where the reference occurs in a provision relating to the giving of permission by the Treasury under the Exchange Control Act 1947 for the payment of money, be construed as including a reference to any person to whom the power of the Treasury to give such permission has been duly delegated.

[*E.r. 8*]

Forms

8. The forms in the Appendices shall be used where applicable with such variations as the circumstances of the particular case require.

[*E.r. 9*]

(**a**) Words substituted by S.R. 2009 No. 230 with effect from 07.09.09

Rules not to exclude conduct of business by post

9. Nothing in these Rules shall prejudice any power to regulate the practice of the Court by giving directions enabling any business or class of business to be conducted by post.

[*E.r. 10*]

PART II

BUSINESS OF THE COURT OF JUDICATURE

A. DISTRIBUTION AMONGST DIVISIONS OF THE [(a)HIGH] COURT

[(b) *Assignment to Chancery Division*

10. There shall be assigned to the Chancery Division—

(*a*) all causes and matters (other than Admiralty) in relation to

(i) the administration of the estates of deceased persons;

(ii) the dissolution of partnerships or the taking of partnership or other accounts;

(iii) the redemption or foreclosure of mortgages;

(iv) the raising of portions or other changes on land;

(v) the sale and distribution of the proceeds of property subject to any lien or charge;

(vi) the execution of trusts, charitable or private;

(vii) the rectification, setting aside or cancellation of deeds, or other written instruments;

(viii) the specific performance of an agreement for the sale, purchase, exchange, mortgage of any property or for the assignment of a lease of any property with or without an alternative claim for damages, or for rescission or such an agreement or for the forfeiture or return of any deposit made under such an agreement;

(ix) the partition or sale of land;

(x) copyright [(c);]

[(d) (xi) the grant and revocation of probate of wills and letters of administration of estates of deceased persons.]

(*b*) proceedings under the Bankruptcy Acts (Northern Ireland) 1857 to 1980, the Companies (Northern Ireland) Order 1986, Part II of the Companies (Northern Ireland) Order 1989 or the Insolvency (Northern Ireland) Order 1989;

(*c*) applications for an injunction to restrain the presentation of a petition to wind up a company;

(*d*) proceedings taken under Article 4 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984(e) by virtue of Article 309(2) or 310(4) of the Insolvency (Northern Ireland) Order 1989;

(*e*) proceedings under Articles 88(3A) or 90(3A) of the Judgments Enforcement (Northern Ireland) Order 1981(f);

(*f*) all causes and matters which under, by virtue of, or in pursuance of any statutory provision were assigned to the Chancery Judge or the Chancery Division immediately before the coming into force of this Order;

(a) Word substituted by S.R. 1981 No. 224 with effect from 1.9.81
(b) Rule substituted by 1991 No. 232 with effect from 1.10.91
(c) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07
(d) Sub-paragraph inserted by S.R. 2007 No. 189 with effect from 16.04.07
(e) S.I. 1984 (N.I. 14)
(f) S.I. 1981/226 (N.I. 6) as inserted by S.I. 1989/2405 (N.I. 19)

(*g*) all causes and matters which under, by virtue of, or in pursuance of any statutory provision are assigned to the Chancery Judge or the Chancery Division.].

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

(*i*) proceedings under Part III of the Fair Trading Act 1973(**b**).].

[(**c**)(*j*) proceedings under the Presumption of Death Act (Northern Ireland) 2009.]

Assignment to Queen's Bench Division

11. There shall be assigned to the Queen's Bench Division–

(*a*) all causes and matters civil and criminal which were within the jurisdiction of the Queen's Bench Division immediately before the coming into force of this Order;

(*b*) the Admiralty jurisdiction of the High Court;

(*c*) proceedings under [(**d**) Articles 107 to 110 of the Judgments Enforcement (Northern Ireland) Order 1981 except such proceedings as by this Order are assigned to the Family Division;

[(**e**)(*d*) applications for writs of habeas corpus.]

[(**f**)(*e*) applications for judicial review;

(*f*) all causes and matters which under by virtue of or in pursuance of any statutory provision are assigned to the Queen's Bench Division].

[(**g**)(*g*) appeals under rule 14 or 15 of the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) SR 1992(**h**);

(*h*) appeals under section 28(2D) or (2E) of the Criminal Appeal (Northern Ireland) Act 1980(**i**).]

[(**j**)(*i*) applications under section 54(3) of the Criminal Procedure and Investigations Act 1996.]

(*j*) [applications under section 103A of the Nationality, Immigration and Asylum Act 2002(**k**).]

[(**l**)(*k*) proceedings under the Prevention of Terrorism Act 2005.]

[(**m**)(*l*)proceedings under the Counter-Terrorism Act 2008 [(**n**)...]

[(**o**)(*la*) proceedings on an application under section 27 of the Terrorist Asset-Freezing etc. Act 2010, or on a claim arising from any matter to which such an application relates;]

[(**p**)(*m*) appeals under rule 15 or 17B of the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland 2005 (**q**).]

(**a**) Paragraphs (*h*) and (*i*) inserted by S.R. 2000 No. 393 with effect from 8.1.01
(**b**) 1973 c. 41
(**c**) Paragraph (*j*) inserted by S.R. 2009 No. 345 with effect from 09.11.09
(**d**) Words substituted by S.R. 1981 No. 224 with effect from 1.9.81
(**e**) Words substituted by S.R. 1983 No. 407 with effect from 1.1.84
(**f**) Paragraphs (*e*) and (*f*) added by S.R. 1983 No. 407 with effect from 1.1.84
(**g**) Paragraphs (*g*) and (*h*) inserted by S.R. 1995 No. 2 with effect from 2.2.95
(**h**) S.R. 1992 No. 314 as amended by S.R.1994 No. 209
(**i**) 1980 c. 47; sub-sections (2D) and (2E) were inserted into section 28 by section 53 of the Criminal Justice and Public Order Act 1994 (c. 33)
(**j**) Paragraph (*i*) inserted by S.R. 1997 No. 265 with effect from 30.6.97
(**k**) Paragraph (*j*) inserted by S.R. 2005 No. 146 with effect from 18.04.05
(**l**) Paragraph (*k*) inserted by S.R. 2005 No. 314 with effect from 27.06.05
(**m**) Words inserted by S.R. 2008 No. 479 with effect from 04.12.08
(**n**) Words deleted by S.R. 2009 No. 264 with effect from 01.10.09
(**o**) Words inserted by 2010 c.38 with effect from 17.12.10
(**p**) Words inserted by S.R. 2009 No. 345 with effect from 09.11.09
(**q**) S.R. 2005 No. 112; as amended by S.R. 2009 No. 267

ORDER 1

[(a)(*n*) applications under Part 7 of the Coroners and Justice Act 2009(b)—Exploitation Proceeds Orders.]

[(c)(*o*) applications under section 96AA of the Sexual Offences Act 2003.]

[(d) *Assignment to Family Division*

12. There shall be assigned to the Family Division—

(*a*) all causes and matters in relation to

[(e)...]

(ii) divorce, nullity of marriage, judicial separation, a decree of presumption of death and dissolution of marriage and any matters arising therefrom or connected therewith;

(iii) the inherent jurisdiction of the court with respect to children;

[(f)(iv)dissolution or annulment of a civil partnership, legal separation of civil partners, a presumption of death order and any matters arising therefrom or connected therewith;

(*b*) proceedings under

(i) the Maintenance Orders (Facilities for Enforcement) Act 1920(g); Part II of the Maintenance Orders Act 1950h; the Maintenance Orders Act 1958(i); the Maintenance and Affiliation Orders Act (Northern Ireland) 1966(j); and the Maintenance Orders (Reciprocal Enforcement) Act 1972(k);

(ii) Articles 107 to 110 of the Judgments Enforcement (Northern Ireland) Order 1981(l), in relation to orders made by the court in matrimonial proceedings for the payment of money or by the Enforcement of Judgments Office in relation to the enforcement of such orders;

(iii) Part II of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984(m), except where those proceedings have been assigned to the Chancery Division under rule 10 of this Order;

(iv) the Child Abduction and Custody Act 1985(n);

(v) the Family Law Act 1986(o);

(vi) the Mental Health (Northern Ireland) Order 1986(p);

(vii) the Enduring Powers of Attorney (Northern Ireland) Order 1987(q);

(viii) the Adoption (Northern Ireland) Order 1987(r);

(ix) Parts IV and V of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989(s);

(a) Paragraph (*n*) inserted by S.R. 2011 No. 62 with effect from 25.03.11
(b) 2009 c. 25
(c) Paragraph (*o*) inserted by S.R. 2015 No. 235 with effect from 19.05.15
(d) Rule 12 substituted by S.R. 1996 No. 212 with effect from 17.6.96
(e) Sub-paragraph omitted by S.R. 2007 No. 189 with effect from 16.04.07
(f) Sub-paragraph inserted by S.R. 2005 No. 449 with effect from 04.11.05
(g) 1920 c. 23
(h) 1950 c. 37
(i) 1958 c. 39
(j) 1966 c. 36 (N.I.)
(k) 1972 c. 18
(l) S.I. 1981/226 (N.I. 6)
(m) S.I. 1984/1984 (N.I. 14)
(n) 1985 c. 60
(o) 1986 c. 55
(p) S.I. 1986/595 (N.I. 4)
(q) S.I.1987/1627 (N.I. 16)
(r) S.I. 1987/2203 (N.I. 22)
(s) S.I. 1989/677 (N.I. 4)

(x) the Human Fertilisation and Embryology Act 1990(**a**) and Adoption (Northern Ireland) Order 1987 as applied with modifications by the Parental Orders (Human Fertilisation and Embryology) Regulations 1994(**b**)

(xi) the Children (Northern Ireland) Order 1995(**c**);

[(**d**) (xii) the Family Homes and Domestic Violence (Northern Ireland) Order 1998(**e**).]

[(**f**) (xiii) sections 6 and 8 of the Gender Recognition Act 2004(**g**);

(xiv) section 181 of, and Schedule 17 to, the Civil Partnership Act 2004(**h**);

(xv) Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, so far as that Regulation relates to jurisdiction, recognition and enforcement in parental responsibility matters;]

[(**i**) (xvi) Schedule 1 to the Forced Marriage (Civil Protection) Act 2007;]

[(**j**)(xvii) Article 32L of the Child Support (Northern Ireland) Order 1991;

(xviii) The Hague Convention of 19th October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children;]

(c) all causes or matters which under, by virtue of or in pursuance of any statutory provision are assigned to the Family Division.]

[(**k**)(d) proceedings under the Human Fertilisation and Embryology Act 1990 and the Adoption (Northern Ireland) Order 1987 as applied with modifications by the Parental Orders (Human Fertilisation and Embryology) Regulations 1994;]

[(**l**) *Choice of Division by plaintiff*

12A.—(1) Without prejudice to the power of transfer under Order 4 rules 1 or 2, the person by whom any cause or matter is commenced in the High Court shall allocate it to whatever division he thinks fit by marking the document by which the cause or matter is commenced with the name of that Division.

(2) All interlocutory or other steps or proceedings taken in a cause or matter shall be taken in the Division in which the cause or matter is for the time being allocated or transferred.

(3) The fact that a cause or matter falls within a class of business assigned by these Rules to a particular Division does not make it obligatory for it to be allocated to that Division.]

B. ASSIGNMENT OF BUSINESS TO DEPARTMENTS

Central Office

13. There shall be transacted in the Central Office—

(a) all business in connection with causes and matters assigned to the Queen's Bench Division;

(**a**) 1990 c. 37
(**b**) S.I. 1994/2767
(**c**) S.I. 1995/755 (N.I. 2)
(**d**) Sub-paragraph (xii) inserted by S.R. 1999 No. 19 with effect from 15.2.99
(**e**) S.I. 1998/1071 (N.I. 6)
(**f**) Sub-paragraphs inserted by S.R. 2005 No. 449 with effect from 04.11.05
(**g**) 2004 c. 7
(**h**) 2004 c. 33
(**i**) Sub-paragraph inserted by S.R. 2008 No. 401 with effect from 03.11.08
(**j**) New sub-paragraphs (xvii) and (xviii) inserted by S.R 2010 No. 49 with effect from 01.04.10
(**k**) Paragraph inserted by S.R. 1995 No. 2 with effect from 02.02.95
(**l**) Rule 12A inserted by S.R. 1983 No. 407 with effect from 1.12.83

(b) all business in connection with the jurisdiction of the Court of Appeal;

(c) all the business heretofore transacted in the Central Office, except such business as by this Order is assigned to any other office.

Chancery Office

14. There shall be transacted in the Chancery Office all business in connection with causes and matters assigned to the Chancery Division, except such business as by rule 13(b) and rule 15 is assigned to the Central Office and the Bankruptcy and Companies [(a) Office] respectively.

[(b) *Bankruptcy and Companies Office*

15. There shall be transacted in the Bankruptcy and Companies Office all business in connection with—

(*a*) applications for an injunction to restrain the presentation of a petition to wind up a company;

(*b*) proceedings under the Bankruptcy Acts (Northern Ireland) 1857 to 1980, the Companies (Northern Ireland) Order 1986; Part II of the Companies (Northern Ireland) Order 1989 and the Insolvency (Northern Ireland) Order 1989;

(*c*) suits for partition maintained by the trustee of a bankrupt's estate in the circumstances mentioned in Article 309(3) of the Insolvency (Northern Ireland) Order 1989;

(*d*) proceedings taken under Article 4 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 by virtue of Article 309(2) or 310(4) of the Insolvency (Northern Ireland) Order 1989;

(*e*) proceedings taken under Article 88(3A) or 90(3A) of the Judgments Enforcement (Northern Ireland) Order 1981;

[(c)(*f*) applications under sections 73, 94 and 178 of the Financial Services Act 1986.]

except such business as by rule 13(*b*) is assigned to the Central Office.]

Probate and Matrimonial Office

16. There shall be transacted in the Probate and Matrimonial Office all business in connection with causes and matters assigned to the Family Division, except such business as by rule 13(*b*) and rule 17 is assigned to the Central Office and the Office of Care and Protection respectively.

[(d) *Office of Care and Protection*

17. There shall be transacted in the Office of Care and Protection all business in connection with—

(*a*) causes, matters or proceedings assigned to the Family Division under—

(i) rule 12(a)(iii);

(ii) rule 12(b)(iv) to (viii);

(iii) rule 12(b)(x); and

(*b*) proceedings assigned to the Family Division under—

(i) rule 12(b)(ix) where the application is under Article 33 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989;

(ii) rule 12(b)(xi) except where by virtue of any statutory provision the proceedings are required to be brought in a pending cause which is assigned to the Family Division under rule 12(a)(ii).]

(a) Word inserted by S.R. 1982 No. 217 with effect from 1.9.82
(b) Rule substituted by S.R. 1991 No. 232 with effect from 1.10.91
(c) Paragraph (f) added by S.R. 1993 No. 143 with effect from 19.4.93
(d) Rule 17 substituted by S.R. 1996 No. 212 with effect from 17.6.96

Taxing Office

18. There shall be transacted in the Taxing Office—

(a) the taxation of—

(i) all costs in civil proceedings in the High Court and Court of Appeal;

(ii) all costs in criminal proceedings in the Crown Court and Court of Appeal;

(iii) all costs of or incidental to any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any statutory provision (not being proceedings in the Court of Judicature) where such costs are, by virtue of any statutory provision, taxable in the High Court;

[(**a**) (iv) all costs taxable pursuant to an order made by the Master (Taxing Office) under Article 71F(2)(a) of the Solicitors (Northern Ireland) Order 1976(**b**)];

(v) all other costs which under any statutory provision are required to be taxed or assessed by the Master (Taxing Office);

[(**c**)(*b*) the measurement of the remuneration under the Insolvency (Northern Ireland) Rules 1991[(**d**)].

[(**e**) PART III

MEDIATION

Interpretation

19.—(1) In this Part of this Order—

(a) "an ADR process" means mediation, conciliation or another dispute resolution process approved by the Court, but does not include arbitration; and

(b) "party" includes the personal representative of a deceased party.

Adjournment of proceedings for the purposes of ADR

20.—(1) The Court, on the application of any of the parties or of its own motion, may, when it considers it appropriate and having regard to all the circumstances of the case, order that proceedings or any issue therein be adjourned for such time as the Court considers just and convenient and—

(a) invite the parties to use an ADR process to settle or determine the proceedings or issue; or

(b) where the parties consent, refer the proceedings or issue to such process, and may, for the purposes of such invitation or reference, invite the parties to attend such information session on the use of mediation, if any, as the Court may specify.

(2) Where the parties decide to use an ADR process, the Court may make an order extending the time for compliance by any party with any provision of these Rules or any order of the Court in the proceedings, and may make such further or other orders or give such directions as the Court considers will facilitate the effective use of that process.

Application for order under rule 20

21. An application by a party for an order under rule 20 shall be made by notice of motion and shall, unless the Court otherwise orders, be supported by an affidavit.

Time limit for application under rule 20

22. Save where the Court for special reason to be stated in the Court's order allows, an application for an order under rule 20 shall not be made later than 56 days before the date on which the proceedings are first listed for hearing.]

(**a**) Sub-paragraph substituted by S.R. 1989 No. 489 with effect from 1.2.90
(**b**) S.I. 1976/582 (N.I. 12)
(**c**) Paragraph (b) substituted by S.R. 1991 No. 232 with effect from 1.10.91
(**d**) S.R. 1991 No. 364
(**e**) Rules inserted by S.R. 2011 No. 62 with effect from 25.03.11

ORDER 2

EFFECT OF NON-COMPLIANCE

Non-compliance with Rules

1.—(1) Where, in beginning of purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.

[*E.r.* 1]

Application to set aside for irregularity

2.—(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule may be made by summons or motion and the grounds of objection must be stated in the summons or notice of motion.

[*E.r.* 2]

ORDER 3

TIME

"Month" means calendar month

1. Without prejudice to section 5 of the Interpretation Act 1978(**a**) in its application to these Rules, the word "month", where it occurs in any judgment, order, direction or other document forming part of any proceedings in the Supreme Court, means a calendar month less the context otherwise requires.

[*E.r.* 1]

Reckoning periods of time

2.—(1) Any period of time fixed by these Rules or by any judgment, order or direction for doing any act shall be reckoned in accordance with the following provisions of this rule.

(2) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(3) Where the act is required to be done within or not less than a specified period before a specified date, the period ends immediately before that date.

(4) Where the act is required to be done a specified number of clear days before or after a specified date, at least that number of days must intervene between the day on which the act is done and that date.

(5) Where, apart from this pargraph, the period in question, being a period of 7 days or less, would include a Saturday, Sunday or bank holiday, Christmas Day or Good Friday, that day shall be excluded.

(6) In paragraph (5) "bank holiday" means a day which is, or is to be observed as, a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971(**b**).

[*E.r.* 2]

Long Vacation excluded from time for service, etc. of pleadings

3. Unless the Court otherwise directs, the period of the Long Vacation shall be excluded in reckoning any period prescribed by these Rules or by any order or direction for serving, filing or amending any pleading.

[*E.r.* 3]

Expiration of time when office closed

4. Where the time prescribed by these Rules, or by any judgment, order or direction, for doing any act at an office of the Supreme Court expires on a day on which that office is closed, and by reason thereof that act cannot be done on that day, the act shall be in time if done on the next day on which that office is open.

[*E.r.* 4]

Extension, etc. of time

5.—(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act in any proceedings.

(**a**) 1978 c. 30
(**b**) 1971 c. 80

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

(3) The period, within which a person is required by these Rules, or by any order or direction, to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose.

(4) In this rule references to the Court shall be construed as including references to the Court of Appeal.

[*E.r.* 5]

Notice of intention to proceed after year's delay

6.—(1) Where a year or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed must give to every other party not less than one month's notice of his intention to proceed.

(2) Where two years or more have elapsed since the last proceeding in a cause or matter the defendant may apply to the Court by summons to dismiss the same for want of prosecution.

(3) A motion or summons on which no order was made is not a proceeding for the purpose of this rule.

[*E.r.* 6]

COMMENCEMENT AND PROGRESS OF PROCEEDINGS

ORDER 4

TRANSFER AND CONSOLIDATION OF PROCEEDINGS

Transfer between Divisions

1.—(1) A cause or matter may, at any stage of the proceedings therein, be transferred from one Division to another by order of the Court made in the Division in which the cause or matter is proceeding.

[(**a**)(2) The fact that a cause or matter falls within a class of business assigned by these Rules to a particular Division does not make it obligatory for it to be transferred to that Division].

[*E.r. 3*]

[(**b**) *Transfer of proceedings after making of order for administration of estate*

2. Where an order for the administration under the direction of the Court of the estate of a deceased person is made in the Chancery Division, then, notwithstanding anything in rule 1, the Chancery Judge may order transfer to that Division any pending cause or matter brought by or against the executors or administrators of that person and assigned to some other Division.]

Transfers to and hearings before another Judge

3. Any judge who consents to do so may by arrangement with the Lord Chief Justice or the judge before whom a cause or matter is pending or to whom it has been assigned, hear such cause or matter or any part thereof or application therein.

When parties must be heard before transfer

4.—(1) Subject to paragraph (2), all such transfers and arrangements as are mentioned in this Order may be made with or without the application or consent of any party.

(2) Before a cause or matter is transferred from one Division to another the parties must be given an oppotunity of being heard.

[(**c**) *Consolidation etc. of causes or matters*

5.—(1) Where two or more causes or matters are pending in the same Division and it appears to the Court—

(*a*) that some common question of law or fact arises in both or all of them, or

(*b*) that rights to relief claimed therein are in respect of or arise out of the same transactions of or series of transaction, or

(*c*) that for some other reason it is desirable to make an order under this rule

the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or immediately after another or may order them to be stayed until after the determination of any other of them.

(2) Where the Court makes an order under paragraph (1) that two or more causes or matters are to be tried at the same time but no order is made for those causes or matters to be consolidated, then, a party to one of those causes or matters may be treated as if he were a party to any other of those causes or matters for the purpose of making an order for costs against him or in his favour.]

[*E.r. 9*]

(**a**) Paragraph (2) added by S.R. 1983 No. 407 with effect from 1.1.84
(**b**) New rule 2 substituted by S.R. 1991 No. 232 with effect from 1.10.91
(**c**) New rule 5 substituted by S.R. 1988 No. 70 with effect from 11.4.88

ORDER 5

MODE OF BEGINNING CIVIL PROCEEDINGS IN HIGH COURT

Mode of beginning civil proceedings

1. Subject to the provisions of any statutory provision or of these Rules, civil proceedings in the High Court may be begun by writ, originating summons, originating motion or petition.

[*E.r.* 1]

Proceedings which must be begun by writ

2. Subject to the provisions of any statutory provision or of these Rules, by virtue of which any proceedings are expressly required to be begun otherwise than by writ, the following proceedings must, notwithstanding anything in rule 4, be begun by writ, that is to say, proceedings—

(*a*) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;

(*b*) in which a claim made by the plaintiff is based on an allegation of fraud;

(*c*) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statutory provision or independently of any contract or any such provision), where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property;

(*d*) in which a claim is made by the plaintiff in respect of the infringement of a patent.

[*E.r.* 2]

Proceedings which must be begun by originating summons

3.—(1) Proceedings by which an application is to be made to the High Court or a judge thereof under any statutory provision must be begun by originating summons except where by these Rules or by or under any statutory provision the application in question is expressly required or authorised to be made by some other means.

(2) This rule does not apply to an application made in pending proceedings.

[*E.r.* 3]

Proceedings which may begun by writ or originating summons

4.—(1) Except in the case of proceedings which by these Rules or by or under any statutory provision are required to begun by writ or originating summons or are required or authorised to be begun by originating motion or petition, proceedings may be begun either by writ or originating summons as the plaintiff considers appropriate.

(2) Proceedings—

(a) in which the sole or principal question at issue is, or is likely to be, one of the construction of a statutory provision or of any instrument made under a statutory provision or of any deed, will, contract, or other document, or some other question of law, or

(b) in which there is unlikely to be any substantial dispute of fact,

are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgement under Order 14 or Order 86 or for any other reason considers the proceedings more appropriate to be begun by writ.

[*E.r. 4*]

Proceedings to be begun by motion or petition

5. Proceedings may be begun by originating motion or petition if, but only if, by these Rules or by under any statutory provision the proceedings in question are required or authorised to be so begun.

[*E.r. 5*]

Right to sue in person

6.—(1) Subject to paragraph (2) and to Order 80 rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the High Court by a solicitor or in person.

[(**a**) (2) Except as provided by paragraph (3), or under any other statutory provision, a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor.]

[(**b**) (3) A body corporate may begin and carry on any such proceedings by an employee if—

(*a*) the employee has been authorised by the body corporate to begin and carry on proceedings on its behalf; and

(*b*) the Court grants leave for the employee to do so.]

[*E.r. 6*]

(**a**) Paragraph substituted by S.R. 2008 No. 22 with effect from 25.02.08
(**b**) New paragraph inserted by S.R. 2008 No. 22 with effect from 25.02.08

ORDER 6

WRITS OF SUMMONS: GENERAL PROVISIONS

Form of writ

1. Every writ must be in Form No. 1, 2, 3 or 4 in Appendix A, as is appropriate.

[*E.r.* 1]

Indorsement of claim

2. Before a writ is issued it must be indorsed—

(*a*) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required, in the action begun thereby;

(*b*) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for appearing, the defendant pays the amount so claimed to the plaintiff or his solicitor;

(*c*) where the claim made by the plaintiff is for possession of land, with a statement showing—

(i) whether the claim relates to a dwelling-house; and

(ii) if it does, whether the dwelling-house is one to which Part III of the Rent (Northern Ireland) Order 1978(**a**), applies;

(*d*) where the action is brought to enforce a right to recover possession of goods, with a statement showing the value of the goods.

[*E.r.* 2]

[(**b**) *Claim for interest on a debt or liquidated demand under s.33A of the Act*

2A. Where a plaintiff claims interest on a debt or liquidated demand under section 33A of the Act the indorsement on the writ must state:

(*a*) that the plaintiff claims interest under section 33A of the Act;

(*b*) the rate of interest claimed and the amount of interest claimed from the date from which interest is claimed to a date not later than the date of issue of the writ; and

(*c*) any claim for further interest at the said rate from the date to which interest is already claimed to judgment or sooner payment.

Claim for contractual interest

2B. Where a plaintiff claims interest under a contract, the indorsement on the writ must give particulars of the contract relied on and, in particular must show:

(*a*) the date from which interest is payable;

(*b*) the rate or rates of interest fixed by the contract;

(*c*) the amount of interest due at a date not later than the date of issue of the writ; and

(*d*) any claim for further interest at the contract rate from the date to which interest is already claimed to judgment or sooner payment.

(**a**) S.I. 1978 No. 1050 (N.I. 20)

(**b**) Rule 2A-2C inserted by S.R. 1983 No. 114 with effect from 1.6.83

ORDER 6

Claim for interest under the Bills of Exchange Act 1882

2C. Where a plaintiff claims interest under section 57 of the Bills of Exchange Act 1882, the indorsement on the writ must state the date of dishonour of the bill of exchange, the rate of interest claimed and the amount of interest due at a date not later than the date of issue of the writ and must claim this interest and any further interest until judgment or sooner payment.]

[(**a**) *Claim for statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998*

2D. Where a plaintiff claims statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998(**b**), the endorsement on the writ must give particulars of the contract relied on and, in particular, must show:

(*a*) that it is a claim for statutory interest under the Act;

(*b*) the date from which the interest is payable;

(*c*) the rate of statutory interest applicable to the claim;

(*d*) the amount of interest due at a date not later than the date of the issue of the writ; and

(*e*) any claim for further statutory interest from the date to which interest is already claimed to judgment or sooner payment.]

Indorsement as to capacity

3. Before a writ is issued it must be indorsed—

(*a*) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;

(*b*) where a defendant is sued in a representative capacity, with a statement of the capacity in which he, is sued.

[*E.r.* 3]

Indorsement as to solicitor and address

4.—(1) Before a writ is issued it must be indorsed—

(*a*) where the plaintiff sues by a solicitor, with the plaintiffs address and the solicitor's name or firm add a business address of his within the jurisdiction [(**c**)or another part of the United Kingdom][(**d**)or any other EEA state];

[(**c**) (*aa*) where the plaintiff has nominated a European lawyer to accept service of documents, with the plaintiff's address and the European lawyer's name or firm and a business address within any EEA state;]

(*b*) where the plaintiff sues in person, with the address of his place of residence and, if his place of residence is not within the jurisdiction [(**c**) or another part of the United Kingdom or any other EEA state] or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent.

(2) The address for service of a plaintiff shall be—

(*a*) where he sues by a solicitor [(**c**) or European lawyer nominated to accept service], the business address of the solicitor indorsed on the writ;

(*b*) where he sues in person, the address within the jurisdiction [(**c**) or another part of the United Kingdom or any other EEA state] indorsed on the writ.

(**a**) Rule inserted by S.R. 1999 No. 333 with effect from 6.9.99
(**b**) 1998 c. 20
(**c**) Words inserted by S.R. 2013 No. 202 with effect from 05.09.13
(**d**) Words inserted by S.R. 2010 No. 381 with effect from 20.12.10

(3) Where a solicitor's name is indorsed on a writ, he must, if any defendant who has been served with or who has entered an appearance to the writ requests him in writing so to do, declare in writing whether the writ was issued by him or with his authority or privity.

(4) If a solicitor whose name is indorsed on a writ declares in writing that the writ was not issued by him or with his authority or privity, the Court may on the application of any defendant who has been served with or who has entered an appearance to the writ, stay all proceedings in the action begun by the writ.

[*E.r.* 5]

Concurrent writ

5.—(1) One or more concurrent writs may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.

(2) Without prejudice to the generality of paragraph (1), a writ for service within the jurisdiction may be issued as a concurrent writ with one which, or notice of which, is to be served out of the jurisdiction and a writ which, or notice of which, is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.

(3) A concurrent writ is a true copy of the original with such differences (if any) as are necessary having regard to the purpose for which the writ is issued.

[*E.r.* 6]

Issue of writ

6.—[(**a**)(1) No writ or notice of writ which is to be served out of the jurisdiction shall be issued without the leave of the court unless it complies with the following conditions, that is to say—

(*a*) each claim made by the writ is either—

(i) one which by virtue of the Civil Jurisdiction and Judgments Act 1982 the Court has power to hear and determine, or

(ii) one which by virtue of any other statutory provision the Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction; and

(*b*) where a claim made by the writ is one which the Court has power to hear and determine by virtue of the Civil Jurisdiction and Judgments Act 1982, the writ is indorsed before it is issued with a statement that the Court has power under the Act to hear and determine the claim, and that no proceedings involving the same cause of action are pending between parties in England and Wales, Scotland or another Convention territory.]

(2) A writ by which proceedings assigned to the Chancery Division are begun must be issued out of the Chancery Office.

(3) Subject to paragraph (2) and to Order 76, rule 2, a writ must be issued out of the Central Office.

(4) Issue of a writ takes place upon its being sealed by an officer of the office out of which it is issued.

(5) A concurrent writ must be marked "concurrent" with an official seal and bear the date of issue.

(**a**) Paragraph (1) substituted by S.R. 1984 No. 110 with effect from 1.1.87

(6) No writ shall be sealed unless at the time of the tender thereof for sealing the person tendering it leaves at the office at which it is tendered a copy thereof signed, where the plaintiff sues in person, by him or, where he does not so sue, by or on behalf of his solicitor.

[(**a**)(7) For the purposes of this rule, 'Convention territory' means the territory or territories of any Contracting State, as defined by section 1(3) of that Act, to which [(**b**) the Brussels Conventions or the Lugano Conventions as defined], in section 1(1) of that Act apply.]

[*E.r.* 7]

Duration and renewal of writ

7.—(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 12 months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

(3) Before a writ, the validity of which has been extended under this rule, is served, it must be sealed with a seal showing a period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

[*E.r.* 8]

(**a**) Paragraph (7) added by S.R. 1984 No. 110 with effect from 1.1.87
(**b**) Words substituted by S.R. 1993 No. 143 with effect from 19.4.93

ORDER 7

ORIGINATING SUMMONSES GENERAL PROVISIONS

Application

1. The provisions of this Order apply to all originating summonses subject in the case of originating summonses of any particular class to any special provisions relating to originating summonses of that class made by theses Rules or by or under any statutory provision.

[*E.r.* 1]

Form of summonses, etc.

2.—(1) Every originating summons must be in Form 6, 7, 8 [(**a**), 9 or 9A)] in Appendix A, whichever is appropriate.

(2) The party taking out an originating summons (other than a summons under [(**b**) Part II of] Order 90 [(**c**), Order 93A] or an exparte summons) shall be described as a plaintiff and the other parties shall be described as defendants.

[*E.r.* 2]

Contents of summons

3.—(1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the High Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which a plaintiff claims that relief or remedy.

(2) Order 6, rules 3 and 4, shall apply in relation to an originating summons as they apply in relation to a writ.

[*E.r.* 3]

Concurrent summons

4. Order 6, rule 5, shall apply in relation to an originating summons as it applied in relation to a writ.

[*E.r.* 4]

[(**d**) *Issue of summons*

5.—(1) Except where otherwise expressly provided by these Rules, an originating summons must be issued out of the Central Office or, in the case of an originating summons by which proceedings assigned to the Chancery Division are begun, the Chancery Office [(**e**) or the Bankruptcy and Companies Office where the business has been assigned to that Office.]

(2) Order 6, rule 6, paragraphs (1), (4), (5) and (6) shall apply in relation to an originating summons as it applies in relation to a writ.]

[*E.r.* 5]

Duration and renewal of summons

6. Order 6, rule 7, shall apply in relation to an originating summons as it applied in relation to a writ.

[*E.r.* 6]

Ex parte originating summons

7.—(1) Rules 2(1), 3(1) and 5 shall, so far as applicable, apply to ex parte originating summonses: but, save as forsaid, the foregoing rules of this Order shall not apply to ex parte originating summonses.

(2) Order 6, rule 6(2), (3), (4) and (6) shall, with the necessary modifications, apply in writing to an ex parte originating summons as the apply in relation to a writ.

[*E.r.* 7]

(**a**) Words substituted by S.R. 2009 No. 345 with effect from 09.11.2009
(**b**) Words added by S.R. 1986 No. 203 with effect from 1.8.86
(**c**) Words inserted by S.R. 2009 No. 345 with effect from 09.11.2009
(**d**) New Rule 5 substituted by S.R. 1981 No. 224 with effect from 1.9.81
(**e**) Words added by S.R. 1991 No. 232 with effect from 1.10.91

ORDER 8

ORIGINATING AND OTHER MOTIONS GENERAL PROVISIONS

Application

1. The provisions of this Order apply to all motions subject, in the case of originating motions of any particular class, to any special provisions relating to motions of that class made by these Rules or by or under any statutory provision.

[*E.r.* 1]

Notice of motion

2.—(1) Except where an application by motion may properly be made ex parte, no motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief may make an order ex parte on such terms as to costs or otherwise, and subject to such undertaking, if any, as it thinks just; and any party affected by such order may apply to the Court to set it aside.

(2) Unless the Court gives leave to the contrary, there must be at least 2 clear days between the service of notice of a motion and the day named in the notice for hearing the motion.

[*E.r.* 2]

Form and issue of notice of motion

3.—(1) The notice of an originating motion must be in Form No. 11 in Appendix A and the notice of any other motion in Form No. 27 in that Appendix.

Where leave has been given under rule 2(2) to serve short notice of motion, that fact must be stated in the notice.

(2) The notice of a motion must include a concise statement of the nature of the claim or the relief or remedy required.

(3) Order 6, rule 4, shall, with the necessary modifications, apply in relation to notice of an originating motion as it applies in relation to a writ.

(4) An originating motion, by which proceedings assigned to the Chancery Division are begun, must be issued out of the Chancery Office [(**a**) or the Bankruptcy and Companies Office where the business has been assigned to that Office.]

(5) Subject to paragraph [(**b**) (4)], an originating motion must be issued out of the Central Office.

(6) Issue of every notice of motion takes place upon its being sealed by an officer of the office out of which it is issued.

[*E.r.* 3]

Service of notice of motion with writ, etc.

4. Notice of a motion to be made in an action may be served by the plaintiff on the defendant with the writ of summons or originating summons or any time after service of such writ or summons, whether or not the defendant has entered an appearance in the action.

[*E.r.* 4]

Adjournment of hearing

5. The hearing of any motion may be adjourned from time to time on such terms, if any, as the Court thinks fit.

[*E.r.* 5]

(**a**) Words added by S.R. 1991 No. 231 with effect from 1.9.91
(**b**) Figure substituted by S.R. 1981 No. 224 with effect from 1.9.81

ORDER 9

PETITIONS: GENERAL PROVISIONS

Application

1. Rules 2 and 3 apply to petition by which civil proceedings in the High Court are begun,, subject, in the case of petitions of any particular class, to any special provisions relating to petitions of that class made by these Rules or by or under any statutory provision.

[*E.r.* 1]

Contents of petition

2.—(1) Every petition must include a concise statement of the nature of the claim made and the relief or remedy required in the proceedings begun thereby.

(2) Every petition must include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served, a statement to that effect.

(3) Order 6, rule 4, shall, with the necessary modifications, apply in relation to a petition as it applies in relation to a writ.

[*E.r.* 2]

Presentation of petition

3. Save where otherwise expressly provided by these Rules a petition may be presented by lodging it in the Chancery Office.

[*E.r.* 3]

Time of service of petition

4. Unless the Court otherwise directs, a petition which is required to be served on any person must be served on him not less than 7 days before the day fixed for the hearing of the petition.

[*E.r.* 4]

Certain applications not to be made by petition

5. No application in any cause or matter may be made by petition.

[*E.r.* 5]

SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS

General provisions

1.[(**a**)(1) Subject to the provisions of these Rules or any statutory provision a writ must be served personally on each defendant by the plaintiff or his agent.]

(2) A writ for service on a defendant within the jurisdiction may, instead of being served personally on him, be served—

(a) by sending a copy of the writ by ordinary first-class post to the defendant at his usual or last known address, or

(b) if there is a letter box for that address, by inserting through the letter box a copy of the writ enclosed in a sealed envelope addressed to the defendant.

In sub-paragraph (a) 'first-class post' means first-class post which has been pre-paid or in respect of which prepayment is not required.

(3) Where a writ is served in accordance with paragraph (2)—

(a) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to or, as the case may be, inserted through the letter box for the address in question;

(b) any affidavit proving due service of the writ must Contain a statement to the effect that—

(i) in the opinion of the deponent the copy of the writ, if sent to, or, as the case may be, inserted through the letter box for, the address in question, will have come to the knowledge of the defendant within 7 days thereafter; and

(ii) in the case of service by post, the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.

(4) Where a defendant's solicitor indorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made.

(5) Where a writ is not duly served on a defendant but he enters an unconditional appearance in the action begun by the writ, the writ shall be deemed to have been duly served on him and to have been so served on the date on which he entered the appearance.

(6) This rule shall have effect subject to the provisions of any statutory provision and these rules and in particular to any statutory provision which provides for the manner in which documents may be served on bodies corporate.

[(**b**)(7) Every copy of a writ for service on a defendant shall be sealed with the seal of the office of the Supreme Court out of which the writ was issued].

Service of writ on agent of oversea principal

2.—(1) Where the Court is satisfied on an ex parte application that—

(a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction, and

(b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate, and

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(a) Paragraph (1) substituted by S.R. 1982 No. 217 with effect from 1.9.82
(b) Paragraph (7) inserted by S.R. 1983 No. 5 with effect from 28.2.83

(c) at the time of the application either the agent's authority has not been determined or he is still in business relations with his principal,

the Court may authorise service of a writ beginning an action relating to the contract to be effected on the agent instead of the principal.

(2) An order under this rule authorising service of a writ on a defendant's agent must limit a time within which the defendant must enter an appearance.

(3) Where an order is made under this rule authorising service of a writ on a defendant's agent, a copy of the order and of the writ must be sent by post to the defendant at his address out of the jurisdiction. [*E.r.* 2]

Service of a writ in pursuance of contract

3.—(1) Where—

(*a*) a contract contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the High Court has jurisdiction to hear and determine any such action, and

(*b*) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner, or at such place (whether within or out of the jurisdiction), as may be so specified,

then, if an action in respect of the contract is begun in the High Court and the writ by which it is begun is served in accordance with the contract, the writ shall, subject to paragraph (2), be deemed to have been duly served on the defendant.

(2) A writ which is served out of the jurisdiction in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of paragraph (1) unless leave to serve the writ, or notice thereof, out of the jurisdiction [(**a**) has been granted under Order 11, rule 1(1) or service of the writ or notice thereof is permitted without leave under Order 11, rule 1(2).] [*E.r.* 3]

[(**b**) (3) Where a contract contains an agreement conferring jurisdiction to which Article 17 of Schedule 1 [(**c**), Article 17 of Schedule 3C], or Article 17 of Schedule 4 to the Civil Jurisdiction and Judgments Act 1982 applies and the writ or notice thereof is served under Order 11, rule 1(2) the writ or notice thereof shall be deemed to have been duly served on the defendant.]

Service of writ in actions for possession of land

4.—(1) Where a writ is indorsed with a claim for the possession of land, service of the writ may be effected either [(**d**) in accordance with the foregoing provisions] or by delivering a copy of such writ at the defendant's residence or place of business to the wife or husband [(**e**) or civil partner] of the defendant, or to some relative of the defendant or to an employee of the defendant (the person with whom such copy shall be left being apparently over the age of 16 years), and such service as last aforesaid may be effected whether the defendant is in Northern Ireland or not.

(2) Where a writ is indorsed with a claim for the possesion of land, the Court may—

(a) if satisfied on an ex parte application that no person appears to be in possession of the land and that service cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the writ to some conspicuous part of the land:

(**a**) Words substituted by S.R. 1984 No. 110 with effect from 1.1.87
(**b**) Paragraph (3) added by S.R. 1984 No. 110 with effect from 1.1.87
(**c**) Words inserted by S.R, 1993 No. 143 with effect from 19.4.93
(**d**) Words substituted by S.R. 1982 No. 217 with effect from 1.9.82
(e) Words inserted by S.R. 2007 No. 189 with effect from 16.04.07

(*b*) if satisfied on such an application that no person appears to be in possession of the land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ to some conspicuous part of the land shall be treated as good service on that defendant.

[*E.r.* 4]

Service of originating summons, petition and notice of motion

5. The foregoing rules of this Order shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ, and rule 1(1), (2), (3) and (4) shall, with any necessary modifications, apply in relation to an originating summons to which no appearance need be entered, a notice of an originating motion and a petition as they apply in relation to a writ.

[*E.r.* 5]

ORDER 11

SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

[(a) *Principal cases in which service of writ out of jurisdiction is permissible*

1.—(1) Provided that the writ does not contain any claim mentioned in Order 75 rule 2(1) and is not a writ to which paragraph (2) of this rule applies, service of a writ or notice of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ—

(a) relief is sought against a person domiciled within the jurisdiction;

(b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);

(c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;

(d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which—

(i) was made within the jurisdiction, or

(ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or

(iii) is by its terms, or by implication, governed by Northern Ireland law, or

(iv) contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of the contract;

(e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;

(f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction;

(g) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;

(h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction;

(i) the claim is made for a debt secured on immovable property, or is made to assert, declare or determine proprietary or possessory right or rights of security in or over moveable property, or to obtain authority to dispose of moveable property, situate within the jurisdiction;

(j) the claim is brought to execute the trusts of a written instrument being trusts that ought to be executed to the law of Northern Ireland and of which the person to be served with the writ is a trustee, or for any relief or remedy which might be obtained in any such action;

(a) Rule 1 substituted by S.R. 1984 No. 110 with effect from 1.1.87

(k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;

(l) the claim is brought in a probate action within the meaning of Order 76;

(m) the claim is brought to enforce any judgment or arbitral award;

(n) the claim is brought against a defendant not domiciled in England and Wales or Scotland in respect of a claim by the [Commissioners for Her Majesty's Revenue and Customs] for or in relation to any of the duties or taxes which have been, or are for the time being placed under their care and management;

(o) the claim is brought under the Nuclear Installations Act 1965(**a**) or in respect of contributions under the Social Security (Northern Ireland) Act 1975(**b**);

(p) the claim is made for a sum to which the Directive of the Council of the European Communities dated 15th March 1976 No. 76/308/EEC applies, and service is to be effected in a country which is a member State of the European Economic Community;

[(**c**)(q) the claim is made under the Financial Services Act 1986(**d**) or the Banking Act 1987(**e**);

(r) the claim is brought for money had and received or for an account or other relief against the defendant as constructive trustee, and the defendant's alleged liability arises out of acts committed, whether by him or otherwise, within the jurisdiction].

(2) [(**f**) Subject to paragraph (2A),] service of a writ or notice of a writ out of the jurisdiction is permissible without the leave of the Court provided that each claim made by the writ is either:-

(a) a claim which by virtue of the Civil Jurisdiction and Judgments Act 1982(g) the Court has power to hear and determine, made in proceedings to which the following conditions apply—

(i) no proceedings between the parties concerning the same cause of action are pending in the courts of any other part of the United Kingdom or of any other Convention territory, and

(ii) either—

the defendant is domiciled in any part of the United Kingdom or in any other Convention territory, or

the proceedings begun by the writ are proceedings to which Article 16 of Schedule 1[(**h**), Article 16 of Schedule 3C] or Article 16 of Schedule 4 refers, or

the defendant is a party to an agreement conferring jurisdiction to which Article 17 of Schedule 1[(**h**), Article 17 of Schedule 3C] or Article 17 of Schedule 4 to that Act applies.

(**a**) 1965 c. 57
(**b**) 1975 c. 15
(**c**) Sub-paragraphs (q) and (r) added by S.R. 1992 No. 399 with effect from 1.11.92
(**d**) 1986 c. 60
(**e**) 1987 c. 22
(**f**) Words inserted by S.R. 2015 No. 235 with effect from 19.5.15
(g) 1982c. 27
(**h**) Words inserted by S.R. 1993 No. 143 with effect from 19.4.93

[(**a**)(aa) a claim which by virtue of the Judgments Regulation, the Court has power to hear and determine, made in proceedings in which the following conditions apply—

(i) no proceedings between the parties concerning the same cause of action are pending in the courts of any other part of the United Kingdom or of any other Member State; and

(ii) either—

the defendant is domiciled in any part of the United Kingdom or in any Member State;

the defendant is not a consumer but is a party to a consumer contract within article 17 of the Judgments Regulation;

the defendant is an employer and a party to a contract of employment within article 20 of the Judgments Regulation;

the proceedings are within article 24 of the Judgments Regulation; or

the defendant is a party to an agreement conferring jurisdiction, within article 25 of the Judgments Regulation;]

or;

(b) a claim which by virtue of any other enactment the High Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.

[(**b**) (2A) Paragraph 2(aa)(i) does not apply if the jurisdiction conferred by the agreement conferring jurisdiction within article 25 of the Judgments Regulation referred to in paragraph (2)(aa) is exclusive.];

[(**c**) (3) Where a writ or notice of a writ is to be served out of the jurisdiction under paragraph (2) the time to be inserted therein within which the defendant must enter an appearance shall be—

(a) 21 days where the service is to be effected out of the jurisdiction—

(i) under paragraph (2)(a) in England and Wales, Scotland or in the European territory of another Contracting State; or

(ii) under paragraph (2)(aa) in the European territory of another Member State;

(b) 31 days where the service is to be effected—

(i) under paragraph (2)(a) in any other territory of a Contracting State; or

(ii) under paragraph 2(aa) in any other territory of a Member State; or

(c) limited in accordance with the practice adopted under rule 4(4) where the service is to be effected under paragraph (2)(a) or 2(aa) in a country not referred to in sub-paragraphs (a) or (b) or under paragraph (2)(b).

(4) For the purposes of this rule and rule 9 of this Order—

(a) "Convention territory" means the territory or territories of any Contracting State as defined by section 1(3) of the Civil Jurisdiction and Judgments Act 1982, to which the Brussels Conventions or the Lugano Convention as defined in section 1(1) of that Act apply;

(**a**) Sub-paragraph inserted by S.R. 2015 No. 235 with effect from 19.5.15
(**b**) Paragraph inserted by S.R. 2015 No. 235 with effect from 19.5.15
(**c**) Paragraphs 3 and 4 substituted by S.R. 2015 No. 235 with effect from 19.5.15

(b) "the Judgments Regulation" means Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), as amended from time to time and as applied pursuant to the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; and

(c) domicile is to be determined—

(i) in relation to a Convention territory, in accordance with sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982; and

(ii) in relation to a Member State, in accordance with the Judgments Regulation and paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001.]

[(a)...]

[*E.r.* 2]

[(b) *Service of notice of writ*

3.—(1) Unless service of the writ is to be effected in England and Wales, Scotland, the Isle of Man or the Channel Islands, notice of the writ and not the writ must be served.]

(2) Notice of a writ for service out of the jurisdiction must be in Form No. 5 in Appendix A.

[*E.r.* 3]

Application for, and grant of, leave to serve writ out of jurisdiction

4.—[(c)(1) An application for the grant of leave under rule 1(1) must be supported by an affidavit stating—

(*a*) the grounds on which the application is made,

(*b*) that in the deponent's belief the plaintiff has a good cause of action,

(*c*) in what place or country the defendant is or probably may be found, and

(*d*) where the application is made under rule 1(1)(c), the grounds for the deponent's belief that there is between the plaintiff and the person on whom a writ or notice of a writ has been served a real issue which the plaintiff may reasonably ask the Court to try.]

(2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

(3) Where the application is for the grant of leave under rule 1 to serve a writ in England and Wales or Scotland, if it appears to the Court that there may be a concurrent remedy there, the Court, in deciding whether to grant leave, shall have regard to the comparative cost and convenience of proceeding there or in Northern Ireland, and (where that is relevant) to the powers and jurisdiction of the county courts in England and Wales or of the sheriff's or small debts courts in Scotland.

(4) An order granting under rule 1 [(d)...] leave to serve a writ, or notice of a writ, out of the jurisdiction must limit a time within which the defendant to be served must enter an appearance.

[*E.r.* 4]

Service of writ or notice of writ abroad: general

5.—(1) Subject to the following provisions of this rule, Order 10 rule 1(1), (4) and (5) and Order 65 rule 4, shall apply in relation to the service of a writ, or notice of a writ, notwithstanding that the writ or notice is to be served out of the jurisdiction.

(a) Rule 2 deleted by S.R. 1984 No. 110 with effect from 1.1.87
(b) Heading and paragraph substituted by S.R. 1984 No. 110 with effect from 1.1.87
(c) Paragraph (1) substituted by S.R. 1984 No. 110 with effect from 1.1.87
(d) Words deleted by S.R. 1984 No. 110 with effect from 1.1.87

(2) Nothing in this rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.

(3) A writ, or notice of a writ, which is to be served out of the jurisdiction—

(a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected; and

(b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 6 or rule 7.

(4) An official certificate stating that a notice of a writ as regards which rule 6 has been complied with, has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate—

(a) by a British consular authority in that country, or

(b) by the government or judicial authorities of that country, or

(c) by any other authority designated in respect of that country under the Hague Convention,

shall be evidence of the facts so stated.

(5) An official certificate by the Secretary of State stating that notice of a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact.

(6) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.

(7) In this rule and rule 6 "the Hague Convention" means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at The Hague on 15th November 1965.

[E.r. 5]

Service of notice of writ abroad through foreign governments, judicial authorities and British consuls

6.—(1) This rule does not apply to service in—

(a) England and Wales, Scotland, the Isle of Man or the Channel Islands;

(b) any independent Commonwealth country;

(c) any colony or protectorate;

(d) the Republic of Ireland.

(2) Where in accordance with these Rules notice of a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the High Court, the notice may be served—

(a) through the judicial authorities of that country; or

(b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).

(3) Where in accordance with these Rules, notice of a writ is to be served on a defendant in any country which is a party to the Hague Convention, the notice may be served—

(a) through the authority designated under the Convention in respect of that country; or

(*b*) if the law of that country permits—

(i) through the judicial authorities of that country, or

(ii) through a British consular authority in that county.

(4) Where in accordance with these Rules notice of a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country or process of the High Court, the notice may be served—

(*a*) through the government of that country, where that government is willing to effect service; or

(*b*) through a British consular authority in that country, except where service through such an authority is contrary to the law of that country.

(5) A person who wishes to serve notice of a writ by a method specified in paragraph (2), (3) or (4) must lodge in the Central Office a request for service of notice of the writ by that method, together with a copy of the notice and an additional copy thereof for each person to be served.

(6) Every copy of a notice lodged under paragraph (5) must be accompanied by a translation of the notice in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected.

Provided that this paragraph shall not apply in relation to a copy of a notice which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a British consular authority on a British subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

(7) Every translation under paragraph (6) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(8) Documents duly lodged under paragraph (5) shall be sent by the Master (Queen's Bench and Appeals) to the Parliamentary Under-Secretary of State to the Foreign Office with a request that he arrange for notice of the writ to be served by the method indicated in the request lodged under paragraph (5), or, where alternative methods are so indicated, by such one of those methods as is most convenient.

[*E.r.* 6]

[(**a**) *Service of process on a foreign State*

7.—(1) Subject to paragraph (4), where a person to whom leave has been granted under rule 1 to serve notice of a writ on a State, as defined in section 14 of the State Immunity Act 1978(**b**), wishes to have the notice served on that State, he must lodge in the Central Office—

(*a*) a request for service by the Secretary of State; and

(*b*) a copy of the notice of the writ; and

(*c*) except where the official language of the State is, or the official languages of the State include, English, a translation of the notice of the writ in the official language or one of the official languages of that State.

(**a**) New rule 7 substituted by S.R. 1982 No. 217 with effect from 1.9.82
(**b**) 1978 c. 33

(2) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) of this rule as it applies in relation to a translation lodged under paragraph (5) of that rule.

(3) Documents duly lodged under this rule shall be sent by the Master (Queen's Bench and Appeals) to the Secretary of State with a request that the Secretary of State should arrange for the notice of the writ to be served.

(4) Where section 12(6) of the State Immunity Act 1978 applies and the State has agreed a method of service other than that provided by the preceding paragraphs, the writ or notice of the writ may be served either by the method agreed or in accordance with the preceding paragraphs of this rule.]

[*E.r.* 7]

Undertaking to pay expenses of service by Secretary of State

8. Every request lodged under rule 6(5) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Secretary of State in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Finance Officer of the office of the Secretary of State and to produce a receipt for the payment to the proper officer of the High Court.

[*E.r.* 8]

Service of originating summons, petition, notice of motion, etc.

9. [(**a**) (1) [(**b**) . . .] Rule 1 of this Order shall apply to the service out of the jurisdiction of an originating summons, notice of motion or petition as it applies to service of a writ]

[(**c**) . . .]

[(**c**) . . .]

(4) [(**b**) . . .] Service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court [(**c**), but leave shall not be required for such service in any proceedings in which the writ, originating summons, motion or petition may by these rules or under any statutory provision be served out of the jurisdiction as without leave.]

(5) Rule 4(1), (2) and (3) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 [(**d**) . . .]

(6) An order granting under this rule leave to serve out of the jurisdiction an originating summons to which an appearance is required to be entered must limit a time within which the defendant to be served with the summons must enter an appearance.

(7) Rules 5, 6 and 8 shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this rule as they apply in relation to notice of a writ.

[*E.r.* 9]

(**a**) New paragraph (1) substituted by S.R. 1984 No. 110 with effect from 1.1.87
(**b**) Words deleted by S.R. 1997 No. 70 with effect from 17.3.97
(**c**) Paragraphs (2) and (3) deleted by S.R. 1984 No. 110 with effect from 1.1.87
(**d**) Words deleted by S.R. 1984 No. 110 with effect from 1.1.87

ORDER 12

ENTRY OF APPEARANCE TO WRIT OR ORIGINATING SUMMONS

Mode of entering appearance

1.—(1) Subject to paragraph (2) and to Order 80 rule 2 a defendant to an action begun by writ may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) enter an appearance in the action and defend it by a solicitor or in person.

[(**a**) (2) A defendant to such an action who is a body corporate may only enter an appearance in the action or defend it by—

(*a*) a solicitor; or

(*b*) an employee if—

(i) the employee has been authorised by the body corporate to enter an appearance in the action or defend it on its behalf; and

(ii) the Court grants leave for the employee to do so.]

(3) An appearance is entered by properly completing the requisite documents, that is to say, a memorandum of appearance, as defined by rule 3, [(**b**) and] two copies thereof, and handing them in at, or sending them by post to, the appropriate office.

(4) If two of more defendants to an action enter an appearance by the same solicitor and at the same time. Only one set of the requisite documents need be completed and delivered for those defendants.

[*E.r.* 1]

Place for entering appearance

2. An appearance must be entered in the appropriate office.

[*E.r.* 2]

Memorandum of appearance

3.—(1) A memorandum of appearance is a request to the appropriate office to enter an appearance for the defendant or defendants specified in the memorandum.

(2) A memorandum of appearance must be in Form No. 12 in Appendix A and the memorandum of appearance and copies thereof required for entering an appearance must be signed by the solicitor by whom the defendant appears or, if the defendant appears in person, by the defendant.

[(**c**) (3) A memorandum of appearance must specify—

(*a*) in the case of a defendant appearing in person, the address of his place of residence and, if his place of residence is not within the jurisdiction [(**d**) or another part of the United Kingdom or any other EEA state] or if he has no [(**d**) such] place of residence, the address of a place [(**e**)...] at or to which documents for him may be delivered or sent;

(*b*) in the case of a body corporate appearing by an employee, the registered or principal office of the body corporate within the jurisdiction [(**d**) or another part of the United Kingdom or any other EEA state] or if it has no [(**d**) such] registered or principal office [(**e**)...], the address of a place within the jurisdiction at or to which documents may be delivered or sent;

(*c*) in the case of a defendant appearing by a solicitor, a business address of his solicitor's within the jurisdiction [(**d**) or another part of the United Kingdom] [(**f**) or any other EEA state] [(**d**) or where the defendant has nominated a European lawyer to accept service of documents, the European lawyer's business address in any EEA state],

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(a) Paragraph substituted by S.R. 2008 No. 22 with effect from 25.02.08
(b) Word inserted by S.R. 1981 No. 224 with effect from 1.9.81
(c) Paragraph substituted by S.R. 2008 No. 22 with effect from 25.02.08
(d) Words inserted by S.R. 2013 No. 202 with effect from 05.09.13
(e) Words omitted by S.R. 2013 No. 202 with effect from 05.09.13
(f) Words inserted by S.R. 2010 No. 381 with effect from 20.12.10

and where the defendant enters an appearance in person or by an employee the address [(**a**)...] specified under sub-paragraph (a) or (b) shall be the address for service, but otherwise the business address of the defendant's solicitor [(**b**) or nominated European lawyer] shall be the address for service.

(4) If the Court is satisfied on application by the plaintiff that any address specified in the memorandum of appearance is not genuine, the Court may set aside the appearance.

[*E.r.* 3]

Procedure on receipt of requisite documents

4.—(1) On receiving the requisite documents an officer of the appropriate office must in all cases affix to the memorandum of appearance, and 2 copies thereof, an official stamp showing the date on which he received those documents enter the appearance in the cause book, file the original memorandum and—

(*a*) if the requisite documents were handed in at the office, hand back 2 copies of the memorandum, and

(*b*) if they were sent by post, send 1 copy by post to the plaintiff, or as the case may be, his solicitor at the plaintiff s address for service and also send by post to the defendant or, as the case may be, his solicitor at the defendant's address for service the other copy of the memorandum.

(2) Where the defendant enters an appearance by handing in the requisite documents at the office, he must on the date on which he enters the appearance send by post to the plaintiff, if the plaintiff sues in person, but otherwise to the plaintiff's solicitor, at the plaintiffs address for service, one of the copies of the memorandum of appearance, handed back to him under paragraph (1).

[*E.r.* 4]

Time limited for appearing

5. Reference in these Rules to the time limited for appearing are, references—

(*a*) in the case of a writ served within the jurisdiction, to 14 days after service of the writ (including the day of service) or, where that time has been extended by or by virtue of these Rules, to that time as so extended; and

(*b*) in the case of a writ, or notice of a writ, served out of the jurisdiction, to the time limited under Order 10 rule 2(2), Order 11 rule 1(3), or Order 11 rule 4(4), or, where that time has been extended as, aforesaid, to that time as so extended.

[*E.r.* 5]

Late appearance

6.—(1) A defendant may not enter an appearance in an action after judgment has been entered therein except with the leave of the Court.

(2) Except as provided by paragraph (1), nothing in these Rules or any writ or order thereunder shall be construed as precluding a defendants from entering an appearance in an action after the time limited for appearing, but if a defendant enters an appearance after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other thing later than if he had appeared within that time.

[*E.r.* 6]

Conditional appearance

7.—(1) A defendant to an action may with the leave of the Court enter a conditional appearance in the action.

(2) A conditional appearance, except by a person sued as a partner of a firm in the name of that firm and served as a partner, is to be treated for all purposes as an unconditional appearance unless the Court otherwise orders or the defendant applies to the Court, within the time limited for the purpose, for an order under rule 8, and the Court makes an order thereunder.

[*E.r.* 7]

(a) Words omitted by S.R. 2013 No. 202 with effect from 05.09.13

(b) Words inserted by S.R. 2013 No. 202 with effect from 05.09.13

Application to set aside writ, etc.

8. A defendant to an action may at any time before entering an appearance therein, or, if he has entered a conditional appearance, [(**a**) within the time limited for service of a defence], apply by summons or motion for an order setting aside the writ or service of the writ, or notice of the writ, on him, or declaring that the writ or notice has not been duly served on him or discharging any order giving leave to serve th ewrit or notice on him out of the jurisdiction.

[*E.r.* 8]

[(**b**) *Application by defendant where writ not served*

8A.—(1) Any person named as defendant in a writ which has not been served on him may serve on the plaintiff a notice requiring him within a specified period not less than 14 days after service of the notice either to serve the writ on the defendant or to discontinue the action as against him.

(2) Where the plaintiff fails to comply with a notice under paragraph (1) within the time specified, the Court may, on the application of the defendant by summons, order the action to be dismissed or make such other order as it thinks fit.

(3) A summons under paragraph (2) shall be supported by an affidavit verifying the facts on which the application is based and stating that the defendant intends to contest the proceedings and a copy of the affidavit must be served with the summons.

(4) Where the plaintiff serves the writ in compliance with a notice under paragraph (1) or with an order under paragraph (2) the defendant must enter an appearance within the time limited for so doing.].

Appearance to originating summons

9.—(1) Subject to paragraph (2), an appearance must be entered to every originating summons (other than an ex parte originating summons) by each defendant named in and served with the summons.

(2) No appearance need be entered to an originating summons in any case or class of case in relation to which special provision to that effect is made by these Rules or by or under any statutory provision.

(3) Subject to the foregoing provisions of this rule, the foregoing rules of this Order shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ except that for the reference in rule 5(*b*) to Order 11, rules 1(3) and 4(4), there shall be substituted a reference to Order 11, rule 9(6).

[*E.r.* 9]

(**a**) Words substituted by S.R. 1984 No. 110 with effect from 1.5.84
(**b**) New rule 8A inserted by S.R. 1992 No. 399 with effect from 1.11.92

ORDER 13

DEFAULT OF APPEARANCE TO WRIT

Claim for liquidated demand

1.—(1) Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest [(a) under section 33A of the Act at a rate which is not higher than that payable on judgment debts at the date of issue of the writ. A claim for interest at a higher rate shall be treated as a claim for interest to be assessed].

(3) Before final judgment is entered under this rule an affidavit must be filed specifying the amount then actually due to the plaintiff.

[*E.r* 1]

Claim for unliquidated damages

2. Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if the defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceeed with the action against the other defendants, if any.

[*E.r.* 2]

Claim for detention of goods

3.—(1) Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing and subject to Order 42, rule 6—

(*a*) at his option enter either—

(i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs, or

(ii) interlocutory judgment for the value of the goods to be assessed and costs, or

(*b*) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value,

and in any case proceed with the action against the other defendants, if any.

(2) A summons under paragraph (1)(*b*) must be supported by affidavit and notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

[*E.r.* 3]

Claim for possession of land

4.—(1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, subject to paragraphs (2), (3) and (4), if that defendant fails to enter an appearance the plaintiff may, after the time limited for appearing, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 88, rule 1, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any.

(a) Words substituted by S.R. 1983 No. 114 with effect from 1.6.83

(2) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the claim does not relate to a dwelling-house.

(3) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the land does not comprise or include a holding agricultural or pastoral or partly agricultural and partly pastoral.

(4) The plaintiff shall not be entitled to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he files an affidavit made by the landlord, his agent, receiver or clerk, stating that there was at the date of issue of the writ at least one year's rent due over and above all just and fair allowances.

(5) An application for leave to enter judgment under paragraph (2) or (3) shall be by summons stating the grounds of the application, and the summons must, unless the Court otherwise orders and notwithstanding anything in Order 65, rule 9, be served on the defendant against whom it is sought to enter judgment.

(6) If the Court refuses leave to enter judgment, it may make or give any such order or directions as it might have made or given had the application been an application for judgment under Order 14, rule 1.

(7) Where there is more than one defendant, any judgment entered under this rule shall contain a stay of enforcement against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

(8) Where the plaintiff is a superior landlord and he applies under paragraph (3) for leave to enter judgment against a defendant who is an immediate landlord the Court may, having regard to the provisions of section 12 of the Land Law (Ireland) Act 1896(**a**):—

(*a*) give such directions as to notice to tenants and otherwise and grant leave subject to such limitations as to enforcement of the judgment and such provisions as to costs as it thinks just;

(*b*) on proof by affidavit that the non-payment of rent by the defendant is due to the non-payment of rent by the tenant of the holding, issue a certificate to that effect.

[*E.r.* 4]

Mixed claims

5. Where a writ issued against any defendant is indorsed with two or more of the claims mentioned in the foregoing rules, and no other claim, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim indorsed on the writ, and proceed with the action against the other defendants, if any.

[*E.r.* 5]

(**a**) 1896 c. 47

Other claims

6.—(1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4, then, if any defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing and upon filing an affidavit proving due service of the writ on that defendant and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had entered an appearance.

(2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter judgment with the leave of the Court against that defendant for costs.

(3) An application for leave to enter judgment under paragraph (2) shall be by summons which must, unless the Court otherwise orders, and notwithstanding anything in Order 65 rule 9 be served on the defendant against whom it is sought to enter judgment.

[*E.r.* 6]

Proof of service of writ

7.—(1) Judgment shall not be entered against a defendant under this Order unless—

(*a*) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ or notice of the writ on the defendant; or

(*b*) the plaintiff produces the writ indorsed by the defendant's solicitor with a statement that he accepts service of the writ on the defendant's behalf.

(2) Where in an action begun by a writ, an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

(3) Where, after judgment has been entered under this Order against a defendant purporting to have been served by post under Order 10 rule 1(2)(a), the copy of the writ sent to the defendant is returned to the plaintiff through the post undelivered to the addressee, the plaintiff shall, before taking any step or further step in the action or the enforcement of the judgment, either—

(*a*) make a request for the judgment to be set aside on the ground that the writ has not been duly served, or

(*b*) apply to the Court for directions.

(4) A request under paragraph (3)(**a**) shall be made by producing to an officer of the office in which the judgment was entered, and leaving with him for filing, an affidavit stating the relevant facts, and thereupon the judgment shall be set aside and the entry of the judgment and of any proceedings for its enforcement made in the record kept in the office for that purpose shall be marked accordingly.

(5) An application under paragraph (3)(b) shall be made ex parte by affidavit stating the facts on which the application is founded and any order or direction sought, and on the application the Court may—

(*a*) set aside the judgement; or

(*b*) direct that, notwithstanding the return of the copy of the writ, it shall be treated as having been duly served, or

(*c*) make such other order and give such other direction as the circumstances may require.

[*E.r.* 7]

(**a**) Words substituted by S.R. 1995 No. 462 with effect from 9.1.96

[*Supplt. No. 22 (April 1993)*]

ORDER 13

[(a) *Judgment against a State*

7A.—(1) Where the defendant is a State, as defined in section 14 of the State Immunity Act 1978 ("the Act"), the plaintiff shall not be entitled to enter judgment under this Order except with the leave of the Court.

(2) An application for leave to enter judgment shall be supported by an affidavit—

(*a*) stating the grounds of the application,

(*b*) verifying the facts relied on as excepting the State from the immunity conferred by section 1 of the Act, and

(*c*) verifying that the writ has been served by being transmitted through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of the State, or in such other manner as may have been agreed to by the State, and that the time for entering an appearance, as extended by section 12(2) of the Act (by two months) where applicable, has expired.

(3) The application may be made ex parte but the Court hearing the application may direct a summons to be issued and served on that State, for which purpose such a direction shall include leave to serve the summons and a copy of the affidavit out of the jurisdiction.

(4) Unless the Court otherwise directs, an affidavit for the purpose of this rule may contain statements of information or belief with the sources and grounds thereof, and the grant of leave to enter judgment under this Order shall include leave to serve out of the jurisdiction—

(*a*) a copy of the judgment, and

(*b*) a copy of the affidavit, where not already served.

(5) The procedure for effecting service out of the jurisdiction pursuant to leave granted in accordance with the rule shall be the same as for the service of the notice of the writ under Order 11 rule 7(1), except where section 12(6) of the Act applies and an alternative method of service has been agreed.]

[*E.r.* 7A]

[(b) *Judgments under the Civil Jurisdiction and Judgments Act 1982*

7B.—(1) Where a writ or notice of a writ has been served out of the jurisdiction under Order 11 rule 1(2)(a) or has been served within the jurisdiction on a defendant domiciled in England and Wales or Scotland or in any other Convention territory the plaintiff shall not be entitled to enter judgment under this Order except with the leave of the Court.

(2) An application for leave to enter judgment may be made ex parte and shall be supported by an affidavit stating that in the deponent's belief—

(*a*) each claim made by the writ is one which by virtue of the Civil Jurisdiction and Judgments Act 1982 the Court has power to hear and determine,

(*b*) no other court has exclusive jurisdiction within the meaning of Schedule 1 or Schedule 3C or under Schedule 4 to that Act to hear and determine such claim, and

(*c*) where the writ or notice thereof is served out of the jurisdiction under Order 11 rule 1(2)(a), such service satisfied the requirements of Schedule 1 [(c) Article 20 of Schedule 3C] or, as the case may require, of Article 20 of Schedule 4 to that Act,

and giving in each case the sources and grounds of such belief.

(a) Rule 7A inserted by S.R. 1982 No. 217 with effect from 1.9.82
(b) Rule 7B inserted by S.R. 1984 No. 110 with effect from 1.1.87
(c) Words inserted by S.R. 1993 No. 143 with effect from 19.4.93

(3) For the purposes of this rule, domicile is to be determined in accordance with the provisions of sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982 and "Convention territory" means the territory or territories of any Contracting State, as defined by section 1(3) of that Act, to which [(**a**) the Brussels Convention or the Lugano Convention] as defined by section 1(1) of that Act apply.]

[(**b**) *Judgment where application under section 6 of the Justice and Security Act 2013 pending*

7C. Judgment shall not be entered against a defendant under this Order if notice has been given under Order 126 of a person's intention to make an application for a declaration under section 6 of the Justice and Security Act 2013 in relation to the proceedings, and that application has not been disposed of.]

Setting aside judgments

8. Without prejudice to rule 7(3) and (4), the Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

[*E.r.* 9]

(**a**) Words substituted by S.R. 1993 No. 143 with effect from 19.4.93
(**b**) Rule 7C inserted by S.R. 2013 No. 175 with effect from 27.06.13

ORDER 14

SUMMARY JUDGMENT

Application by plaintiff for summary judgment

1.—(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

(2) Subject to paragraph (3), this rule applies to every action begun by writ in the Queen's Bench Division or the Chancery Division other than—

(*a*) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment;

[(**a**) . . .]

(*c*) an Admiralty action in rem.

(3) This Order shall not apply to an action to which Order 86 applies.

[*E.r.* 1]

Manner in which application under rule 1 must be made

2.—(1) An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the claim, or the part of a claim, to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, or no defence except as to the amount of any damages claimed.

(2) Where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent the affidavit filed under paragraph (1) must state whether or not the land comprises or includes a holding agricultural or pastoral or partly agricultural and partly pastoral.

[(**b**) . . .]

[(**c**)](3) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.

[*E.r.* 2]

Judgment for plaintiff

3.—(1) Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against that defendant on the claim or part as may be just having regard to the nature of the remedy or relief claimed.

(2) The Court may by order, and subject to such conditions, if any, as may be just, stay enforcement of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

(**a**) Rule 1(2)(*b*) revoked by S.R. 1999 No. 333 with effect from 6.9.99
(**b**) Words deleted by S.R. 2001 No. 254 with effect from 5.9.01
(**c**) Figure renumbered by S.R. 2001 No. 254 with effect from 5.9.01

(3) Where the plaintiff is a superior landlord and he applies under rule 1 for judgment for possession of land for non-payment of the rent of land which comprises or includes a holding agricultural or pastoral or partly agricultural and partly pastoral, the Court may, having regard to the provisions of section 12 of the Land Law (Ireland) Act 1896(**a**),—

(*a*) give such directions as to notice to tenants and otherwise and give judgment subject to such limitations as to enforcement of the judgment and such provisions as to costs as it thinks just;

(*b*) on proof by affidavit that the non-payment of rent by the defendant is due to the non-payment of rent by the tenant of the holding, issue a certificate to that effect.

[*E.r.* 3]

Leave to defend

4.—(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

[(**b**) . . .]

[(**c**)](2) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial (in cases which under the Act may be tried without a jury) or otherwise as it thinks fit.

(3) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity—

(*a*) to produce any document;

(*b*) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

[*E.r.* 4]

Application for summary judgment on counterclaim

5.—(1) Where a defendant to an action in the Queen's Bench Division or Chancery Division begun by writ has served a counterclaim on the plaintiff then, subject to paragraph (3), the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such a claim, apply to the Court for judgment against the plaintiff on that claim or part.

(2) Rules 2, 3 and 4 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1 but with the following modifications, that is to say—

(*a*) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;

(*b*) the words in rule 3(2) "any counterclaim made or raised by the defendant in" shall be omitted; and

(*c*) the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

(3) This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 1(2).

[*E.r.* 5]

(**a**) 1986 c. 47
(**b**) Words deleted by S.R. 2001 No. 254 with effect from 5.9.01
(**c**) Figures renumbered by S.R. 2001 No. 254 with effect from 5.9.01

Directions

6.—(1) Where the Court—

(a) orders that a defendant or a plaintiff have leave (whether conditional or unconditional) to defend an action or counterclaim, as the case may be, with respect to a claim or a part of a claim, or

(b) gives judgment for a plaintiff or a defendant on a claim or part of a claim but also orders that enforcement of the judgment be stayed pending the trial of a counterclaim or of the action, as the case may be, the Court shall give directions as to the further conduct of the action.

(2) In particular, and if the parties consent, the Court may direct that the claim in question and any other claim in the action be tried by a master under the provisions of these Rules relating to the trial of causes or matters or questions or issues by masters.

[*E.r.* 6]

Costs

7.—(1) If the plaintiff makes an application under rule 1 where the case is not within this Order or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62, and in particular to [rule 8(2) and (3)] thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid by him forthwith.

(2) The Court shall have the same power to dismiss an application under rule 5 as it has under paragraph (1) to dismiss an application under rule 1, and that paragraph shall apply accordingly with the necessary modifications.

[*E.r.* 7]

Right to proceed with residue of action or counterclaim

8.—(1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

(2) Where on an application under rule 5 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

[*E.r.* 8]

Judgment for delivery up of chattel

9. Where the claim to which an application under rule 1 or rule 5 relates is for the delivery up of a specific chattel and the Court gives judgment under this Order for the applicant, it shall have the same power to order the party against whom judgment is given to deliver up the chattel without giving him an option to retain it on paying the assessed value thereof as if the judgment had been given after trial.

[E.r. 9]

[*Supplt. No. 50 (June 2013)*]

ORDER 14

[(a) *Judgment where application under section 6 of the Justice and Security Act 2013 pending*

10. No party in an action to which this Order applies may obtain summary judgment if notice has been given under Order 126 of a person's intention to make an application for a declaration under section 6 of the Justice and Security Act 2013 in relation to the proceedings, and that application has not been disposed of.]

[*E.r.* 12]

Relief against forfeiture

11. A tenant shall have the same right to apply for relief after judgment for possession of land on the ground of forfeiture for non-payment of rent has been given under this Order as if the judgment had been given after trial.

[*E.r.* 10]

Setting aside judgment

12. Any judgment given against a party who does not appear at the hearing of an application under rule 1 or rule 5 may be set aside or varied by the Court on such terms as it thinks just.

[*E.r.* 11]

(a) Rule 10 inserted by S.R. 2013 No. 175 with effect from 27.06.13

ORDER 15

CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES

Joinder of causes of action

1.—(1) Subject to rule 5(1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action—

(*a*) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action, or

(*b*) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others, or

(*c*) with the leave of the Court.

(2) An application for leave under this rule must be made ex parte by affidavit before the issue of the writ or originating summons, as the case may be, and the afidavit must state the grounds of the application.

[*E.r.* 1]

Counterclaim against plaintiff

2.—(1) Subject to rule 5(2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.

(2) Rule 1 shall apply in relation to a counterclaim as if the counterclaim were a separate action and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

(3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed.

(4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that this provision shall not be taken as affecting the Court's discretion with respect to costs.

[*E.r.*2]

Counterclaim against additional parties

3.—(1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the action, then, subject to rule 5(2), he may join that other person as a party against whom the counterclaim is made.

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim [(**a**) and in the case of a person who is not already a party to the action the defendant must issue the counterclaim out of the appropriate office and serve on the person concerned a sealed copy of the counterclaim, and a copy of the writ or originating summons by which the action was begun and of all other pleadings served in the action]; and a person on whom a copy of a counterclaim is served under this paragraph shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

(a) Words inserted by S.R. 1992 No. 399 with effect from 1.11.92

(3) A defendant who is required by paragraph (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action must do so within the period within which, by virtue of Order 18, rule 2, he must serve on the plaintiff the defence to which the counterclaim is added.

(4) An appearance to a counterclaim by a person who is not already a party to the action must be entered in the appropriate office. A memorandum of appearance to a counterclaim shall be in Form No. 15 in Appendix A.

(5) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these Rules, namely, [(**a**) Order 6, rule 6(4) and (6),] Order 10, Order 11 (except rule 3), Orders 12 and 13 and Order 75, rule 4, shall subject to the last foregoing paragraph, apply in relation to the counterclaim and the proceedings arising from it as if—

(*a*) the counterclaim were a writ and the proceedings arising from it an action; and

(*b*) the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that action.

(6) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form No. 14 in Appendix A, addressed to that person—

(*a*) stating the effect of Order 12, rule 1, as applied by paragraph (5),

(*b*) specifying the appropriate office for the entry of appearance by that person to the counterclaim, and

(*c*) stating that he may obtain forms of the requisite documents from the appropriate office and explaining how he may do so.

[*E.r.* 3]

Joinder of parties

4.—(1) Subject to rule 5(1), two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where—

(*a*) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions, and

(*b*) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transactions or series of transactions.

(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any statutory provision and unless the Court gives leave to the contrary, be parties of the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.

This paragraph shall not apply to a probate action.

[*E.r.* 4]

(**a**) Words inserted by S.R. 1992 No. 399 with effect from 1.11.92

Court may order separate trials, etc.

5.—(1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of the causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counterclaim is made that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

[*E.r.* 5]

Misjoinder and nonjoinder of parties

6.—(1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party, and the Court may in any case or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

(2) [[(**a**) Subject to the provisions of this rule,] at any stage of the proceedings in any cause or matter [(**b**) (whether before or after final judgment)] the Court may on such terms as it thinks just and either of its own motion or on application—

(*a*) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

(*b*) order any of the following persons to be added as a party, namely—

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

[(**c**) .....]

(3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.

[(**d**) (4) No person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(5) No person shall be added or substituted as a party after the expiry of any relevant period of limitation unless either—

(*a*) the relevant period was current at the date when proceedings were commenced and it is necessary for the determination of the action that the new party should be added, or substituted, or

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(**a**) Words inserted by S.R. 1982 No. 217 with effect from 1.9.82
(**b**) Words inserted by S.R. 1985 No. 170 with effect from 2.9.85
(**c**) Words deleted by S.R. 1982 No. 217 with effect from 1.9.82
(**d**) Rule 6(4), (5) and (6) inserted by S.R. 1982 No. 217 with effect from 1.9.82

(*b*) the relevant period arises under the provisions of section 9A or 9B of the Statute of Limitations (Northern Ireland) 1958 and the Court directs that those provisions should not apply to the action by or against the new party.

In this paragraph "any relevant period of limitation" means a time limit under the Limitation Acts (Northern Ireland) 1958 to 1982.

(6) The addition or substitution of a new party shall not be regarded as necessary for the purposes of paragraph (5)(*a*) unless the Court is satisfied that—

(*a*) the new party is a necessary party to the action in that property is vested in him at law or in equity and the plaintiff's claim in respect of an equitable interest in that property is liable to be defeated unless the new party is joined, or

(*b*) the relevant cause of action is vested in the new party and the plaintiff jointly but not severally, or

(*c*) the new party is the Attorney General and the proceedings should have been brought by relator proceedings in his name, or

(*d*) the new party is a company in which the plaintiff is a shareholder and on whose behalf the plaintiff is suing to enforce a right vested in the company, or

(*e*) the new party is sued jointly with the defendant and is not also liable severally with him and failure to join the new party might render the claim unenforceable.] [*E.r.* 6]

[(**a**) (7) This rule shall not apply to any joinder of parties to which Order 121 applies.].

Change of parties by reason of death, etc.

7.—(1) Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.

(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause may be effectually and completely determined and adjudicated upon, order that the other person be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.

An application for an order under this paragraph may be made ex parte.

(3) An order may be made under this rule for a person to be made a party to a cause or matter notwithstanding that he is already a party to it on the other side of the record, or on the same side but in a different capacity; but—

(*a*) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side, and

(*b*) if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.

(4) The person on whose application an order is made under this rule must procure the order to be noted in the cause book, and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun[(**b**) and of all other pleadings served in the proceedings.].

(**a**) New Rule 6(7) inserted by S.R. 2000 No. 243 with effect from 2.10.00
(**b**) Words inserted by S.R. 1992 No. 399 with effect from 1.11.92

(5) Any application to the Court by a person served with an order made ex parte under this rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.

[*E.r.* 7]

Provisions consequential on making of order under rule 6 *or* 7

8.—(1) Where an order is made under rule 6, the writ by which the action in question was begun must be amended accordingly and must be endorsed with—

(*a*) a reference to the order in pursuance of which the amendment is made, and

(*b*) the date on which the amendment is made,

and the amendment must be made within such period as may be specified in the order or, if no period is so specified, within 14 days after the making of the order.

(2) Where by an order under rule 6 a person is to be made a defendant, the rules as to service of a writ of summons shall apply accordingly to service of the amended writ on him, but before serving the writ on him the person on whose application the order was made must procure the order to be noted in the cause book.

[(**a**)(2A) Together with the writ of summons served under paragraph (2) shall be served a copy of all other pleadings served in the action.]

(3) Where by an order under rule 6 or 7 a person is to be made a defendant, the rules as to entry of appearance shall apply accordingly to entry of appearance by him, subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limited for appearing shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is noted in the cause book.

(*Continued on page 5*)

(**a**) New paragraph 2A inserted by S.R. 1992 No. 599 with effect from 1.11.92

(4) Where by an order under rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until—

(*a*) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him, or

(*b*) where the order is made under rule 7, the order has been served on him under rule 7(4) or, if the order is not required to be served on him, the order has been noted in the cause book,

and where by virtue of the foregoing provisions a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old, except that entry of appearance by the old party shall not dispense with entry of appearance by the new.

(5) The foregoing provisions of this rule shall apply in relation to an action begun by originating summons as they apply in relation to an action begun by writ.

[*E.r.* 8]

Failure to proceed after death of party

9.—(1) If after the death of a plaintiff or defendant in any action the cause of action survives, but no order under rule 7 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested person who, in the opinion of the Court, should be notified.

(2) Where in any action a counterclaim is made by a defendant, this rule shall apply in relation to the counterclaim as if the counterclaim were a separate action and as if the defendant making the counterclaim were the plaintiff and the person against whom it is made a defendant.

[*E.r.* 9]

Actions for possession of land

10.—(1) Without prejudice to rule 6, the Court may at any stage of the proceedings in an action for possession of land order any person not a party to the action who is in possession of the land (whether in actual possession or by a tenant) to be added as a defendant.

(2) An application by any person for an order under this rule may be made ex parte, supported by an affidavit showing that he is in possession of the land in question and if by a tenant, naming him.

(3) A person added as a defendant by an order under this rule must serve a copy of the order on the plaintiff and must enter an appearance in the action within such period, if any, as may be specified in the order or, if no period is so specified, within 7 days after the making of the order, and the rules as to entry of appearance shall apply accordingly to entry of appearance by him.

[*E.r.* 10]

ORDER 15

Relator actions

11. Before the name of any person is used in any action as a relator, that person must give a written authorisation so to use his name to his solicitor and the authorisation must be filed in the office out of which it is intended to issue the proceedings.

[*E.r.* 11]

Representative proceedings

12.—(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of proceedings under this rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint one or more of the defendants or other persons as representing whom the defendants are sued to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the power conferred by this paragraph, the Court appoints a person not named as a defendant, it shall make an order under rule 6 adding that person as a defendant.

(3) A judgment or order given in proceedings under this rule shall be binding on all the persons as representing whom the plaintiffs sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.

(4) An application for the grant of leave under paragraph (3) must be made by summons which must be served personally on the person against whom it is sought to enforce the judgment or order.

(5) Notwithstanding that a judgment or order to which any such application relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

(6) The Court hearing an application for the grant of leave under paragraph (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in an action may be tried and determined.

[*E.r.* 12]

Representation of interested persons who cannot be ascertained, etc.

13.—(1) In any proceedings concerning—

(*a*) the estate of a deceased person, or

(*b*) property subject to a trust, or

(*c*) the construction of a written instrument, including a statute,

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.

(2) The conditions for the exercise of the power conferred by paragraph (1) are as follows—

(*a*) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;

(*b*) that the person, class or some member of the class, though ascertained, cannot be found;

(*c*) that, though the person or some member of the class, though ascertained, cannot be found;

(*d*) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

(3) Where in any proceedings to which paragraph (1) applies, the Court exercises the power conferred by that paragraph, a judgement or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class by the person or persons so appointed.

(4) Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by the compromise are not parties to the proceedings (including unborn or ascertained persons) but—

(*a*) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise, or

(*b*) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

[*E.r.* 13]

[(**a**) *Notice of action to non-parties bound by judgment*

13A.—(1) At any stage in an action to which this rule applies, the Court may, on the application of any party or of its own motion, direct that notice of the action be served on any person who is not party but who will or may be affected by any judgment given therein.

(2) An application under this rule may be made *ex parte* and shall be supported by an affidavit stating the grounds of the application.

(3) Every notice of an action under this rule shall be in Form No. 35A in Appendix A and the copy to be served shall be a sealed copy accompanied by a copy of the writ or originating summons of all other pleadings served in the action and of the affidavit mentioned in paragraph (2).

(4) A person may, within 14 days of service on him of a notice under this rule, enter an appearance to the writ or originating summons and shall thereupon become a party to the action, but in default of such appearance and subject to paragraph (5) he shall be bound by any judgment given in the action as if he were a party thereto.

(5) If at any time after service of such notice on any person the writ or originating summons is amended so as substantially to alter the relief claimed, the Court may direct that the judgment shall not bind such person unless a further notice together with a copy of the amended writ or originating summons is served upon him under this rule.

(**a**) New Rule 13A inserted by S.R. 1999 No. 19 with effect from 15.2.99

(6) This rule applies to any action relating to—

(*a*) the estate of a deceased person, or

(*b*) property subject to a trust.

(7) Order 6, rule 6(4) and (6) shall apply in relation to a notice of an action under this rule as if the notice were a writ and the person by whom the notice is issued the plaintiff.]

Representation of beneficiaries by trustees, etc.

14.—(1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the intersts of those persons in the first-mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 13.

[*E.r.* 14]

Representation of deceased person interested in proceedings

15.—(1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.

(2) Before making an order under this rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

[*E.r.* 15]

Proceedings against estates

16.—(1) Where any person against whom an action would have lain has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

(2) Without prejudice to the generality of paragraph (1), an action brought against "the personal representatives of A.B. deceased" shall be treated, for the purposes of that paragraph, as having been brought against his estate.

(3) An action purporting to have been commenced against a person shall be treated, if he is dead at is commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement.

(4) In any such action as is referred to in paragraph (1) or (3)—

(*a*) the plaintiff shall, during the period of validity for service of the writ or originating summons, apply to the Court for an order appointing a person to

represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made since the commencement of the action, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;

(*b*) the court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or an application, make any such order as is mentioned in sub-paragraph (*a*) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(6) Where an order is made under paragraph (4), rules 7(4) and 8(3) and (4) shall apply as if the order had been made under rule 7 on the application of the plaintiff.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.

[*E.r.* 6A]

Actions for wrongful interference with goods

17.—(1) Where the plaintiff in an action for wrongful interference with goods is one of two or more persons having or claiming any interest in the goods, then, unless he has the written authority of every other such person to sue on the latter's behalf, the writ or originating summons by which the action was begun shall be indorsed with a statement giving particulars of the plaintiff's title and identifying every other person who, to his knowledge, has or claims any interest in the goods.

This paragraph shall not apply to an action arising out of an accident on land due to a collision or apprehended collosion involving a vehicle.

(2) A defendant to an action for wrongful interference with goods who desires to show a third party has a better right than the plaintiff as respects all or any part of the interest claimed by the plaintiff may, at any time after entering an appearance and before any judgement or order is given or made on the plaintiff's claim, apply for directions as to whether any person named in the application (not being a person whose written authority the plaintiff has to sue on his behalf) should be joined with a view to establishing whether he has a better right than the plaintiff, or has a claim as a result of which the defendant might be doubly liable within the meaning of section 7 of the Torts (Interference with Goods) Act 1977.

(3) An application under paragraph (2) shall be made by sumons, which shall be served personally on every person named in it as well as being served by the plaintiff.

(4) Where a person named in an application under paragraph (2) fails to appear on the hearing of the summons or to comply with any direction given by the Court on the application, the Court may by order deprive him of any right of action against the defendant for the wrong, either unconditionally or subject to such terms and conditions as the Court thinks fit.

[*E.r.* 10A]

ORDER 15

Conduct of proceedings

18. The Court may give the conduct of any action, inquiry or other proceeding to such person as it thinks fit.

[*E.r.* 17]

ORDER 16

THIRD PARTY AND SIMILAR PROCEEDINGS

Third party notice

1.—(1) Where in any action a defendant who has entered an appearance—

(*a*) claims against a person not already a party to the action any contribution or indemnity; or

(*b*) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

(*c*) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action,

then, subject to paragraph (2), the defendant may issue a notice in Form No. 17 or 18 in Appendix A, whichever is appropriate (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

(2) A defendant to an action may not issue a third party notice without leave of the Court unless the action was begun by writ and he issues the notice before serving his defence on the plaintiff.

(3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the action (in this Order referred to as a third party) with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice was issued.

[*E.r.* 1]

Application for leave to issue third party notice

2.—(1) An application for leave to issue a third party notice may be made ex parte but the Court may direct [(**a**) a summons for leave to be issued.]

(2) An application for leave to issue a third party notice must be supported by an affidavit stating—

(*a*) the nature of the claim made by the plaintiff in the action;

(*b*) the stage which proceedings in the action have reached;

(*c*) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and

(*d*) the name and address of the person against whom the third party notice is to be issued.

[*E.r.* 2]

Issue of service of, and entry of appearance to, third party notice

3.—(1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.

(2) There must be served with every third party notice a copy of the writ or originating summons by which the action was begun and of the pleadings (if any) served in the action.

(**a**) Words substituted by S.R. 1981 No. 166 with effect from 1.7.81

(3) An appearance to a third party notice may be entered in the appropriate office.

(4) Subject to the foregoing provisions of this rule, the following provisions of these Rules, namely, Order 6, rule 6(2), (3), (4) and (6), Order 10, Order 11 (except rule 3), Order 12, Order 21 and Order 75, rule 4, shall apply in relation to a third party notice and to the proceedings begun thereby as if—

(*a*) the third party notice were a writ and the proceedings begun thereby an action, and

(*b*) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action [(**a**):

Provided that in the application of Order 11, rule 1(1)(*c*) leave may be granted to serve a third party notice outside the jurisdiction on any necessary or proper party to the proceedings brought against the defendant.]

[*E.r.* 3]

Third party directions

[(**b**) **4.**—(1) Subject to paragraphs (1A) and (2), if the third party enters an appearance the following provisions of this paragraph shall apply in relation to the conduct of the third party proceedings—

(*a*) the defendant who issued the third party notice shall within 14 days of the entry of the third party's appearance deliver a statement of claim to the third party;

(*b*) the third party shall enter a defence to the statement of claim delivered by the defendent within 14 days of its delivery;

(*c*) the defendant and the third party shall furnish to each other their respective lists of documents within 14 days of the third party serving his defence; and

(*d*) the third party may appear in the trial of the action between the plaintiff and the defendant and shall be bound by any judgment or decision in the action in respect of liability, damages or costs.

[(**c**) (1A) Paragraph (1) shall not apply where the defendant who issued the third party notice—

(*a*) applies, at the same time, to the Court by summons (to be served on all the other parties to the action) for directions; or

(*b*) applies to the Court ex parte to receive and make a rule of Court (having the effect of an order) a consent of all parties providing for the conduct or disposal of the third party proceedings.].

(2) If no summons is served on the third party and no ex parte application is made under paragraph (1A), the third party may, not earlier than 7 days after entering an appearance, apply to the Court by summons (to be served on all the other parties to the action) for directions or for an order to set aside the third party notice in place of the directions set out in paragraph (1).]

(3) On an application for directions under this rule the Court may—

(*a*) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or

(*b*) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or

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(**a**) Proviso added by S.R. 1984 No. 110 with effect from 1.1.87
(**b**) Paragraphs (1) and (2) substituted by S.R. 1999 No. 333 with effect from 6.9.99
(**c**) Paragraph 1A substituted by S.R. 2000 No. 42 with effect from 27.3.00

(*c*) dismiss the application and terminate the proceedings on the third party notice,

and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

(4) On an application for directions under this rule the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced as to the extent to which the third party is to be bound by any judgment or decision in the action.

(5) Any order made or direction given under this rule may be varied or rescinded by the Court at any time.

[*E.r.* 4]

Default of third party, etc.

5.—(1) If a third party does not enter an appearance or, having been ordered to serve a defence, fails to do so—

(*a*) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in that notice; and

(*b*) the defendant by whom the third party notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court, before satisfaction thereof, enter judgment against the third party in respect of any contribution or indemnity claimed in the notice, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

(2) If a third party or the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other order as may appear to the Court necessary to do justice between the parties.

(3) The Court may at any time set aside or vary a judgment entered under paragraph (1)(*b*) or paragraph (2) on such terms (if any) as it thinks just.

[*E.r.* 5]

Setting aside third party proceedings

6. Proceedings on a third party notice may, at any stage of the proceedings, be set aside by the Court.

[*E.r.* 6]

Judgment between defendant and third party

7.—(1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action or, if the action is decided otherwise than by trial, on application order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the said party against the defendant.

(2) Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make payment in respect of the same debt or damage, the judgment shall not be enforced without the leave of the Court until that liability has been discharged.

(3) For the purpose of paragraph (2) "liability" includes liability under a judgment in the same or other proceedings and liability under an agreement to which section 1(4) of the Civil Liability (Contribution) Act 1978(**a**) applies.

[*E.r.* 7]

Claims and issues between a defendant and some other party

8.—(1) Where in any action a defendant who has entered an appearance—

(*a*) claims against a person who is already a party to the action any contribution or indemnity; or

(*b*) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

(*c*) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the action,

then, subject to paragraph (2), the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim, or as the case may be, of the question or issue required to be determined, [but need not serve with the notice of any document referred to in rule 3(2).]

(2) Where a defendant makes such a claim as is mentioned in paragraph (1) and that claim could be made by him by counterclaim in the action, paragraph (1) shall not apply in relation to the claim.

(3) No appearance to such a notice shall be necessary of the person on whom it is served has entered an appearance in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served on the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and (where he has entered an appearance in the action or is a plaintiff) had entered an appearance to the notice.

(4) Rule 4(2) shall have effect in relation to proceedings on a notice issued under this rule as if for the words "7 days after entering an appearance" there were substituted the words "21 days after service of the notice on him".

(5) Notwithstanding paragraph (3) it shall not be necessary for any party whose only claim under paragraph (1) of this rule is for contribution or indemnity to apply to the Court for directions or serve a statement of his claim, but any issue between that party and the person on whom such notice is served shall be determined at or after the trial of the action as the trial judge may direct.

(6) Where defendants are sued as tortfeasors liable in respect of the same damage, they shall be treated as opposite parties and no notice need be served under this rule, but any such defendant, if he intends, in support of a claim for contribution or indemnity, to rely on facts or particulars not pleaded by the plaintiff or on any contractual right, must furnish [(**b**) particulars thereof in writing to the other parties.]

[*E.r.* 8]

Claims by third and subsequent parties

9.—(1) Where a defendant has served a third party notice and the third party makes such a claim or requirement as is mentioned in rule 1 or rule 8, this Order shall, with the modification mentioned in paragraph (2) and any other necessary modifications, apply as if the third party were a defendant; and similarly where any

(**a**) 1978 c. 47

(**b**) Words substituted by S.R. 1981 No. 166 with effect from 1.7.81

further person to whom by virtue of this rule this Order applies as if he were a third party makes such a claim or requirement.

(2) The modification referred to in paragraph (1) is that paragraph (3) shall have effect in relation to the issue of a notice under rule 1 by a third party in substitution for rule 1(2).

(3) A third party may not issue a notice under rule 1 without the leave of the Court unless the action in question was begun by writ and he issues the notice before the expiration of 14 days after the time limit for appearing to the notice issued against him.

[*E.r.* 9]

Offer of contribution

10. If, at any time after he has entered an appearance, a party to an action who [(**a**) . . .] stands to be held liable in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his defence) a written offer to that other party to contribute a specified amount or to a specified extent to the debt or damages, then, notwithstanding that he reserves the right to being the offer to the attention of the judge at the trial, the offer shall not be brought to the attention of the judge until after all questions of liability and amount of debt or damages have been decided.

[*E.r.* 10]

Disposal of claim for contribution or indemnity

11. Any claim to contribution indemnity or other relief or remedy under this Order may be decided in the action notwithstanding that the plaintiff's claim has been satisfied by a payment into Court, compromise, judgment or otherwise.

Counterclaim by defendant

12. Where in any action a counterclaim is made by a defendant, the foregoing provisions of this Order shall apply in relation to the counterclaim as if the subject-matter of the counterclaim were the original subject-matter of the action, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

[*E.r.* 11]

[(**b**) *Notice to insurers*

13.—(1) The notice of proceedings to be given by a claimant under Article 98 of the Road Traffic (Northern Ireland) Order 1981(**c**) shall be in Form 19A in Appendix A.

(2) An application for an order against the insurer or giver of security under the said Article shall be brought by motion on notice within 6 months of the date upon which the claimant obtained judgment against the owner or driver of the motor vehicle.]

(**a**) Words deleted by S.R. 1982 No. 217 with effect from 1.9.82
(**b**) Rule 13 added by S.R. 1981 No. 166 with effect from 1.7.81
(**c**) S.I. 1981/154 (N.I. 1)

ORDER 17

INTERPLEADER

Entitlement to relief by way of interpleader

1. Where a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto, he may apply to the Court for relief by way of interpleader.

[*E.r.* 1]

Mode of application

2.—(1) An application for relief under this Order must be made by originating summons unless made in a pending action, in which case it must be made by summons in the action.

(2) No appearance need be entered to an originating summons under this rule.

(3) A summons under this rule must be supported by evidence that the applicant—

(*a*) claims no interest in the subject-matter in dispute other than for charges or costs,

(*b*) does not collude with any of the claimants to that subject-matter, and

(*c*) is willing to pay or transfer that subject-matter into court or do dispose of it as the Court may direct.

[*E.r.* 3]

Powers of Court hearing summons

3.—(1) Where on hearing of a summons under this Order all the persons by whom adverse claims to the subject-matter in dispute (hereafter in this Order referred to as ''the claimants'') appear, the Court may order—

(*a*) that any claimant be made a defendant in any action pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order, or

(*b*) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.

(2) Where—

(*a*) all the claimants consent or any of them so requests, or

(*b*) the questions at issue between the claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.

(3) Where a claimant, having been duly served with a summons for relief under this Order, does not appear on the hearing of the summons or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

[*E.r.* 5]

ORDER 17

Power to stay proceedings

4. Where a defendant to an action applies for relief under this Order in the action, the Court may by order stay all further proceedings in the action.

[*E.r.* 7]

Other powers

5. Subject to the foregoing rules of this Order, the Court may in or for the purpose of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

[*E.r.* 8]

One order in several causes or matters

6. Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several pending causes or matters pending in any Division, the Court may make such an order, and the order shall be entitled in all those causes or matters and shall be binding on all the parties to them.

[*E.r.* 9]

Discovery

7. Orders 24 and 26 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other cause or matter.

[*E.r.* 10]

Trial of interpleader issue

8.—(1) Order 35 shall, with the necessary modifications, apply to the trial of an interpleader issue as it applies to the trial of an action.

(2) The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

[*E.r.* 11]

ORDER 18

PLEADINGS

Service of statement of claim

1. Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve, a statement of claim on the defendant or, if there are two or more defendants, on each defendant, and must do so either when the writ, or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 6 weeks after that defendant enters an appearance.

[*E.r.* 1]

Service of defence

2.—(1) Subject to paragraph (2), a defendant who enters an appearance in, and intends to defend, an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of [(**a**) 6 weeks] after the time limited for appearing or after the statement of claim is served on him, whichever is the later.

(2) If a summons under Order 14 rule 1 or under Order 86 rule 1 is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within [(**a**) 6 weeks] after the making of the order or within such other period as may be specified therein.

[*E.r.* 2]

Service of reply and defence to counterclaim

3.—(1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with rule 8, and if no reply is served rule 14(1) will apply.

(2) A plaintiff on whom a defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.

(3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.

(4) A reply to any defence must be served by the plaintiff before the expiration of 21 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 21 days after the service on him of the counterclaim to which it relates.

[*E.r.* 3]

Pleadings subsequent to reply

4. No pleading subsequent to a reply or a defence to counterclaim shall be served except with the leave of the Court.

[*E.r.* 4]

Service of pleadings in the Long Vacation

5. Without prejudice to Order 3 rule 3, pleadings may be served during the Long Vacation.

Pleadings: formal requirements

6.—(1) Every pleading in an action must bear on its face—

(**a**) Words substituted by S.R. 2009 No. 345 with effect from 06.01.10

(*a*) the year in which the writ in the action was issued and the number of the action,

(*b*) the title of the action,

(*c*) the Division of the High Court to which the action is assigned

(*d*) the description of the pleading, and

(*e*) the date on which it was served.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.

(4) Every pleading of a party must be indorsed—

(*a*) where the party sues or defends in person, with his name and address;

(*b*) in any other case, with the name or firm and business address of the solicitor by whom it was served.

(5) Every pleading of a party must be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.

[*E.r.* 6]

Facts, not evidence, to be pleaded

7.—(1) Subject to the provisions of this rule, and rules 10, 11, 12 and 23, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case permits.

(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

(5) A party must refer in his pleading to any statutory provision on which he relies, specifying the relevant section, subsection, regulation, paragraph or other provision, as the case may be.

[*E.r.* 7]

Matters which must be specifically pleaded

8.—(1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality—

(*a*) which he alleges makes any claim or defence of the opposite party not maintainable; or

(*b*) which, if not specifically pleaded, might take the opposite party by surprise; or

(*c*) which raises issues of fact not arising out of the preceding pleaing,

and, where the defendant intends to rely on the defence of inevitable accident or Act of God, he must specifically plead such defence with all necessary particulars, but this requirement shall not transfer to the defendant any burden of proof which relies on the plaintiff.

(2) Without prejudice to paragraph (1), a defendant to an action for the recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

(3) A claim for exemplary damages [(**a**) or for provisional damages] must be specifically pleaded together with the facts on which the party pleading relies.

[(**b**) (4) A party must plead specifically any claim for interest under section 33A of the Act or otherwise].

[*E.r.* 8]

Matters may be pleaded whenever arising

9. Subject to rules 7(1), 10 and 15(2), a party may in any pleading plead any matter which has arisen at any time, whether before or since the issue of the writ.

[*E.r.* 9]

Departure

10.—(1) A party shall not in any pleading make any allegation of fact, or raise any new ground or claim, inconsistent with a previous pleading of his.

(2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

[*E.r.* 10]

Points of law may be pleaded

11. A party may by his pleading raise any point of law.

[*E.r.* 11]

Particulars of pleading

12.—(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words—

(*a*) particulars of any negligence, breach of statutory duty, misrepresentation, fraud, breach of trust, wilful default, undue influence or fault of the plaintiff on which the party pleading relies, and

(*b*) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.

(**a**) Words inserted by S.R. 1991 No. 330 with effect from 2.9.91

(**b**) New paragraph (4) added by S.R. 1983 No.114 with effect from 1.6.83

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3), the Court may, on such terms as it thinks just, order that party to serve on any other party—

(*a*) where he alleges knowledge, particulars of the facts on which he relies, and

(*b*) where he alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

[(**a**) (7) Where particulars are given pursuant to a request, or order of the Court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.]

[*E.r.* 12]

Admissions and denials

13.—(1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted.

[*E.r.* 13]

Denial by joinder of issue

14.—(1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to paragraph (3)—

(*a*) there is at the close of pleadings an implied joinder of issue on the pleading last served, and

(*b*) a party may in his pleading expressly join issued on the next preceding pleading.

(3) There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.

(**a**) Rule 12(7) added by S.R. 1982 No. 217 with effect from 1.9.82

(4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation.

[*E.r.* 14]

Statement of claim

15.—(1) A statement of claim must state specifically the relief or remedy which the plaintiff claims; but costs need not be specifically claimed.

(2) A statement of claim shall not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action to mentioned; but, subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the indorsement of the writ without amending the indorsement.

(3) Every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

[*E.r.* 15]

[(**a**) *Defence*

15A.—(1) In his defence the defendant must state—

(*a*) which of the allegations in the particulars of the statement of claim he denies;

(*b*) which of the allegations he is unable to admit or deny but which he requires the plaintiff to prove;

(*c*) which of the allegations he admits.

(2) Where the defendant denies liability the defence shall be so pleaded that it raises the defendant's case with sufficient clarity that the opposite party is made aware of the true nature of the defendant's case and, where appropriate, the defence shall put forward the defendant's version of relevant facts or events if that version is materially different from the plaintiff's version as pleaded in the statement of claim.

(3) Where the claim includes a money claim, a defendant shall be taken to require that any allegation relating to the amount of money clamed be proved unless he expressly admits the allegation.]

Defence of tender

16. Where in any action a defence of tender before action is pleaded, the defendant must pay into court in accordance with Order 22 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

[*E.r.* 16]

Defence of set-off

17. Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

[*E.r.* 17]

(**a**) Rule inserted by S.R. 2009 No. 345 with effect from 06.01.10

ORDER 18

Counterclaim and defence to counterclaim

18. Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically—

(*a*) rule 15(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff;

(*b*) rules 8(2), 16 and 17 shall, with the necessary modifications apply to a defence to counterclaim as they apply to a defence.

[*E.r.* 18]

Striking out pleadings and indorsements

19.—(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—

(*a*) it discloses no reasonable cause of action or defence, as the case may be; or

(*b*) it is scandalous, frivolous or vexatious; or

(*c*) it may prejudice, embarrass or delay the fair trial of the action; or

(*d*) it is otherwise an abuse of the process of the court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

[*E.r.* 19]

Close of pleadings

20.—(1) The pleadings in an action are deemed to be closed—

(*a*) at the expiration of 21 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim, or

(*b*) if neither a reply nor a defence to counterclaim is served, at the expiration of 21 days after service of the defence.

(2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

[*E.r.* 20]

Trial without pleadings

21.—(1) Where in an action to which this rule applies any defendant has entered an appearance in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.

(2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree to such a statement, may settle the statement itself.

(3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order it may, give such directions as to the further conduct of the action as may be appropriate.

(4) This rule applies to every action begun by writ other than one which includes—

(*a*) a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment; or

(*b*) a claim by the plaintiff based on an allegation of fraud.

[*E.r.* 21]

Saving for defence under Merchant Shipping Acts

22. Nothing in Order 75 rules 2 and 36 to 39, shall be taken as limiting the right of any shipowner or other person to rely by way of defence on any provision of [(**a**) the Merchant Shipping Act 1995(**b**)] which limits the amount of his liability in connection with a ship or other property.

[*E.r.* 22]

Conviction, etc. to be adduced in evidence: matters to be pleaded

23.—(1) If in any action which is to be tried with pleadings any party intends, in reliance on section 7 of the Civil Evidence Act (Northern Ireland) 1971(**c**), to adduce evidence that a person was convicted of an offence by or before a court in the United Kingdom or by a court-martial there or elsewhere, he must include in his pleading a statement of his intention with particulars of—

(*a*) the conviction and the date thereof,

(*b*) the court or court-martial which made the conviction, and

(*c*) the issue in the proceedings to which the conviction is relevant.

(2) If in any action which is to be tried with pleadings any party intends, in reliance on section 8 of the said Act of 1971, to adduce evidence that a person was found guilty of adultery in matrimonial proceedings or was adjudged to be the father of a child in affiliation proceedings before a court in the United Kingdom, he must include in his pleading a statement of his intention with particulars of—

(*a*) the finding or adjudication and the date thereof,

(*b*) the court which made the finding or adjudication and the proceedings in which it was made, and

(*c*) the issue in the proceedings to which the finding or adjudication is relevant.

(3) Where a party's pleading includes such a statement as is mentioned in paragraph (1) or (2), then if the opposite party—

(*a*) denies the conviction, finding of adultery or adjudication of paternity to which the statement relates, or

(*b*) alleges that the conviction, finding or adjudication was erroneous, or

(*c*) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

(4) This rule shall not apply to evidence intended to impeach the credit of a party or witness.

[*E.r.* 7A]

(**a**) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07
(**b**) 1995 c.21
(**c**) 1971 c. 36 (N.I.)

ORDER 19

DEFAULT OF PLEADINGS

Default in service of statement of claim

1. Where the plaintiff is required by these Rules to serve a statement of claim on a defendant and he fails to serve it on him, the defendant may, after the expiration of the period fixed by or under these Rules for service of the statement of claim, apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

[*E.r.* 1]

Default of defence: claim for liquidated demand

2.—(1) Where the plaintiffs claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

(2) Order 13 rule 1(2) and (3), shall apply for the purposes of this rule as it applies for the purposes of that rule.

[*E.r.* 2]

Default of defence: claim for unliquidated damages

3. Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

[*E.r.* 3]

Default of defence: claim for detention of goods

4.—(1) Where the plaintiffs claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under rules for the service of the defence and subject to Order 42 rule 6—

(a) at his option enter either—

(i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs, or

(ii) interlocutory judgment for the value of the goods to be assessed and costs, or

(b) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value,

and in any case proceed with the action against the other defendants, if any.

(2) A summons under paragraph (1)(b) must be supported by affidavit and, notwithstanding Order 65 rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

[*E.r.* 4]

[*Suppl. No. 50 (June 2013)*]

ORDER 19

[(a) *Judgment where application under section 6 of the Justice and Security Act 2013 pending*

5. Judgment shall not be entered against a Plaintiff under this Order if notice has been given under Order 126 of a person's intention to make an application for a declaration under section 6 of the Justice and Security Act 2013 in relation to the proceedings, and that application has not been disposed of.]

Claim for possession of land

6.—(1) Where the plaintiffs claim against a defendant is for possession of land only, then, subject to paragraphs (2), (3) and (4), if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 88 rule 1, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any.

(2) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the claim does not relate to a dwelling-house.

(3) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the land does not comprise or include a holding agricultural or pastoral or partly agricultural and partly pastoral.

(4) The plaintiff shall not be entitled to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he files an affidavit made by the landlord, his agent, receiver or clerk, stating that there was at the date of issue of the writ at least one year's rent due over and above all just and fair allowances.

(5) An application for leave to enter judgment under paragraph (2) or (3) shall be by summons stating the grounds of the application, and the summons must, unless the Court otherwise orders and notwithstanding anything in Order 65 rule 9, be served on the defendant against whom it is sought to enter judgment.

(6) If the Court refuses leave to enter judgment, it may make or give any such order or directions as it might have made or given had the application been an application for judgment under Order 14 rule 1.

(7) Where there is more than one defendant, any judgment entered under this rule shall contain a stay of enforcement against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

(8) Where the plaintiff is a superior landlord and he applies under paragraph (3) for leave to enter judgment against a defendant who is an immediate landlord the Court may, having regard to the provisions of section 12 of the Land Law (Ireland) Act 1896(b):—

(a) give such directions as to notice to tenants and otherwise and grant leave subject to such limitations as to enforcement of the judgment and such provisions as to costs as it thinks just;

(a) New Rule 5 inserted by S.R. 2013 No. 175 with effect from 27.06.13
(b) 1896 c. 47

(b) on proof by affidavit that the non-payment of rent by the defendant is due to the non-payment of rent 'by the tenant of the holding, issue a certificate to that effect.

[*E.r.* 5]

Default of defence: mixed claims

7. Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the action against the other defendants, if any.

[*E.r.* 6]

Default of defence: other claims

8.—(1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may—

(*a*) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or

(*b*) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.

(3) An application under paragraph (1) must be by summons or motion.

[*E.r.* 7]

Default of defence to counterclaim

9. A defendant who counterclaims against a plaintiff shall be treated for the purposes of rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counterclaim, those rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these Rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

[*E.r.* 8]

Setting aside judgment

10. The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

[*E.r.* 9]

ORDER 20

AMENDMENT

Amendment of writ without leave

1.—(1) Subject to paragraph (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed.

(2) Where a writ is amended under this rule after service thereof, then, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on each defendant to the action.

(3) This rule shall not apply in relation to an amendment which consists of—

(*a*) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued, or

(*b*) the addition or substitution of a new cause of action, or

(*c*) (without prejudice to rule 3(1)) an amendment of the statement of claim (if any) indorsed on the writ,

unless the amendment is made before service of the writ on any party to the action.

[*E.r.* 1]

Amendment of appearance

2. A defendant may not amend his memorandum of appearance without the leave of the Court.

[*E.r.* 2]

Amendment of pleadings without leave

3.—(1) A party may, without the leave of the Court, amend any pleading of his once at any time before the pleadings are deemed to be closed and, where he does so, he must serve the amended pleading on the opposite party.

(2) Where an amended statement of claim is served on a defendant—

(*a*) the defendant, if he has already served a defence on the plaintiff, may amend his defence, and

(*b*) the period for service of his defence or amended defence, as the case may be, shall be either the period fixed by or under these Rules for service of his defence or a period of 14 days after the amended statement of claim is served on him, whichever expires later.

(3) Where an amended defence is served on the plaintiff by a defendant—

(*a*) the plaintiff, if he has already served a reply on that defendant, may amend his reply, and

(*b*) the period for service of his reply or amended reply, as the case may be, shall be either the period fixed by or under these Rules for service of his reply or a period of 14 days after the amended defence is served on him.

(4) In paragraphs (2) and (3) references to a defence and a reply include references to a counterclaim and a defence to counterclaim respectively.

(5) Where an amended counterclaim is served by a defendant on a party (other than the plaintiff) against whom the counterclaim is made, paragraph (2) shall apply as if the counterclaim were a statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made a defendant.

(6) Where a party has pleaded to a pleading which is subsequently amended and served on him under paragraph (1), then, if that party does not amend his pleading under the foregoing provisions of this rule, he shall be taken to rely on it in answer to the amended pleading, and Order 18, rule 14(2), shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under paragraph (1), was served.

[*E.r.* 3]

Application for disallowance of amendment made without leave

4.—(1) Within 14 days after the service on a party of a writ amended under rule 1(1) or of a pleading amended under rule 3(1), that party may apply to the Court to disallow the amendment.

(2) Where the Court hearing an application under this rule is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made under rule 1(1) or rule 3(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.

(3) Any order made on an application under this rule may be made on such terms as to costs or otherwise as the Court thinks just.

[*E.r.* 4]

Amendment of writ or pleading with leave

5.—(1) Subject to Order 15, rules 6, 7 and 8, and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the party intending to sue or, as the case may be, intended to be sued.

[(**a**) (4) An amendment to alter the capacity in which a party sues may be allowed under paragraph (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired.]

(**a**) Rule 5(4) substituted by S.R. 1982 No. 217 with effect from 1.9.82.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as the cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

[*E.r.* 5]

Amendment during Long Vacation

6. Every writ, originating summons, petition, pleading or other documents in any proceedings may be amended during the Long Vacation.

[*E.r.* 6]

Amendment of other originating process

7. Rule 5 shall have effect in relation to an originating summons, a petition and notice of an originating motion as it has effect in relation to a writ.

[*E.r.* 7]

Amendment of certain other documents

8.—(1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) This rule shall not have effect in relation to a judgment or order.

[*E.r.* 8]

Failure to amend after order

9. Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

[*E.r.* 9]

Mode of amendment of writ, etc.

10.—(1) Where the amendments authorised under any rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorised, must be prepared and, in the case of a writ or originating summons re-issued, but, except as aforesaid and subject to any direction given under rules 5 or 8, the amendments so authorised may be effected by making in writing the necessary alterations of the document and, in the case of a writ or originating summons, causing it to be re-sealed and filing a copy thereof.

(2) A writ, pleading or other document which has been amended under this Order must be indorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the judge or master by whom the order (if any) authorising the amendment was made and the date thereof, or, if no such order was made, the number of the rule of this Order in pursuance of which the amendment was made.

[*E.r.* 10]

Amendment of judgment and orders

11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.

[*E.r.* 11]

[(**a**) *Amendment of pleadings by agreement*

12.—(1) Notwithstanding the foregoing provisions of this Order, any party may amend any pleading in a cause or matter with the consent in writing of the other party or parties at any stage of the proceedings.

(2) This rule shall not have effect in relation to an amendment to a counterclaim which consists of the addition, omission or substitution of a party.]

[*E.r.* 12]

(**a**) Rule 12 added by S.R. 1983 No. 114 with effect from 1.6.83

ORDER 21

WITHDRAWAL AND DISCONTINUANCE

Withdrawal of appearance

1. A party who has entered an appearance in an action may withdraw the appearance at any time with the leave of the Court.

[*E.r.* 1]

Discontinuance of action, etc., without leave

2.—(1)[(**a**) Subject to paragraph (2A)], the plaintiff in an action begun by writ may, without the leave of the Court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.

(2) [(**a**) Subject to paragraph (2A)], a defendant [(**b**) to an action begun by writ] may, without the leave of the Court—

(*a*) withdraw his defence or any part of it at any time.

(*b*) discontinue a counterclaim, or withdraw any particular claim made by him therein, against any or all of the parties against whom it is made, at any time not later than 21 days after service on him of a defence to counterclaim or, if the counterclaim is made against two or more parties, of the defence to counterclaim last served,

by serving a notice to that effect on the plaintiff or other party concerned.

[(**c**) (2A) A party in whose favour an interim payment has been ordered, in accordance with Order 29, rule 14, may not discontinue any action or counterclaim, or withdraw any particular claim therein, except with the leave of the Court or the consent of all the other parties.]

(3) Where there are two or more defendants to an action [(**b**) begun by writ] not all of whom serve a defence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

This paragraph shall apply in relation to a counterclaim as it applies in relation to an action with the substitution for references to a defence, to the plaintiff and to paragraph (1), of references to a defence to counterclaim, to the defendant and to paragraph (2) respectively.

[(**d**) (3A) The plaintiff in an action begun by originating summons may, without the leave of the Court, discontinue the action or withdraw any particular question or claim in the originating summons, as against any or all of the defendants at any time not later than 14 days after service on him of the defendant's affidavit evidence filed pursuant to Order 28, rule 1A(4) or, if there are two or more defendants, of such evidence last served, by serving a notice to that effect on the defendant concerned.

(**a**) Words inserted by S.R. 1982 No. 217 with effect from 1.9.82
(**b**) Words inserted by S.R. 1983 No. 114 with effect from 1.6.83
(**c**) Paragraph (2A) inserted by S.R. 1982 No. 217 with effect from 1.9.82
(**d**) Paragraphs 3A and 3B inserted by S.R. 1983 No. 114 with effect from 1.6.83

(3B) When there are two or more defendants to an action begun by originating summons not all of whom serve affidavit evidence on the plaintiff, and the period fixed by or under these rules for service by any of those defendants of his affidavit evidence expires after the latest date on which any other defendant serves his affidavit evidence, paragraph (3A) shall have effect as if the reference therein to the service of the affidavit evidence last served were a reference to the expiration of that period.]

(4) If all parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing to the proper officer a written consent to the action being withdrawn signed by all the parties.

[*E.r.* 2]

Discontinuance of action, etc., with leave

3.—(1) Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise) or counterclaim, or withdraw any particular claim made by him therein, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against all or any of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.

(2) An application for the grant of leave under this rule may be made by summons or motion.

[*E.r.* 3]

Effect of discontinuance

4. Subject to any terms imposed by the Court in granting leave under rule 3, the fact that a party has discontinued an action or counterclaim or withdrawn a particular claim made by him therein shall not be a defence to a subsequent action for the same, or substantially the same, cause of action.

[*E.r.* 4]

Stay of subsequent action until costs paid

5.—(1) When a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he subsequently brings an action for the same, or substantially the same, cause of action to be stayed until those costs are paid.

(2) An application for an order under this rule may be made by summons or motion.

[*E.r.* 5]

Withdrawal of summons

6. A party who has taken out a summons in a cause or matter may not withdraw it without the leave of the Court.

[*E.r.* 6]

ORDER 22

PAYMENT INTO AND OUT OF COURT

1.[(**a**) (1) In any action for debt or damages any defendant may without leave at any time after he has entered an appearance in the action—

(a) before the closing of pleadings, or

(b) if he has complied with [(**b**) Order 25 rule [(**c**) 6](a)], not later than 14 weeks from the close of pleadings or within 4 weeks of disclosure by the plaintiff of the evidence which it is his duty to disclose under [(**b**) Order 25 rule [(**c**) 7](a)], whichever is the later,

or with leave or on consent at any later time pay into Court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.]

(2) On making any payment into court under this rule, and on increasing any payment already made, the defendant must give notice thereof in Form No. 20 in Appendix A to the plaintiff and every other defendant (if any) and within 3 days after receiving the notice the plaintiff must send the defendant a written acknowledgement of its receipt.

[(**d**) (2A) Where a payment into Court is made which would following acceptance by a plaintiff be a compensation payment as defined in Article 3 of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(**e**) (in this Order referred to as "the 1997 Order"), the defendant must state in the notice he gives under paragraph (2) the gross amount of the compensation, the name and amount of any benefit by which the gross amount is reduced in accordance with Article 10 of and Schedule 2 to the 1997 Order and the net sum paid into Court, and a copy of the notice must at the same time be lodged in the appropriate office.

(3) A defendant may, without leave, before the close of pleadings and thereafter with leave, give notice of an increase in a payment made under this rule but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without the leave of the Court which may be granted on such terms as may be just.

(4) Where two or more causes of action are joined in the action and money is paid into court under this rule, in respect of all, or some only of, those causes of action, the notice of payment—

(a) must state that the money is paid in respect of all those causes of action or, as the case may be, must specify the cause of causes of action in respect of which the payment is made, and

(b) where the defendant makes separate payments in respect of each, or any two or more, of those causes of action, must specify the sum paid in respect of that cause or, as the case may be, those causes of action.

(5) Where a single sum of money is paid into court under this rule in respect of two or more causes of action, then, if it appears to the Court that the plaintiff is embarrassed by the payment, the Court may, subject to paragraph (6), order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.

(**a**) Paragraph (1) Substituted by S.R. 1986 No. 128 with effect from 1.9.86. The paragraph applies to action in which the pleadings are closed on or after that date
(**b**) References substituted by S.R. 1995 No. 462 with effect from 9.1.96
(**c**) Numbers substituted by S.R. 2015 No. 235 with effect from 19.5.15
(**d**) Paragraph (2A) substituted by S.R. 1999 No. 333 with effect from 6.9.99
(**e**) S.I. 1997/1183 (N.I. 12)

(6) Where a cause of action under the Fatal Accidents (Northern Ireland) Order 1977(**a**) and a cause of action under the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937(**b**) are joined in an action, with or without any other cause of action, the causes of action under the said Order and the said Act shall, for the purpose of paragraph (5), be treated as one cause of action.

[(**c**) (7) For the purpose of this rule, the plaintiff's cause of action in respect of a debt or damages shall be construed as a cause of action in respect, also, of such interest as might be included in the judgment, whether under section 33A of the Act or otherwise, if judgment were given at the date of the payment into court.].

[*E.r.* 1]

Payment in by defendant who has counterclaimed

2. Where a defendant, who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum or sums of money into court under rule 1, the notice of payment must state, if it be the case, that in making the payment the defendant has taken into account and intends to satisfy—

(a) the cause of action in respect of which he claims, or

(b) where two or more causes of action are joined in the counterclaim, all those causes of action [or] if not all, which of them.

[*E.r.* 2]

Acceptance of money paid into court

3.—(1) Where money is paid into a court under rule 1 then, within 21 days after receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 21 days after the receipt of the notice of the last payment or the amended notice but, in any case, before the trial or hearing of the action begins, the plaintiff may—

(a) where the money was paid in respect of the cause of action, or all the causes of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case may be, or

(b) where the money was paid in respect of some only of the causes of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment,

by giving notice in Form 21 in Appendix A to every defendant to the action.

(2) On the plaintiff's accepting any money paid into court all further proceedings in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with him or in the alternative to him, shall be stayed.

(3) Where money is paid into court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum so paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or causes of action in respect of which he claimed, then, on the plaintiff's accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

(4) A plaintiff who has accepted any sum paid into court shall, subject to rules 4 and 10, be entitled to receive payment of that sum in satisfaction of the cause or causes to which the acceptance relates.

[*E.r.* 3]

(**a**) S.I. 1977 No. 1251 (N.I. 18)
(**b**) 1937 c. 9 (N.I.)
(**c**) Paragraph (7) added by S.R. 1983 No. 114 with effect from 1.6.83

Order for payment out of money accepted required in certain cases

4.—(1) Where a plaintiff accepts any sum paid into court and that sum was paid into court—

(*a*) by some but not all of the defendants sued jointly or in the alternative by him, or,

(*b*) with a defence of tender before action, or,

(*c*) in an action to which Order 80 rule 10 applies, or,

(*d*) in satisfaction of either of causes of action arising under the Fatal Accidents (Northern Ireland) Order 1977 and Part III of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937, or a cause of action arising under the said Order where more than one person is entitled to the money,

the money in court shall not be paid out except under paragraph (2) or in pursuance of an order of the Court, and the order shall deal with the whole costs of the action or of the cause of action to which the payment relates, as the case may be.

(2) Where an order of the Court is required under paragraph (1) by reason only of paragraph (1)(*a*), then if, either before or after accepting the money paid into court by some only of the defendants sued jointly or in the alternative by him, the plaintiff discontinues the action against all the other defendants and those defendants consent in writing to the payment out of that sum, it may be paid out without an order of the Court.

(3) Where after the trial or hearing of an action has begun a plaintiff accepts any money paid into court and all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates are stayed by virtue of rule 3(2), then, notwithstanding anything in paragraph (2), the money snail not be paid out except in pursuance of an order of the Court, and the order shall deal with the whole costs of the action. [*E.r.* 4]

Money remaining in court

5. If any money paid into court in an action is not accepted in accordance with rule 3, the money remaining in court shall not be paid out except in pursuance of an order of the Court which may be made at any time before, at or after the trial or hearing of the action; and where such an order is made before the trial or hearing the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in. [*E.r.* 5]

Counterclaim

6. A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money into court in accordance with rule 1, and that rule and rules 3 (except paragraph (3)), 4 and 5 shall apply accordingly with the necessary modifications. [*E.r.* 6]

Non-disclosure of payment into court

7. Except in an action to which a defence of tender before action is pleaded, and except in an action all further proceedings in which are stayed by virtue of rule 3(2) after the trial or hearing has begun, the fact that money has been paid into court under the foregoing provisions of this Order shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of the debt or damages have been decided, [*E.r.* 7]

Money paid into court under order

8.—(1) Subject to paragraph (2), money paid into court under an order of the Court shall not be paid out except in pursuance of an order of the Court.

(2) Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 14—

(*a*) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the writ or counterclaim, as the case may be, and specified in the notice, or

(*b*) if he pleads a tender, may by his pleadings appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered;

and money appropriated in accordance with this rule shall be deemed to be money paid into court in accordance with rule 1 or money paid into court with a plea of tender, as the case may be, and this Order shall apply accordingly.

[*E.r.* 8]

Person to whom payment to be made

9.—(1) Where the party entitled to money in court is a person in respect of whom a certificate is or has been in force entitling him to legal aid under [(**a**) Part II of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**b**)], payment shall be made only to that party's solicitor (or, if he is no longer represented by a solicitor, then, if the Court so orders, to the [(**c**)...] Law Society of Northern Ireland), without the need for any authority from the party.

(2) Subject to paragraph (1), payment shall be made to the party entitled or to his solicitor.

(3) This rule applies whether the money in court has been paid into court under rule 1 or under an order of the Court or a certificate of a master.

[*E.r.* 10]

Payment out: small intestate estates

10. Where a person entitled to a fund in court, or a share of such fund, dies intestate and the Court is satisfied that no grant of administration of his estate has been made and that the assets of his estate [(**d**), including the fund or share, do not exceed in value the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act (Northern Ireland) 1967(**e**), it may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, [(**f**) surviving civil partner,] child, father, mother, brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased.

[*E.r.* 11]

Payment of hospital expenses

11.—(1) This rule applies in relation to an action or counterclaim for bodily injury arising out of the use of a motor vehicle on a road or in a place to which the public have a right of access in which the claim for damages includes a sum for hospital expenses.

(**a**) Words substituted by S.R. 1985 No. 170 with effect from 2.9.85
(**b**) S.I. 1981 No. 228 (N.I. 3)
(**c**) Words deleted by S.R. 1985 No. 170 with effect from 2.9.85
(**d**) Words substituted by S.R. 1985 No. 170 with effect from 2.9.85
(**e**) 1967 c. 5 (N.I.)
(**f**) Words inserted by S.R. 2007 No. 189 with effect from 16.04.07

(2) Where the party against whom the claim is made, or an authorised insurer within the meaning of Part V of the Road Traffic Act (Northern Ireland) 1970(**a**) pays the amount for which that party or insurer, as the case may be, is or may be liable under section 84 of that Act in respect of the treatment afforded by a hospital to the person in respect of whom the claim is made, the party against whom the claim is made must, within 7 days after the claim is made, give notice of the payment to all the other parties to the action.

[*Suppl. No. 6 (Feb. 1983)*]

[*E.r.* 12]

Investment of money in court

12. Cash under the control or of subject to the order of the Court may be invested in any manner specified in [(**b**) Part I and] paragraphs 1 to 10 and 12 of Part II of Schedule 1 to the Trustee Investments Act 1961(**c**) as [(**d**) supplemented by the provisions of] Part IV of that Schedule.

[*E.r.* 13]

(**a**) 1970 c. 2 (N.I.)
(**b**) Words inserted by S.R. 1983 No. 5 with effect from 28.2.83
(**c**) 1961 c. 62
(**d**) Words substituted by S.R. 1983 No. 5 with effect from 28.2.83

ORDER 23

SECURITY FOR COSTS

Security for costs of action, etc.

1.—(1) Where, on the application of a defendant to an action or other proceeding in the High Court, it appears to the Court—

(a) [(**a**) subject to paragraph 4,] that the plaintiff is ordinarily resident out of the jurisdiction, or

(b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so, or,

(c) subject to paragraph (2), that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein, or

(d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation, [(**b**) or

(e) that the plaintiff is a company or other body (whether incorporated inside or outside Northern Ireland) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so,]

then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of paragraph (1)(*c*) if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.

(3) The references in the foregoing paragraphs to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.

[*E.r.* 1]

[(**c**) (4) The Court shall not require a plaintiff to give security by reason only of paragraph (1)(a) in an application for enforcement to which Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), as amended from time to time and as applied pursuant to the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters applies.

Manner of giving security

2. Where an order is made requiring any party to give security for costs the security shall be given in such manner, at such times, and on such terms (if any), as the Court may direct.

[*E.r.* 2]

Saving for statutory provision

3. This Order is without prejudice to the provisions of any statutory provision which empowers the Court to require security to be given for the costs of any proceedings.

[*E.r.* 3]

(**a**) Words inserted by S.R. 2015 No. 235 with effect from 19.5.15

(**b**) Paragraph inserted by S.R. 2015 No. 235 with effect from 19.5.15

[(a) ORDER 24

DISCOVERY AND INSPECTION OF DOCUMENTS

Mutual discovery of documents

1.—(1) After the close of pleadings in an action begun by writ there shall, subject to and in accordance with the provisions of this Order, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the action.

(2) Nothing in this Order shall be taken as preventing the parties to an action agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

[*E.r.* 1]

Discovery by parties without order

2.—(1) Subject to the provisions of this rule and of rule 4, the parties to an action between whom pleadings are closed must make discovery by exchanging lists of documents and, accordingly, each party must, within 14 days after the pleadings in the action are deemed to be closed as between him and any other party, make and serve on that party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action.

Without prejudice to any directions given by the Court under Order 16, rule 4, this paragraph shall not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

(2) Unless the Court otherwise orders, in any action where liability is admitted or where the action arises out of an accident on land due to a collision or apprehended collision involving a vehicle discovery shall be limited to disclosure of any documents relating to special damage.

(3) Paragraph (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any enactment to make discovery of any documents.

(4) Paragraphs (2) and (3) shall apply in relation to a counterclaim as they apply in relation to an action.

(5) On the application of any party required by this rule to make discovery of documents, the Court may—

(*a*) order that the parties to the action or any of them shall make discovery under paragraph (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order, or

(*b*) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage;

and the Court shall make such an order and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

(6) An application for an order under paragraph (5) must be by summons, and the summons must be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.

(7) Any party to whom discovery of documents is required to be made under this rule may, at any time within one month after the pleadings in the action are deemed to be closed, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list which he has made under paragraph (1),

(a) New Order 24 substituted by S.R. 1991 No. 330 with effect from 2.9.91

and the party on whom such a notice is served must, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

[*E.r.* 2]

Order for discovery

3.—(1) Subject to the provisions of this rule and of rules 4 and 8, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

(2) Where a party who is required to make discovery of documents fails to comply with any provision of that rule, the Court, on the application of any party to whom the discovery was required to be made, may make an order against the first-mentioned party under paragraph (1) of this rule or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2 and to serve a copy thereof on the applicant.

(3) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

[*E.r.* 3]

Order for determination of issue, etc., before discovery

4. Where on an application for an order under rule 2 or 3 it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

[*E.r.* 4]

Form of list and affidavit

5.—(1) A list of documents made in compliance with rule 2, or with an order under rule 3, must be in Form No. 22 in Appendix A, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

(2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 23 in Appendix A.

[*E.r.* 5]

Defendant entitled to copy a co-defendant's list

6.—(1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the

plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule ''list of documents'' includes an affidavit verifying a list of documents.

[*E.r.* 6]

Order for discovery of particular documents

7.—(1) Subject to rule 9, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then is his possession, custody or power when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavits under rule 2 or rule 3.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified as described in the application and that it relates to one or more of the matters in question in the cause or matter.

[*E.r.* 7]

Application under sections 31 or 32(1) of the Administration of Justice Act 1970

8.—(1) An application for an order under section 31 of the Administration of Justice Act 1970 for the disclosure of documents before the commencement of proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under 32(1) of the said Act for the disclosure of documents by a person who is not a party to the proceedings shall be made by summons in Form No. 28A in Appendix A, which must be served on that person and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by an affidavit which must—

(*a*) in the case of a summons under paragraph (1) state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in the High Court in which a claim for personal injuries is likely to be made;

(*b*) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of a claim for personal injuries made or likely to be made in the proceedings and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order under the said section 31 or 32(1) for the disclosure of documents may be made conditional on the applicant's giving security for the costs of the person

against whom it is made or on such other terms, if any, as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with them and what has become to them.

(6) No person shall be compelled by virtue of such an order to produce any documents which he could not be compelled to produce—

(*a*) in the case of a summons under paragraph (1), if the subsequent proceedings has already been begun, or

(*b*) in the case of a summons under paragraph (2), if he had been served with a writ of subpoena duces tecum to produce the documents at the trial.

(7) In this rule "a claim for personal injuries" means a claim in respect of personal injuries to a person or in respect of a person's death.

(8) For the purposes of rules 11 and 12 an application for an order under the said section 31 or 32(1) shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

[*E.r.* 7A]

Discovery to be ordered only if necessary

9. On the hearing of an application for an order under rule 3, 7 or 8 the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

[*E.r.* 8]

Inspection of documents referred to in list

10. A party who has served a list of documents on any other party, whether in compliance with rule 2 or 6 or with an order under rule 3, must allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof and, accordingly, he must when he serves the list on the other party also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at a place specified in the notice.

[*E.r.* 9]

Inspection of documents referred to in pleadings and affidavits

11.—(1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof.

(2) The party on whom a notice is served under paragraph (1) must, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

[*E.r.* 10]

Order for production for inspection

12.—(1) If a party who is required by rule 10 to serve such a notice as is therein mentioned or who is served with a notice under rule 11(1)—

(*a*) fails to serve a notice under rule 10 or, as the case may be, rule 11(2), or

(*b*) objects to produce any document for inspection, or

(*c*) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there, then,

subject to rule 15(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to paragraph (1), but subject to rule 15(1), the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power to the other party and they relate to a matter in question in the cause or matter.

[*E.r.* 11]

Provision of copies of documents

13.—(1) Any party who is entitled to inspect any documents under any provision of this Order or any order made thereunder may at or before the time when inspection takes place serve on the party who is required to produce such documents for inspection a notice (which shall contain an undertaking to pay the reasonable charges) requiring him to supply a true copy of any such document as is capable of being copied by photographic or similar process.

(2) The party on whom such a notice is served must within 7 days after receipt thereof supply the copy requested together with an account of the reasonable charges.

(3) Where a party fails to supply another party a copy of any document under paragraph (2), the court may, on the application of either party, make such order as to the supply of that document as it thinks fit.

[*E.r.* 11A]

Order for production to Court

14. At any stage of the proceedings in any cause or matter the Court may, subject to rule 15(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.

[*E.r.* 12]

Production to be ordered only if necessary, etc.

15.—(1) No order for the production of any documents for inspection or to the court or for the supply of a copy of any document shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where on an application under this Order for production of any document for inspection or to the Court or for the supply of a copy of any document privilege from such production or supply is claimed or objection is made to such production or supply on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

[*E.r.* 13]

Production or business books

16.—(1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection, order a copy of any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

[*E.r.* 14]

Use of documents

17. Any undertaking, whether express or implied, not to use a document for any purposes other than those of the proceedings in which it is disclosed shall cease to apply to such document after it has been read to or by the Court, or referred to, in open Court, unless the Court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs.

[*E.r.* 14A]

Document disclosure of which would be injurious to public interest: saving

18. The foregoing provisions of this Order shall be without prejudice to any rule of law which authorises or required the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

[*E.r.* 15]

Failure to comply with requirement for discovery, etc.

19.—(1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose or to supply copies thereof fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rules 3(2) and 12(1), the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order for discovery or production of documents made against that party shall be sufficient to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

[*E.r.* 16]

Revocation and variation of orders

20. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.]

[*E.r.* 17]

[(a) ORDER 25

MEDICAL EVIDENCE

I. PRELIMINARY

Application and interpretation

1.—(1) This Part of this Order applies to all actions in respect of personal injury or death.

(2) For the purposes of this Order—

"medical evidence" means—

(*a*) the evidence contained in any medical report or other accompanying or supplemental document as specified in rule 10 and includes surgical and radiological evidence and any ancillary expert or technical evidence; and

(*b*) any other evidence of a medical, surgical or radiological nature which a party proposes to adduce at the trial by means of oral testimony,

and the expressions "medical expert" and "medical examination" shall be construed accordingly; and

"clinical negligence" means negligence in connection with the diagnosis of any illness, or the care or treatment of any patient, in consequence of any act or omission to act by a person employed or engaged for such purposes.

Restrictions on medical evidence

2. No party shall, except with the leave of the Court or on consent, adduce medical evidence at the trial the contents of which he has not disclosed to the other parties in accordance with rules 7, 8 or 13.

Failure to comply with rules

3. Where any party fails to comply with any of the provisions of this order, the Court may stay the action or strike out that party's defence, as the case may be, or make such order as the Court considers appropriate.

II. GENERAL RULES

Application

4. This Part of this Order applies to all actions for damages in respect of personal injury or death except actions grounded on an allegation of clinical negligence.

Medical report to be served with statement of claim

5. The plaintiff shall serve with his statement of claim medical evidence substantiating all the personal injuries alleged in the statement of claim.

Medical examination of another party: disclosure of report

6. Any party who has been afforded medical examination of another party shall disclose to that other party any medical evidence resulting from such examination—

(a) insofar as he then has in his possession or power a report or reports of such examination not later than 10 weeks from the close of the pleadings; and

(b) insofar as he thereafter obtains any such report before the date of the trial, within 21 days of receiving it and in any case before the first day of the trial.

(**a**) Order 25 substituted by S.R. 2009 No. 230 with effect from 07.09.09

ORDER 25

Disclosure of medical *evidence*

7. Subject to rule 5, where a party proposes to adduce at the trial medical evidence obtained from any medical expert, he shall disclose all relevant medical evidence obtained at any time from that medical expert to the relevant party or parties—

(*a*) insofar as he then has in his possession or power that evidence, not later than 10 weeks from the close of the pleadings; and

(*b*) insofar as he thereafter obtains any such evidence before the date of the trial, within 21 days of receiving it and in any case before the first day of the trial.

Evidence received during the trial

8. Where a party obtains on or after the first day of the trial any report of evidence of the kind mentioned in rule 5 or 6, he shall disclose that report or evidence to the relevant party or parties immediately.

Party to furnish name and address of doctor, etc.

9. Any party to an action shall furnish to any other party on demand the name and address of any medical practitioner or the name of any hospital from whom or at which he received any medical or surgical treatment material to the action.

Mode of disclosure

10.—(1) A party serving or disclosing medical evidence under this Part of this Order shall do so by furnishing copies of any relevant medical report or reports, together with any documents emanating from the maker of the report which are intended by him to accompany or supplement any such report, or a document or documents containing a sufficient record of any such evidence as is referred to in the definition of medical evidence in rule 1(2). All such reports or other documents shall be signed and dated by the relevant medical expert and shall specify his professional qualifications.

(2) On the ex parte application of any party bound to serve or disclose any medical report under this Order, the Court may give him leave—

(i) to adduce at the trial the evidence contained in any report without serving or disclosing the report; or

(ii) to omit or amend any part of any report when serving or disclosing the report.

Variation between evidence disclosed and evidence at trial.

11. Where a party's medical evidence at the trial varies from the evidence which that party has disclosed to another party, the Court may on the application of any party adjourn the trial or make any such order, on such terms as to costs and otherwise, as the Court considers appropriate.

III. CLINICAL NEGLIGENCE ACTIONS

Application

12. This Part of this Order applies to actions for damages in respect of personal injury which are grounded on an allegation of clinical negligence.

Disclosure of medical evidence on the issue of liability

13.—(1) Where more than one party to such an action proposes to adduce at the trial medical evidence obtained from any medical expert on the issue of liability, each party shall—

(i) insofar as they then have in their possession or power that evidence, disclose it to the other party or parties simultaneously not later than 20 weeks from the close of the pleadings or such other period as the Court may direct; and

(ii) insofar as any party thereafter obtains any such evidence before the date of the trial, disclose it to the other party or parties within 21 days of receiving it and in any case before the first day of the trial.

(2) Nothing in paragraph (1) shall be interpreted as imposing an obligation on any party to disclose evidence obtained from any medical expert on liability except where the party or parties to whom disclosure is to be made is also relying on such evidence and simultaneous exchange is to take place.

Disclosure of medical evidence on the issue of damages

14.—(1) Where the plaintiff proposes to adduce at the trial medical evidence obtained from any medical expert for the purpose of assisting the Court in assessing damages, he shall—

(i) insofar as he then has in his possession or power that evidence, disclose it to the other party or parties not later than 10 weeks from the close of the pleadings or such other period as the Court may direct; and

(ii) insofar as he thereafter obtains any such evidence before the date of the trial, disclose it to the other party or parties within 21 days of receiving it and in any case before the first day of the trial.

(2) Where the defendant or any other party proposes to adduce at the trial medical evidence obtained from any medical expert for the purpose of assisting the Court in assessing damages, he shall—

(i) insofar as he then has in his possession or power that evidence, disclose it to the plaintiff and any other party or parties not later than 20 weeks from the close of the pleadings or such other period as the Court may direct; and

(ii) insofar as he thereafter obtains any such evidence before the date of trial, disclose it to the plaintiff and any other party or parties within 21 days of receiving it and in any case before the first day of the trial.]

ORDER 26

INTERROGATORIES

[(**a**) *Discovery by interrogatories*

1.—(1) A party to any cause or matter may in accordance with the following provisions of this Order serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter which are necessary either—

(*a*) for disposing fairly of the cause or matter, or

(*b*) for saving costs.

(2) Without prejudice to the provisions of paragraph (1), a party may apply to the Court for an order giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter.

(3) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) may not be administered notwithstanding that it might be admissible in oral cross-examination of a witness.

(4) In this Order,

''interrogatories without order'' means interrogatories served under paragraph (1);

''ordered interrogatories'' means interrogatories served under paragraph (2) or interrogatories which are required to be answered pursuant to an order made on an application under rule 3(2) and, where such an order is made, the interrogatories shall not, unless the Court orders otherwise, be treated as interrogatories without order for the purposes of rule 3(1).

(5) Unless the context otherwise requires, the provisions of this Order apply to both interrogatories without order and ordered interrogatories.

[*E.r.* 1]

Form and nature of interrogatories

2.—(1) Where interrogatories are served, a note at the end of the interrogatories shall specify—

(*a*) a period of time (not being less than 28 days from the date of service) within which the interrogatories are to be answered;

(*b*) where the party to be interrogated is a body corporate or unincorporate which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the officer or member on whom the interrogatories are to be served; and

(*c*) where the interrogatories are to be served on two or more parties or are required to be answered by an agent or servant or a party, which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

(2) Subject to rule 5(1), a party on whom interrogatories are served shall, unless the Court otherwise on an application under rule 3(2), be required to give within the period specified under rule 2(1)(*a*) answers, which shall (unless the Court directs otherwise) be on affidavit.

[*E.r.* 2]

(**a**) Rules 1 to 6 substituted by S.R. 1991 No. 330 with effect from 2.9.91

Interrogatories without order

3.—(1) Interrogatories without order may be served on a party not more than twice.

(2) A party on whom interrogatories without order are served may, within 14 days of the service of the interrogatories, apply to the Court for the interrogatories to be varied or withdrawn and, on any such application, the Court may make such order as it thinks fit (including an order that the party who served the interrogatories shall not serve further interrogatories without order).

(3) Interrogatories without order shall not be served on the Crown.

[*E.r.* 3]

Ordered interrogatories

4.—(1) Where an application is made for leave to serve interrogatories, a copy of the proposed interrogatories shall be served with the summons by which the application is made.

(2) In deciding whether to give leave to serve interrogatories, the Court shall take into account any offer made by the party to be interrogated to give particulars, make admissions or produce documents relating to any matter in question and whether or not interrogatories without order have been administered.

[*E.r.* 4]

Objections and insufficient answers

5.—(1) Without prejudice to rule 3(2), where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his answer.

(2) Where any person on whom ordered interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, either by affidavit or an oral examination as the Court may direct.

(3) Where any person on whom interrogatories without order have been served answers any of them insufficiently, the party serving the interrogatories may ask for further and better particulars of the answer given and any such request shall not be treated as service of further interrogatories for the purposes of rule 3(1).

[*E.r.* 5]

Failure to comply with order

6.—(1) If a party fails to answer interrogatories or to comply with an order made under rule 5(2) or a request made under rule 5(3), the court may make such an order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) Without prejudice to paragraph (1), where a party fails to answer ordered interrogatories or to comply with an order made under rule 5(2), he shall be liable to committal.

(3) Service on a party's solicitor of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.]

[*E.r.* 6]

Use of answers to interrogatories at trial

7. A party may put in evidence at the trial of a cause or matter, or of any issue therein, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and if of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be used without the other, the Court may direct that that other answer or part shall be put in evidence.

[*E.r.* 7]

Revocation and variation of orders

8. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original matter was made.

[*E.r.* 8]

ORDER 27

ADMISSIONS

Admission of case of other party

1. Without prejudice to Order 18, rule 13, a party to a cause or matter may give notice, by his pleading or otherwise in writing, that he admits the whole or any part of the case of any other party.

[*E.r.* 1]

Notice to admit [(**a**) . . .]

2.—(1) A party to a cause or matter may not later than 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, [(**b**) such facts or such part of his case, as may be] specified in the notice.

(2) An admission made in compliance with a notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him on such terms as may be just.

[*E.r.* 2]

Judgment on admission [(**c**) . . .]

3. Where admissions of fact [(**d**) or of part of a case] are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

An application for an order under this rule may be made by motion or summons.

[*E.r.* 3]

Admission and production of documents specified in list of documents

4.—(1) Subject to paragraph (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party who receives or who is served with a list of documents in pursuance of any provision of Order 24 shall, unless the Court otherwise orders, be deemed to admit—

(*a*) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been, and

(*b*) that any document described therein as a copy is a true copy.

This paragraph does not apply to a document the authenticity of which the party has denied in his pleading.

(2) If before the expiration of 21 days after inspection of the documents specified in a list of documents or after the time limited for inspection of those documents expires, whichever is the later, the party who reiceves or who is served with the list serves on the party whose list it is a notice stating,

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(**a**) Words deleted by S.R. 1982 No. 217 with effect from 1.9.82
(**b**) Words substituted by S.R. 1982 No. 217 with effect from 1.9.82
(**c**) Words deleted by S.R. 1982 No. 217 with effect from 1.9.82
(**d**) Words inserted by S.R. 1982 No. 217 with effect from 1.9.82

in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admission in relation to that document under paragraph (1).

(3) A party to a cause or matter by whom a list of documents is served on any other party in pursuance of any provision of Order 24 shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.

(4) The foregoing provisions of this rule apply in relation to an affidavit made in compliance with an order under Order 24, rule 5, as they apply in relation to a list of documents served in pursuance of any provision of that Order.

[*E.r.* 4]

Notices to admit or produce documents

5.—(1) Except where rule 4(1) applies, a party to a cause or matter may within 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit the authenticity of the documents specified in the notice.

(2) If a party on whom a notice under paragraph (1) is served desires to challenge the authenticity of any document therein specified he must, within 21 days after service of the notice, serve on the party by whom it was given a notice stating that he does not admit the authenticity of the document and requires it to be proved at the trial.

(3) A party who fails to give a notice of non-admission in accordance with paragraph (2) in relation to any document shall be deemed to have admitted the authenticity of that document unless the Court otherwise orders.

(4) Except where rule 4(3) applies, a party to a cause or matter may serve on any other party a notice requiring him to produce the documents specified in the notice at the trial of the cause or matter.

[*E.r.* 5]

ORDER 28

ORIGINATING SUMMONS PROCEDURE

Application

1. The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any statutory provision; and subject as aforesaid, Order 32 rule [(**a**) 7] shall apply in relation to originating summonses as it applies in relation to other summonses.

[*E.r.* 1]

[(**b**)*Affidavit evidence*

1A.—(1) In any cause or matter begun by originating summons (not being an ex parte summons) the plaintiff must, before the expiration of 14 days after the defendant has entered an appearance, or, if there are two or more defendants, at least one of them has entered an appearance, file in the appropriate office affidavit evidence on which he intends to rely.

(2) In the case of an ex parte originating summons the applicant must file his affidavit evidence not less than 4 clear days before the day fixed for the hearing.

(3 Copies of the affidavit evidence filed under paragraph (1) must be served by the plaintiff on the defendant, or, if there are two or more defendants, on each defendant, before the expiration of 14 days after appearance has been entered by that defendant.

(4) Where a defendant who has entered an appearance wishes to adduce affidavit evidence he must within 28 days after service on him of copies of the plaintiff's affidavit evidence under paragraph (3) file his own affidavit evidence in the appropriate office and serve copies thereof on the plaintiff and on any other defendant who is affected thereby.

(5) A plaintiff on whom a copy of a defendant's affidavit evidence has been served under paragraph (4) may within 14 days of such service file further affidavit evidence in reply and shall in that event serve copies thereof on that defendant.

(6) No other affidavit shall be received in evidence without the leave of the Court.

(7) Where an affidavit is required to be served by one party on another party it shall be served without prior charge.

(8) The provisions of this rule apply subject to any direction by the Court to the contrary.

(9) In this rule references to affidavits and copies of affidavits include references to exhibits and copies of such exhibits.]

[*E.r.* 1A]

Fixing times for attendance of parties before Court

2.—(1) [(**c**) In the case of an originating summons which is in Form No. 6 in Appendix A the plaintiff must, within one month of the expiry of the time within which copies of affidavit evidence may be served under rule 1A,] obtain an appointment for the attendance of the parties before the Court for the hearing of the

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(a) Figure substituted by S.R. 1983 No. 114 with effect from 1.6.83
(b) Rule 1A inserted by S.R. 1983 No. 114 with effect from 1.6.83
(c) Words inserted by S.R. 1983 No. 114 with effect from 1.6.83

summons, and a day and time for their attendance shall be fixed by a notice (in Form No. 10 in Appendix A) sealed by an officer of the appropriate office.

(2) A day and time for attendance of the parties before the Court for the hearing of an originating summons [(a) which is in Form No. 7 in Appendix A] or for the hearing of an ex parte originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be[(a), and the time limits for lodging affidavits under rule 1A(2) and (3) shall where appropriate be abridged so as to expire, respectively, on the fifth day before, and the next day before, the day so fixed].

(3) Where, in respect of an originating summons [(a) which is in Form No. 7 in Appendix A] an application for a day to be fixed under paragraph (2) is not made until after the originating summons has been issued, a day and time for the attendance of the parties before the Court for the hearing of the summons shall be fixed by a notice issued in accordance with the provisions of paragraph (1).

(4) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant may, with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he has entered an appearance.

[*E.r.* 2]

[(b)*Notice of hearing*]

3.—(1) Not less than [(c) 14] days before the day fixed under rule 2 for the attendance of the parties before the Court for the hearing of an originating summons [(a) which is in Form No. 6 in Appendix A], the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party. [(d) ...]

(2) Not less than 4 clear days before the day fixed under rule 2 for the hearing of an originating summons [(a) which is in Form No. 7 in Appendix A], the plaintiff must serve the summons on every defendant and, where the day for the hearing is fixed after the summons is issued, a copy of the notice fixing it.

[(e) (3) Where notice in Form 10 in Appendix A is served in accordance with paragraph (1), such notice shall specify what orders or directions the party serving the notice intends to seek at the hearing; and any party served with such notice who wishes to seek different orders or directions must, not less than 7 days before the hearing, serve on every other party a notice specifying the other orders and directions he intends to seek.

(4) If the hearing of an originating summons which is in Form No. 6 or Form No. 7 in Appendix A is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for he must, not less than 7 days before the resumed hearing of the summons, serve on every other party a notice specifying those orders and directions.

(5) Where a party is required by any provision of this rule or rule 5(2) to serve a notice or a copy of a notice on "every other party" he must—

(a) where he is the plaintiff, serve it on every defendant who has entered an appearance to the originating summons; and

(b) where he is a defendant, serve it on the plaintiff and on every other defendant affected thereby.]

[*E.r.* 3]

(a) Words substituted by S.R. 1983 No. 114 with effect from 1.6.83
(b) Title substituted by S.R. 1983 No. 114 with effect from 1.6.83
(c) Figure substituted by S.R. 1993 No. 143 with effect from 19.4.93
(d) Words deleted by S.R. 1993 No. 143 with effect from 19.4.93
(e) New paragraphs (3), (4) and (5) inserted by S.R. 1993 No. 143 with effect from 19.4.93

Directions, etc., by Court

4.—(1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

[(**a**)(2) In any case where the Court does not dispose of any originating summons altogether at a hearing or orders the cause or matter begun by it to be remitted to a county court, or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.]

(3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the summons on oral evidence or mainly on oral evidence, and if it thinks fit, may order that no further evidence shall be filed and that the summons shall be heard on oral evidence or partly on oral evidence, and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination.

[*E.r.* 4]

[(**b**)(5) The Court may at any stage of the proceedings order that any affidavit or any particulars of any claim, defence or other matter stated in any affidavit, shall stand as pleadings.]

Adjournment of summons

5.—(1) The hearing of the summons by the Court may (if necessary) be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.

[(**c**)(2) If the hearing of the summons is adjourned generally, any party may restore it to the list on 7 days' notice to every other party, and rule 3(4) shall apply in relation to any such adjourned hearing.]

[*E.r.* 5]

(a) Paragraph (2) substituted by S.R. 1983 No. 114 with effect from 1.6.83
(b) Paragraph (5) inserted by S.R. 1993 No. 143 with effect from 19.4.93
(c) Paragraph (2) substituted by S.R. 1993 No. 143 with effect from 19.4.93

Applications affecting party in default of appearance

6. Where in a cause or matter begun by originating summons an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such a manner as it thinks fit that the party is in default of appearance.

[*E.r.* 6]

Counterclaim by defendant

7.—(1) A defendant to an action begun by originating summons who has entered an appearance to the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this rule must at the first or any resumed hearing of the originating summons by the Court but, in any case, at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct under rule 4 or rule 8.

(3) If it appears on the application of a plaintiff against whom a counterclaim is made under this rule that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

[*E.r.* 7]

Continuation of proceedings as if cause or matter begun by writ

8.—(1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason by continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavit shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

(2) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(3) Any reference in these Rules to an action begun by writ shall, unless the context otherwise requires, be construed as including a reference to a cause or matter proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

[*E.r.* 8]

Order for hearing or trial

9.—(1) Except where the Court disposes of a cause or matter begun by originating summons in chambers or orders it to be remitted to a county court in accordance with the provisions of section 31 of the Act or makes an order in relation to it under rule 8 or some other provision of these rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make [(**a**) such order as to the hearing of the cause or matter as may be appropriate].

(**a**) Words substituted by S.R. 1983 No. 5 with effect from 28.2.83

[**(a)** . . .]

(3) The Court shall by order determine the mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial.

(4) Order 33, rule 4(2), and Order 34, rules 1 to 7, shall apply in relation to a cause or matter in the Queen's bench Division begun by originating summons and to an order made therein under this rule as they apply in relation to an action in that Division begun by writ and to an order made therein under the said rule 4 and shall have effect accordingly with the necessary modification.

[*E.r.* 9]

Failure to prosecute proceedings with despatch

10.—(1) If the plaintiff in a cause or matter begun by originating summons makes default in complying with any order or direction of the Court as to the conduct of the proceedings, or if the Court is satisfied that the plaintiff in a cause or matter so begun is not prosecuting the proceedings with due despatch, the Court may order the cause or matter to be dismissed or may make such other order as may be just.

(2) Paragraph (1) shall, with any necessary modifications, apply in relation to a defendant by whom a counterclaim is made under rule 7 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 8, proceedings in a cause or matter begun by originating summons are to continue as if the cause or matter had been begun by writ, the foregoing provisions of this rule shall not apply in relation to the cause or matter after the making of the order.

[*E.r.* 10]

Abatement, etc., of action

11. Order 34, rule 8 shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

[*E.r.* 11]

(a) Paragraph (2) deleted by S.R. 1983 No. 5 with effect from 29.2.83

ORDER 29

INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC.

I. INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, ETC.

Application for injunction

1.—(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

[*E.r.* 1]

[**(a)***Application for injunction to restrain presentation of winding-up petition*

1A.—(1) An application for the grant of an injunction to restrain the presentation of a petition to wind up a company shall, subject to paragraph (2), be made by originating motion.

(2) Where the case is one of urgency, the application may be made ex parte on affidavit, and in that case the injunction applied for may be granted on terms providing for the issue of the originating motion and such other terms, if any as the court thinks fit.]

Detention, preservation, etc., of subject-matter of cause or matter

2.—(1) On the application of any party to a cause or matter the Court may make an order for the detention or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.

(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this rule must be made by summons.

(a) New rule 1A inseerted by S.R. 1991 No. 231 with effect from 1.9.91

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he enters an appearance. [*E.r.* 2]

Delivery up of goods under s.4 of Torts (Interference with Goods) Act 1977

3.—(1) Without prejudice to rule 2, the Court may, on the application of any party to a cause or matter, make an order under section 4 of the Torts (Interference with Goods) Act 1977(**a**) for the delivery up of any goods which are the subject of the cause or matter or as to which any question may arise therein.

(2) Paragraphs (2) and (3) of rule 1 shall have effect in relation to an application for such an order as they have effect in relation to an application for the grant of an injunction. [*E.r.* 2A]

Power to order samples to be taken, etc.

4.—(1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorise or require any sample to be taken of any property which is the subject-matter of the cause or matter or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purposes of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule. [*E.r.* 3]

Sale of perishable property etc.

5.—(1) The Court may, on the application of any party to a cause or matter, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order of any property (other than land) which is the subject-matter of the cause or matter or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any good reason it is desirable to sell forthwith.

In this paragraph "land" includes any interest in, or right over, land.

(2) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule. [*E.r.* 4]

Order for early trial

6. Where on the hearing of an application, made before the trial of a cause or matter, for an injunction or the appointment of a receiver or an order under rule 2, 4 or 5 it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

Where the Court makes an order for early trial it shall by the order determine the place and mode of the trial. [*E.r.* 5]

Recovery of personal property subject to lien, etc.

7. Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or

(**a**) 1977 c. 22

otherwise as security of any sum of money, the Court, at any time after the claim to he so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any) for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it.

[*E.r.* 6]

Directions

8. Where an application is made under any of the foregoing provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.

[*E.r.* 7]

Inspection, etc., of property under section 21 *of Administration of Justice Act* 1969 *or section* 32(2) *of Administration of Justice Act* 1970

9.—(1) An application for an order under section 21(1) of the Administration of Justice Act 1969(**a**) in respect of property which may become the subject-matter of subsequent proceedings in the High Court or as to which any question may arise in any such proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under section 32(2) of the Administration of Justice Act 1970(**b**) in respect of property which is not the property of or in the possession of any party to the proceedings shall be made by summons, which must be served on the person against whom the order is sought personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by affidavit which must specify or describe the property in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings or subsequent proceedings, that it is property which is or may become the subject-matter of the proceedings or as to which any question arises or may arise in the proceedings.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order made under the said section 21 or 32(2) may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just.

(6) No such order shall be made if it appears to the Court—

(*a*) that compliance with the order, if made, would result in the disclosure of information relating to a secret process, discovery or invention not in issue in the proceedings, and

(*b*) that the application would have been refused on that ground if—

(i) in the case of a summons under paragraph (1), the subsequent proceedings had already been begun, or

(**a**) 1969 c. 58
(**b**) 1970 c. 31

(ii) in the case of a summons under paragraph (2), the person against whom the order is sought were a party to the proceedings

[*E.r.* 7A]

Allowance of income of property pendente lite

10. Where any real or personal property forms the subject-matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties. [*E.r.* 8]

[(**a**) *The European Intellectual Property Directive*

10A.—(1) When an application is made to which Directive 2004/48/EC(**b**) applies, the Court may grant an interim order making the continuation of an alleged infringement subject to guarantees.

(2) Where the Court grants an order *ex parte* to which Directive 2004/48/EC applies, such order shall be granted only on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.]

[(**c**) II — INTERIM PAYMENTS

Interpretation of Part II

11. In this part of this Order—

"interim payment", in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff; and any reference to the plaintiff or defendant includes a reference to any person who, for the purpose of the proceedings, acts as next friend of the plaintiff or guardian of the defendant. [*E.r.* 9]

Application for interim payment

12.—(1) The plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to enter an appearance has expired, apply to the Court for an order requiring that defendant to make an interim payment.

(2) An application under this rule shall be made by summons but may be included in a summons for summary judgement under Order 14 or Order 86.

(3) An application under this rule shall be supported by by an affidavit which shall—

(*a*) verify the amount of the damages, debt or other sum to which the application relates and the grounds of the application;

(*b*) exhibit any documentary evidence relied on by the plaintiff in support of the application; and

(*c*) if the plaintiff's claim is made under the Fatal Accidents (Northern Ireland) Order 1977(**d**), contain the particulars mentioned in Article 4(4) of that Order.

(4) The summons and a copy of the affidavit in support of any documents exhibited thereto shall be served on the defendant against whom the order is sought not less than 10 clear days before the return day.

(5) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown. [*E.r.* 10]

(**a**) New Rule 10A inserted by S.R. 2006 No. 486 with effect from 08.01.07
(**b**) Directive on the Enforcement of Intellectual Property Rights (2004/48/EC) (O.J. L157, 30.4.2004)
(**c**) Order 29 Pts. II and III (rules 11-23) substituted by new Pt. II (rules 11-20) by S.R. 1982 No. 217 with effect from 1.9.82
(**d**) S.I. 1977 No. 1251 (N.I. 18)

Order for interim payment in respect of damages

13.—[(**a**) (1) If, on the hearing of an application under rule 12 in an action for damages, the Court is satisfied—

(a) that the defendant against whom the order is sought (in this paragraph referred to as "the respondent") has admitted liability for the plaintiff's damages; or

(b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or

(c) that, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent; or

(d) that, in an action in which there are two or more defendants and the order is sought against any one or more of them, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against at least one of the defendants (but the Court cannot determine which),

the Court may if it thinks fit, subject to paragraphs (2) and (3), order the respondent, or any one or more of the respondents as the case may be, to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely.]

(2) [(**b**) Where an application falls within paragraphs (1)(a)-(c)] no order shall be made under paragraph (1) in an action for personal injuries if it appears to the Court that the defendant is not a person falling within one of the following categories, namely—

(a) a person who is insured in respect of the plaintiffs claim;

(b) a public authority; or

(c) a person whose means and resources are such as to enable him to make the interim payment.

[(**b**) (3) Where an application falls within paragraph 1(d), no order shall be made under paragraph (1) unless the Court is satisfied that each of the defendants is a person falling within one of the following categories, namely—

(a) a person who is insured in respect of the plaintiff's claim or whose liability will be met by an insurer under Article 98 of the Road Traffic (Northern Ireland) Order 1981;

(b) a person whose liability will be met by the Motor Insurers' Bureau, a company limited by guarantee and incorporated under the Companies Act 1929, or an insurer acting on its behalf; or

(c) a public authority.]

[*E.r.* 11]

Order for interim payment in respect of sums other than damages

14. If, on the hearing of an application under rule 12, the Court is satisfied—

(a) that the plaintiff has obtained an order for an account to be taken as between himself and the defendant and for any amount certified due on taking the account to be paid; or

(b) that the plaintiffs action includes a claim for possession of land and, if the action proceeded to trial, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the action, even if a final judgment or order were given or made in favour of the defendant; or

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(a) Rule 13(1) substituted by S.R. 2015 No. 415 with effect from 06.01.16

(b) Paragraph inserted by S.R. 2015 No. 415 with effect from 06.01.16

(c) that, if the action proceeded to trial the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages or costs,

the Court may, if he thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim or counterclaim on which the defendant may be entitled to rely.

[*E.r.* 12]

Manner of payment

15.—(1) Subject to Order 80 rule 10, the amount of any interim payment ordered to be made shall be made to the plaintiff unless the order provides for it to be paid into court, and where the amount is paid into court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

(2) An application under the preceding paragraph for money in court to be paid out may be made ex parte, but the Court hearing the application may direct a summons to be issued.

(3) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

(4) Where a payment is ordered in respect of the defendant's use and occupation of land the order may provide for periodical payments to be made during the pendency of the action.

[*E.r.* 13]

Directions on application under rule 12

16. Where an application is made under rule 12, the Court may give directions as to the future conduct of the action, and, in particular, the Court may order an early trial of the action.

[*E.r.* 14]

Non-disclosure of interim payment

17. The fact that an order has been made under rule 13 or 14 shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the court at the trial, or hearing, of any question or issue as to liability or damages until all questions of liability and amount have been determined.

[*E.r.* 15]

Payment into court in satisfaction

18. Where, after making an interim payment, whether voluntarily or pursuant to an order, a defendant pays a sum of money into Court under Order 22, rule 1, the notice of payment must state that the defendant has taken into account the interim payment.

[*E.r.* 16]

Adjustment on final judgment or order or on discontinuance

19. Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue his action or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceedings on the application

of any party, make such order with respect to the interim payment as may be just, and in particular—

(a) an order for the repayment by the plaintiff of all or part of the interim payment, or

(b) an order for the payment to be varied or discharged, or

(c) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

[*E.r.* 17]

Counterclaims and other proceedings

20. The preceding rules in this Part of this Order shall apply, with the necessary modifications, to any counterclaim or proceeding commenced otherwise than by writ, where one party seeks an order for an interim payment to be made by another.

[*E.r.* 18]

ORDER 30

RECEIVERS

Application for receiver and injunction

1.—(1) An application for the appointment of a receiver may be made by summons or motion.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so ex parte on affidavit.

(4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.

[*E.r.* 1]

[(**a**) *Giving of security by receiver*

2.—(1) A judgment or order directing the appointment of a receiver may include such direction as the Court may think fit as to the giving of security by the person appointed.

(2) Where by virtue of any judgment or order appointing a person named therein to be receiver a person is required to give security in accordance with this rule, he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee.

(4) The guarantee must be filed in the appropriate office and it shall be kept as of record until duly vacated.

[*E.r.* 2]

Remuneration of receiver

3. A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorised by the Court and the Court may direct that such remuneration shall be fixed by reference to such scales or rates of professional charges as it thinks fit.

[*E.r.* 3]

Service of order and notice

4. A copy of the judgment or order appointing a receiver shall be served by the party having conduct of the proceedings on the receiver and all other parties to the cause or matter in which the receiver has been appointed.

[*E.r.* 4]

Receiver's accounts

5.—(1) A receiver shall submit such accounts to such parties at such intervals or on such dates as the Court may direct.

(2) Any party to whom a receiver is required to submit accounts may, in giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to such accounts.

(**a**) Rules 2 to 8 substituted for rules 2 to 6 by S.R. 1983 No. 5 with effect from 28.2.83

(3) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within not less than 14 days to lodge his accounts with the Court and a copy of such notice shall be lodged in the appropriate office.

(4) Following an examination by or on behalf of the Court of an item or items in an account to which objection is taken the result of such examination must be certified by a master and an order may thereupon be made as to the incidence of any costs or expenses incurred.

[*E.r.* 5]

Payment into court by receiver

6. The Court may fix the amounts and frequency of payments into court to be made by a receiver.

[*E.r.* 6]

Default by receiver

7.—(1) Where a receiver fails to attend for the examination of his account or fails to submit any account, provide access to any books or papers, provide or do any other thing which he is required to provide or do, he and all of the parties in the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the examination of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum required to be so paid, the Court may disallow any remuneration claimed by the receiver and may, where he has failed to pay any such sum into court, charge him with interest at the rate currently payable in respect of judgment debts in the High Court on that sum while in his possession as receiver.

Directions to receiver

8. A receiver may at any time request the Court to give him directions and such request shall state in writing the matters with regard to which directions are required].

ORDER 31

SALES, ETC. OF LAND BY ORDER OF COURT: CONVEYANCING COUNSEL TO THE COURT

1. SALES, ETC. OF LAND BY ORDER OF COURT

Power to order sale of land

1. Where in any cause or matter in the Chancery Division relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

In this Order "land" includes any interest in, or right over, land.

[*E.r.* 1]

Manner of carrying out sale

2.—(1) Where an order is made, whether in court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or [(**a**) subsequently] direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

[(**b**) . . . .]

[(**c**)(2)] [(**d**) The Court] may give such directions as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions—

(*a*) appointing the party or person who is to have the conduct of the sale;

(*b*) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;

(*c*) fixing a reserve or minimum price;

(*d*) requiring payment of the purchase money into court or to trustees or other persons;

(*e*) for settling the particulars and conditions of sale;

(*f*) for obtaining evidence of the value of the property;

(*g*) fixing the security (if any) to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed him;

(*h*) requiring an abstract of the title to be referred to conveyancing counsel to the Court or some other conveyancing counsel for his opinion thereon and to settle the particulars and conditions of sale.

[*E.r.* 2]

(**a**) Word substituted by S.R. 1983 No. 5 with effect from 28.2.83
(**b**) Rule 2(2) and (3) deleted by S.R. 1983 No. 5 with effect from 28.2.83
(**c**) Rule 2(4) renumbered rule 2(2) by S.R. 1983 No. 5 with effect from 28.2.83
(**d**) Words substituted by S.R. 1983 No. 5 with effect from 28.2.83

Certifying result of sale

3.—(1) If either the Court has directed payment of the purchase money into court or the Court so directs, the result of a sale by order of the Court must be certified—

(*a*) in the case of a sale by public auction, by the auctioneer who conducted the sale, and

(*b*) in any other case, by the solicitor of the party or person having the conduct of the sale;

and the Court may require the certificate to be verified by the affidavit of the auctioneer or solicitor, as the case may be.

(2) The solicitor of the party or person having the conduct of the sale must file the certificate and affidavit (if any) [(a) in] the Chancery Office.

[*E.r.* 3]

Mortgage, exchange or partition under order of the Court

4. Rules 2 and 3 shall, so far as applicable and with the necessary modifications, apply in relation to the mortgage, exchange or partition of any land under an order of the Court as they apply in relation to the sale of any land under such an order.

[*E.r.* 4]

II. Conveyancing Counsel to the Court

Reference of matters to conveyancing counsel to Court

5. The Court may refer to the conveyancing counsel to the Court—

(*a*) any matter relating to the investigation of the title to any property with a view to an investment of money in the purchase or on mortgage thereof, or with a view to the sale thereof,

(*b*) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement or other instrument, and

(*c*) any other matter it thinks fit,

and may act upon this opinion in the matter referred.

[*E.r.* 5]

Objection to conveyancing counsel's opinion

6. Any party may object to the opinion given by any conveyancing counsel on a reference under rule 5, and if he does so the point in dispute shall be determined by the judge either in chambers or in court as he thinks fit.

[*E.r* 6]

(a) Word substituted by S.R. 1983 No. 5 with effect from 28.2.83

ORDER 32

APPLICATIONS AND PROCEEDINGS IN CHAMBERS

Powers of judge in chambers

1. A judge of the High Court may exercise in chambers all or any part of the jurisdiction vested in the High Court in all such causes and matters and in all such proceedings in any causes or matters as may be directed or authorised by these Rules or by or in pursuance of any statutory provision to be heard in chambers.

Applications which must be made in chambers

2. An application must be made in chambers where—

(*a*) these Rules or any statutory provision require the application to be made in chambers or by summons; or

(*b*) the Court directs that the application be made in chambers; or

(*c*) the application is interlocutory and is not required or authorised by these Rules to be made by motion, except an application for an injunction or an application made in court at the trial or hearing of a cause or matter.

Mode of making application

3.—(1) Every application in chambers not made ex parte must be made by summons. A summons, other than an originating summons, shall be in Form No. 28 in Appendix A.

(2) Any application made ex parte may be directed to be made by summons.

[*E.r.* 1]

Issue of summons

4.—(1) Issue of a summons by which an application in chambers is to be made takes place on its being sealed by an officer of the appropriate office.

(2) A summons may not be amended after issue without the leave of the Court.

[**(a)** . . .]

[*E.r.* 2]

Service of summons

5. A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing thereof, but except as aforesaid and unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be served on every other party not less than 2 clear days before the day so specified.

[*E.r.* 3]

Adjournment of hearing

6.—(1) The hearing of a summons may be adjourned from time to time, either generally or to a particular date, as may be appropriate.

(2) If the hearing is adjourned generally, the party by whom the summons was taken out may restore it to the list on 2 clear days' notice to all the other parties on whom the summons was served.

[*E.r.* 4]

(a) Rule 4(3) deleted by S.R. 1982 No. 217 with effect from 1.9.82

ORDER 32

Proceeding in absence of party failing to attend

7.—(1) Where any party to a summons fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing a summons proceeded in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons.

(4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

[*E.r.* 5]

Order made ex parte may be set aside

8. The Court may set aside an order made ex parte.

[*E.r.* 6]

Subpoena for attendance of witness

9.—(1) A writ of subpoena ad testificandum or a writ of subpoena duces tecum to compel the attendance of a witness for the purpose of proceedings in chambers may be issued out of the appropriate office, if the party who desires the attendance of the witness produces a note from a judge or master authorising the issue of the writ.

(2) Any master may give such a note or may direct that the application for it be made to the judge before whom the proceedings are to be heard.

[*E.r.* 7]

Application to make order of House of Lords order of High Court

10. An application to make an order of the House of Lords an order of the High Court may be made ex parte by affidavit to a master.

[*E.r.* 10]

Jurisdiction of masters

11.—(1) A master shall have power to transact all such business and exercise all such jurisdiction as may be transacted and exercised by a judge in chambers, except in respect of the following matters and proceedings, that is to say—

(*a*) matters relating to criminal proceedings;

(*b*) matters relating to the liberty of the subject;

(*c*) applications to review any taxation of costs;

(*d*) applications under section 32 of the Act for leave to institute or continue legal proceedings;

(*e*) applications for approval of transactions under the inherent jurisdiction of the court;

(*f*) the granting of an injunction, except in the terms agreed by the parties to the proceedings in which the injunction is sought;

(*g*) application to sanction a compromise, arrangement or transaction on behalf of a person under disability;

(*h*) applications concerning charities;

(*i*) applications under section 40 of the Trustee Act (Northern Ireland) 1958(**a**) for the appointment of a trustee in substitution for an existing trustee without his consent;

(*j*) applications to authorise transactions relating to trust property under section 56 of the Trustee Act (Northern Ireland) 1958;

(*k*) applications to vary trusts under section 57 of the Trustee Act (Northern Ireland) 1958;

(*l*) applications by trustees to be relieved from personal liability under section 61 of the Trustee Act (Northern Ireland) 1958;

(*m*) applications under [(**b**) Article 133(2) of the Mental Health (Northern Ireland) Order 1986(**c**)] to bring proceedings against a person;

(*n*) any other matter or proceeding which by any of these Rules or under any general or special directions of the Lord Chief Justice or, in the case of the Master (Chancery) or the Master (Bankruptcy), the Chancery Judge, is required to be heard only by a judge.

[(**d**)(*o*) proceedings under section 7(1)(*a*) of the Human Rights Act 1998 in respect of a judicial act, as defined in section 9(5) of that Act;

(*p*) proceedings in which there is an issue which may lead to the Court considering whether to make a declaration of incompatibility under section 4 of the Human Rights Act 1998.].

[(**e**)(2) The exception from the powers of a master to sanction a compromise, arrangement or transaction on behalf of a person under disability referred to in paragraph 1(*g*) shall not apply to the Master (Care and Protection) in the exercise of his powers in matters relating to patients].

[(**f**)(3)] Where an originating summons raises for the determination of the Court a question as to the construction of a document or a question of law, nothing in paragraph (1) shall authorise a master to determine that question.

[*E.r.* 11 & 14]

Reference of a matter to judge

12.—(1) A master may refer to a judge any matter which he thinks should properly be decided by a judge, and the judge may either dispose of the matter or, after or without hearing the parties, refer it back to the master, with such directions as he thinks fit.

(2) A matter referred under this rule shall, in accordance with the directions of the judge, either be listed for hearing by the judge or restored to the master's list.

[*E.r.* 12]

[(**g**) *Application for a direction under the Statute of Limitations*

12A. The jurisdiction to direct, under section 9D of the Statute of Limitations (Northern Ireland) 1958, that section 9A or 9B of that Act should not apply to an action or to any specified cause of action to which the action relates shall be exerciseable by the Court.]

(**a**) 1958 c. 23 (N.I.)
(**b**) Words substituted by S.R. 1986 No. 184 with effect from 31.7.86
(**c**) S.I. 1986/595 (N.I. 4)
(**d**) New sub-paragraphs (*o*) and (*p*) added by S.R. 2000 No. 243 with effect from 2.10.00
(**e**) New rule 11(2) inserted by S.R. 1985 No. 170 with effect from 2.9.85
(**f**) Rule 11(2) renumbered 11(3) by S.R. 1985 No. 170 with effect from 2.9.85
(**g**) Rule 12A inserted by S.R. 1982 No. 217 with effect from 1.9.82

ORDER 32

Power to direct hearing in court

13.—(1) The judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.

(2) Any matter heard in court by virtue of a direction under paragraph (1) may be adjourned from court into chambers.

[*E.r.* 13]

Masters may summons parties, etc.

14.—(1) For the purpose of any proceedings before him, a master may—

(*a*) issue a summons requiring any party to the proceedings to attend before him,

(*b*) at the request of any such party, issue a summons requiring any person to attend him as a witness,

(*c*) require the production of documents, and

(*d*) examine any party or witness either orally or on interrogatories.

(2) A summons under paragraph (1)(2b1) must be served personally on the person against whom it is issued.

(3) If a person refuses or fails to obey a summons duly served on him under this rule the master may make an order requiring that person to attend before him.

[*E.r.* 15]

Obtaining assistance of experts

15. If the Court thinks it is expedient in order to enable it better to determine any matter arising in proceedings in chambers, it may obtain the assistance of any person specially qualified to advise on that matter and may act upon his opinion.

[*E.r.* 16]

Adjournment into or from court

16. The hearing of any summons or other application in chambers may be adjourned from chambers into court and subsequently from court into chambers.

[*E.r.* 18]

Disposal of matters in chambers

17. The judge may by any judgment or order made in court in any proceedings direct that such matters (if any) in the proceedings as he may specify shall be disposed of in chambers.

[*E.r.* 19]

Papers for use of Court, etc.

18. The original of any document which is to be used in evidence in proceedings in chambers must, if it is available, be brought in, and copies of any such document or of any part thereof shall not be made unless the Court directs that copies of that document or part be supplied for the use of the Court or be given to the other parties to the proceedings.

[*E.r.* 21]

TRIAL

ORDER 33

PLACE AND MODE OF TRIAL

Place of trial

1. Subject to any direction or order under section 58 of the Act, the place of trial of a cause or matter, or of any question or issue arising therein, shall be the Royal Courts of Justice.

[*E.r.* 1]

Mode of trial

2. Subject to the provisions of these Rules, a cause or matter, or any question or issue arising therein, may be tried before—

(*a*) a judge alone, or

(*b*) a judge with a jury, or

(*c*) a judge with the assistance of assessors, or

(*d*) a master.

[*E.r.* 2]

Time, etc., of trial of questions or issues

3. The Court may order any question or issue arising in a cause or matter, whether of fact or of law or partly of law, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

[*E.r.* 3]

Determining the mode of trial

4. [(**a**) (1) Any action in which a claim is made in respect of libel, slander, malicious prosecution or false imprisonment or any issue of fact therein shall, subject to section 62(2) of the Act, be tried with a jury if any party to the action so requests, and a party setting down such an action must specify the mode of trial which he requests].

(2) Where the party setting down such an action requests a trial without a jury, any other party may within 7 days after receiving a notice pursuant to Order 34, rule 7(1) lodge a request in the appropriate office that the action be tried with a jury and must within 24 hours after lodging such request send a copy thereof to every other party.

(3) A party setting down any other action must not request any mode of trial.

[(**b**) (3A) The trial of any action not mentioned in paragraph (1) or any issue of fact therein shall, subject to section 62(4) of the Act, be tried without a jury].

(4) Where trial has been requested under paragraph (1) or (2), any party (including the party who made the request) may apply either by motion on notice or at the trial of the action for an order that the action or any issue of fact therein be tried without a jury.

(5) Where the trial of an action with a jury has not been requested, any party (including the party who set down the action for trial) may apply by motion on notice for an order that the action or any issue of fact therein be tried with a jury.

(**a**) New paragraph (1) substituted by S.R. 1987 No. 304 with effect from 1.8.87
(**b**) New paragraph (3A) inserted by S.R. 1987 No. 304 with effect from 5.9.87

(6) The Court may, upon application made under paragraph (4) or (5) and subject to section 62 of the Act, fix the mode of trial of any action or of any issue of fact therein and, only where it considers that the interest of justice so require, order that different questions of fact arising in the action be tried at different times or by different modes of trial.

(7) Nothing in this rule affects the provisions of Order 104, rule 11, as to actions for the infringement of a patent.

[(**a**) *Excusing of jurors*

4A.—(1) Subject to paragraphs (2) to (5) of this rule the powers of a judge under Articles 10 and 11(1) of the 1996 Order may be exercised by the Principal Clerk of the Central Office.

(2) A person dissatisfied with a decision of the Principal Clerk of the Central Office made in the exercise of the powers conferred by Article 10 or 11(1) of the 1996 Order may appeal to a judge in accordance with paragraph (3) of this rule.

(3) An appeal under this rule shall be commenced by the appellant giving notice of appeal to the Principal Clerk of the Central Office and such notice shall be in writing and shall specify the matters upon which the appellant relies in support of his appeal.

(4) A judge shall not dismiss an appeal under this rule unless the apellant has been given an opportunity of making representations.

(5) Where an appeal under this rule is decided in the absence of the appellant, the Principal Clerk of the Central Office shall notify him of the decision as soon as possible.

(6) In this rule "the 1996 Order" means the Juries (Northern Ireland) Order 1996(**b**).]

Trial with assistance of assessors

5. A trial of a cause or matter with the assistance of assessors under section 61 of the Act shall take place in such manner and in such terms as the Court may direct.

[*E.r.* 6]

Dismissal of action, etc., after decision of preliminary issue

6. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just.

[*E.r.* 7]

(**a**) Rule inserted by S.R. 1999 No. 19 with effect from 15.2.99
(**b**) S.I. 1996/1141 (N.I. 6)

ORDER 34

SETTING DOWN FOR TRIAL ACTION BEGUN BY WRIT

Application and interpretation

1. This Order applies to actions begun by writ and, accordingly, references in this Order to an action shall be construed as references to an action so begun.

[*E.r.* 1]

Time for setting down action

2.—(1) The plaintiff in any action shall within 6 weeks after the close of pleadings, or within the period fixed by an order of the Court, set down the action for trial.

(2) Where the plaintiff fails to set down the action for trial, the defendant may set it down or apply to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or make such order as it thinks fit.

[*E.r.* 2]

Setting down action for trial

3. In order to set down an action for trial the party setting it down must deliver to the appropriate office a request in Form No. 34 of Appendix A that the action may be set down for trial.

Lodging documents

4.—(1) The party setting down an action for trial must deliver to the appropriate office two indexed bundles (one of which shall serve as the record and the other to be for the use of the judge) consisting of one copy of each of the following documents, that is to say—

(*a*) the writ,

(*b*) the pleadings (including any affidavits ordered to stand as pleadings), any request or order for particulars and the particulars given,

(*c*) subject to Order 22, rule 7, any interlocutory orders, and

(*d*) the requisite legal aid documents, if any.

(2) Each of the said bundles must be bound up and indexed in the proper chronological order [(**a**), save that voluntary particulars of any pleading and particulars to which Order 18, rule 12(7), applies shall be placed immediately after the pleading to which they relate] and the bundle which is to serve as the record must be stamped with the stamp denoting payment of the fee payable on setting down the action and have indorsed thereon the names, addresses and telephone numbers of the solicitors for the parties or, in the case of a party who has no solicitor, of the party himself.

(3) Where a third party notice has been issued under Order 16, the party issuing the notice (whether with or without leave) must, as soon as practicable after receiving notice that the action has been set down for trial or on setting down the action for trial (unless the third party proceedings have been disposed of or abandoned), deliver to the appropriate office two bundles prepared in accordance with paragraph (1) each consisting of one copy of the third party notice and all documents in the third party proceedings corresponding to those specified in paragraph (1).

(**a**) Words inserted by S.R. 1982 No. 217 with effect from 1.9.82

(4) Where a new trial becomes necessary in any action, the procedure for setting down the action for the new trial shall be that specified in the foregoing provisions except that the bundle which is to serve as the record must be bespoken from the appropriate office and must include the order for a new trial.

(5) In this rule "the requisite legal aid documents" means any documents which are required by regulations under [(**a**) Part II of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**b**)] to be included in the bundle for use at the trial.

[(**c**)(6) The party who has set an action down for trial must deliver to the appropriate office two copies of any documents of the kind specified in paragraph (1) which have come into existence between the date of setting down and the day preceding the trial of the action].

[*E.r* 3]

Directions relating to lists

5. Nothing in this Order shall prejudice any powers of the Lord Chief Justice to give directions—

(*a*) providing for the keeping and publication of lists and actions for hearing;

(*b*) providing for the determination of a date for the trial of any action which has been set down or a date before which the trial thereof is not to take place; and

(*c*) as to the making of applications (whether to the Court or a court officer), to fix, vacate or alter any such date, and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information.

[*E.r.* 4]

Further provisions as to lists

6. At any time after an action has been set down for trial and before it is tried, the Court may require the parties to furnish the Court or court officer, by personal attendance or otherwise, with such information as may be necessary to show whether the action is ready for trial, and if any party fails to comply with any such requirement, the Court may—

(*a*) of its own motion, on 7 days' notice to the parties, direct that the action be removed from the list of actions for hearing.

(*b*) on the application of any party, dismiss the action for want of prosecution or strike out the defence of counterclaim or make such other order as the Court thinks fit.

Where a direction is given under sub-paragraph (*a*), the Court may subsequently direct the action to be restored to the list on such terms, if any, as it thinks fit.

[*E.r.* 5]

Notification of setting down

7.—(1) Any party to an action who sets it down for trial must, within 24 hours after doing so, give notice in Form No. 35 of Appendix A to the other parties to the action that he has done so.

(2) It shall be the duty of all parties to an action set down for trial to furnish without delay to the officer who keeps the lists of actions for hearing all available information as to the action being or being likely to be settled, and, if the action is settled or withdrawn, to notify that officer of the fact without delay.

(**a**) Words substituted by S.R.. 1981 No. 224 with effect from 1.9.81
(**b**) S.I. 1981/228 (N.I. 8)
(**c**) Paragraph (6) added by S.R. 1984 No. 354 with effect from 12.11.84

(3) In performances of the duty imposed by paragraph (2), a plaintiff who gives notice of acceptance of a payment into court in accordance with Order 22, rule 3(1), shall at the same time lodge a copy of the notice with the officer mentioned in that paragraph.

[*E.r.* 8]

Abatement, etc., of action

8.—(1) Where after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the solicitor for the plaintiff or other party having the conduct of the action must, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the proper officer, and that officer shall cause the appropriate entry to be made in the list of actions set down for trial.

(2) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action shall on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.

[*E.r.* 9]

ORDER 35

PROCEEDINGS AT TRIAL

Failure to appear by both parties or one of them

1.—(1) If, when the trial of an action is called on, neither party appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a judge.

(2) If, when the trial of an action is called on, one party does not appear, the judge may proceed with the trial of the action or any counterclaim in the absence of that party.

[*E.r.* 1]

Judgment, etc. given in absence of party may be set aside

2.—(1) Any judgment, order or verdict obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(2) An application under this rule must be made within 7 days after the trial.

[*E.r.* 2]

Adjournment of trial

3. The judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place and upon such terms, if any, as he thinks fit.

[*E.r.* 3]

Order of speeches

4.—(1) The judge before whom an action is tried (whether with or without a jury) may give directions as to the party to begin and the order of speeches at the trial, and, subject to any such directions, the party to begin and the order of speeches shall be that provided by this rule.

(2) Subject to paragraph (6), the plaintiff shall begin by opening his case.

(3) If the defendant does not adduce evidence, the plaintiff may, after the evidence on his behalf has been given, make a second speech closing his case and the defendant shall then state his case.

(4) If the defendant does adduce evidence, he may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on his behalf has been given, make a second speech closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply.

(5) Where there are two or more defendants who appear separately or are separately represented, then—

(*a*) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears on the record;

(*b*) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order aforesaid and the speech of each of them closing his case shall be made in that order after the evidence on behalf of all the defendants has been given;

(*c*) if some of them adduce evidence and some do not, those who do [(**a**) not] shall state their case in the order aforesaid after the speech of the plaintiff in reply to the other defendants.

(6) Where the burden of proof of all the issues in the action lies on the defendant or, where there are two or more defendants and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall begin, and in that case paragraphs (2), (3) and (4) shall have effect in relation to, and as between, him and the plaintiff as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposing party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

(8) For the purposes of this rule a party shall be deemed to adduce evidence if he puts in a document whether in the course of cross-examination or otherwise.

[*E.r.* 7]

Inspection by judge or jury

5.—(1) The judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the cause or matter.

(2) Where a cause or matter is tried with a jury and the judge inspects any place or thing under paragraph (1), he may authorise the jury to inspect it also.

[*E.r.* 8]

Death of party before giving of judgment

6. Where a party to any action dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given notwithstanding the death, but the foregoing provision shall not be taken as affecting the power of the judge to make an order under Order 15, rule 7(2), before giving judgment.

[*E.r.* 9]

Record to be kept by officer

7. The officer present in court shall at the trial or as soon as practicable thereafter, enter in a register to be kept for that purpose, the following—

(i) the record number of the action;

(ii) the date of the trial;

(iii) the name of the trial judge and whether the trial was with or without a jury;

(iv) the title of the action;

(v) the names of solicitor and counsel;

(vi) the names of any witnesses;

(vii) the questions asked of and the answers given by the jury where the trial was with a jury;

(**a**) Word inserted by S.R. 1982 No. 217 with effect from 1.9.82

(viii) particulars of the judgment and of all orders, directions and certificates (if any);

(ix) a note of the days on which the trial was held and the time spent at trial during each day on which the trial was held.

List of exhibits

8.—(1) The proper officer shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter indicating the party by whom it is put in and shall number each party's exhibits consecutively.

(2) The proper officer shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have an office copy of that list.

(3) The list of exhibits when completed shall be attached to the pleadings and shall form part of the record of the action.

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

[*E.r.* 11]

Custody of exhibit after trial

9. It shall be the duty of every party to an action who has put in any exhibit to apply to the proper officer immediately after the trial for the return of the exhibit, and, so far as is practicable regard being had to the nature of the exhibit, to keep it duly marked and labelled as before, so that in the event of an appeal to the Court of Appeal or the House of Lords, he may be able to produce the exhibit so marked and labelled at the hearing of the appeal in case he is required by the Court of Appeal or the House of Lords to do so.

[*E.r.* 12]

Impounded documents

10.—(1) Documents impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order made by a judge on an application made by motion:

Provided that where the Attorney General for Northern Ireland or the Director of Public Prosecutions for Northern Ireland makes a written request in that behalf, documents so impounded shall be delivered into his custody.

(2) Documents impounded by order of the Court, while in the custody of the Court, shall not be inspected except by a person authorised to do so by an order signed by a judge.

[*E.r.* 13]

ORDER 36

[(a) TRIALS BEFORE MASTERS AND REFEREES]

Power to order trial before master or referee

1. In any cause or matter, other than a criminal proceeding by the Crown, if the question in dispute consists wholly or in part of matters of account, the Court may at any time [(**b**) . . .] order the whole cause or matter or any question or issue of fact arising therein to be tried, without prejudice to Orders 43 and 44, before a master or before a referee or arbitrator respectively agreed on by the parties (all of whom are hereinafter referred to as the "referee").

[*E.r.* 1]

Procedure on reference

2. Where an order for the trial of any question or issue of fact is made under rule 1, unless the court otherwise orders, further consideration of the cause or matter shall stand adjourned until the receipt of the referee's report.

[*E.r.* 2]

Lodgment of order under rule 1

3. Every order made under rule 1 shall forthwith be lodged with the referee who shall within 14 days thereafter fix the date of the trial after consultation with the parties or their solicitors.

Report on reference

4.—(1) The report made by a reference in pursuance of a reference under rule 1 shall be made to the Court and notice thereof served on the parties to the reference.

(2) The referee may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.

(3) On the receipt of the referee's report, the Court may—

(*a*) adopt the report in whole or in part;

(*b*) vary the report;

(*c*) require an explanation from him;

(*d*) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other referee; or

(*e*) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.

(4) When the report of the referee has been made, an application to vary the report or remit the whole or any part of the question or issue originally referred may be made on the hearing of the Court of the further consideration of the cause or matter, after, giving not less than 4 days' notice thereof, and any other application with respect to the report may be made on that hearing without notice.

(**a**) New title substituted by S.R. 1997 No. 70 with effect from 17.3.97
(**b**) Words deleted by S.R. 1997 No. 70 with effect from 17.3.97

(5) Where on a reference under rule 1 the Court orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the referee's report, the order may contain directions with respect to the proceedings on the receipt of the report, and the foregoing provisions of this rule shall have effect subject to any such directions.

[*E.r.* 3]

Powers, etc. of referee

5.—(1) Subject to any directions contained in the order referring any business to a referee—

(*a*) the referee shall for the purpose of disposing of any cause or matter (including any interlocutory application therein) or any other business referred to him have the same jurisdiction, powers and duties (excluding the power of committal) as a judge, exercisable or, as the case may be, to be performed as nearly as circumstances admit in the like case, in the like manner and subject to the like limitations; and

(*b*) every trial and all other proceedings before a referee shall, as nearly as circumstances admit, be conducted in the like manner as the like proceedings before a judge.

(2) Without prejudice to the generality of paragraph (1), but subject to any such directions as are mentioned therein, a referee before whom any cause or matter is tried shall have the like powers as the Court with respect to claims relating to or connected with the original subject-matter of the cause or matter by any party thereto against any other person, and Order 15, rule 5(2) and Order 16 shall with any necessary modifications apply in relation to any such claim accordingly.

(3) A referee may hold any trial or any other proceedings before him at any place which appears to him to be convenient and may adjourn the proceedings from place to place as he thinks fit.

[*E.r.* 4]

ORDER 37

[(a) DAMAGES: ASSESSMENT AFTER JUDGMENT AND ORDERS FOR PROVISIONAL DAMAGES]

Assessment of damages by a master

1.—(1) Where judgment is given for damages to be assessed and no provision is made by the judgment as to how they are to be assessed, the damages shall, subject to the provisions of these Rules, be assessed by a master and the party entitled to the benefit of the judgement may, after obtaining the necessary appointment from the master, and at least 7 days before the date of the appointment, serving notice of the appointment on the party against whom the judgment is given, proceed accordingly.

(2) Notwithstanding anything in Order 65, rule 9, a notice under this rule must be served on the party against whom the judgment is given.

(3) Without prejudice to the powers of a master of the Chancery Division under Order 32, rule 14, the attendance of witnesses and the production of documents before the master in proceedings under this Order may be compelled by writ of subpoena, and the provisions of Order 35 shall, with the necessary adaptations, apply in relation to those proceedings as they apply in relation to proceedings at a trial.

[*E.r.* 1]

[(b) I. ASSESSMENT OF DAMAGES AFTER JUDGMENT

[(c) *Order*] *or judgment for amount of damages*

2. Where in pursuance of this Order or otherwise damages are assessed by a master—

[(d) (*a*) in the Chancery Division the Master shall make an order for payment of the damages so assessed under Order 44, rule 11];

(*b*) in the Queen's Bench Division the Master shall give final judgment for the amount of the damage so assessed.

[*E.r.* 2]

Default judgment against some but not all defendants

3. Where any such judgment as is mentioned in rule 1 is given in default of appearance or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the Court otherwise orders.

[*E.r.* 3]

Power to order assessment by master, etc.

4.—(1) Where judgment is given for damages to be assessed, the Court may subject to section 62 of the Act of its own motion or, upon application by motion on notice, order—

(*a*) that the damages shall be assessed by a master, or

(*b*) that the action shall proceed to trial before a judge as respects the damages.

(2) Where the Court orders that the action shall proceed to trial, it may make such orders and give such directions as it thinks just.

[*E.r.* 4]

(a) New title substituted by S.R. 1991 No. 330 with effect from 2.9.91
(b) Words inserted by S.R. 1991 No. 330 with effect from 2.9.91
(c) Word substituted by S.R. 1983 No. 5 with effect from 28.2.83
(d) New paragraph substituted by S.R. 1983 No. 5 with effect from 28.2.83

Assessment of value

5. The foregoing provisions of this Order shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, as they apply to a judgment for damages to be assessed, and references in those provisions to the assessment of damages shall be construed accordingly. [*E.r.* 5]

Assessment of damages to time of assessment

6. Where damages are to be assessed (whether under this Order or otherwise) in respect of any continuing cause of action, they shall be assessed down to the time of the assessment. [*E.r.* 6]

[(a) II. ORDERS FOR PROVISIONAL DAMAGES FOR PERSONAL INJURIES

Application and interpretation

7.—(1) This Part of this Order applies to actions to which paragraph 10 of Schedule 6 to the Administration of Justice Act 1982 (in this Part of this Order referred to as "paragraph 10") applies.

(2) In this Part of this Order "award of provisional damages" means an award of damages for personal injuries under which—

(*a*) damages are assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in paragraph 10; and

(*b*) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration. [*E.r.* 7]

Order for provisional damages

8.—(1) The Court may on such terms as it thinks just and subject to the provisions of this rule make an award of provisional damages if—

(*a*) the plaintiff has pleaded a claim for provisional damages, and

(*b*) the Court is satisfied that the action is one to which paragraph 10 applies.

(2) An order for an award of provisional damages shall specify the disease or type of deterioration in respect of which an application may be made at a future date, and shall also, unless the Court otherwise determines, specify the period within which such application may be made.

(3) The Court may, on the application of the plaintiff made within the period, if any, specified in paragraph (2), by order extend that period if it thinks it just to do so, and the plaintiff may make more than one such application.

(4) An order for an award of provisional damages may be made in respect of more than one disease or type of deterioration and may in respect of each disease or deterioration specify a different period within which an application may be made at a future date.

(5) Orders 13 and 19 shall not apply in relation to an action in which the plaintiff claims provisional damages. [*E.r.* 8]

Offer to submit to an award

9.—(1) Where an application is made for an award of provisional damages, any defendant may at any time (whether or not he makes a payment into court) make a written offer to the plaintiff—

(a) Part II added by S.R. 1991 No. 330 with effect from 2.9.91

(a) to tender a sum of money (which may include an amount, to be specified in respect of interest) in satisfaction of the plaintiffs claim for damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in paragraph 10 and identifying the disease or deterioration in question; and

(b) to agree to the making of an award of provisional damages.

(2) Any offer made under paragraph (1) shall not be brought to the attention of the Court until after the Court has determined the claim for an award of provisional damages.

(3) Where an offer is made under paragraph (l) the plaintiff may, within 21 days after receipt of the offer, give written notice to the defendant of his acceptance of the offer and shall on such acceptance make an application to the Court for an order in accordance with the provisions of rule 8(2).

[*E.r.* 9]

Application for award of further damages

10.—(1) This rule applies where the plaintiff, pursuant to an award of provisional damages, claims further damages.

(2) No application for further damages may be made after the expiration of the period, if any, specified under rule 8(2), or of such period as extended under rule 8(3).

(3) The plaintiff shall give not less than three months' written notice to the defendant of his intention to apply for further damages and, if the defendant is to the plaintiffs knowledge insured in respect of the plaintiffs claim, to the insurers.

(4) The plaintiff may take out a summons for directions as to the future conduct of the action within 21 days after the expiry of the period of notice referred to in paragraph (3).

(5) On the bearing of the summons for directions the Court shall give such directions as may be appropriate for the future conduct of the action, including, but not limited to, the disclosure of medical reports and the place, mode and date of the bearing of the application for further damages.

(6) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the order for the award of provisional damages.

(7) The provisions of Order 29 with regard to the making of interim payments shall, with the necessary modifications, apply where an application is made under this rule.

(8) The Court may include in an award of further damages simple interest at such rate as it thinks fit on all or any part thereof for all or any part of the period between the date of notification of the plaintiff s intention to apply for further damages and the date of the award.]

[*E.r.* 10]

ORDER 37

[(a) III. DAMAGES ACT 1996 — PERIODICAL PAYMENTS

Interpretation

11. In this Part—

"the 1996 Act" means the Damages Act 1996(b);

"damages" means damages for future pecuniary loss; and

"periodical payments" means periodical payments under section 2(1) of the 1996 Act(c).

Statement of claim

12.—(1) This rule applies to proceedings for damages for personal injury.

(2) The plaintiff in his statement of claim shall state whether he considers periodical payments or a lump sum to be the more appropriate form for all or part of an award of damages.

(3) Where the defendant admits to the whole of any cause, he shall, in his defence, state whether he considers periodical payments or a lump sum to be the more appropriate form for all or part of an award of damages.

(4) Where a statement is given under paragraphs (2) or (3), a party must provide relevant particulars of the circumstances which are relied on in support of the statement.

(5) Where a statement under paragraph (2) or (3) is not given, the court may order a party to make such a statement.

(6) Where the court considers that the statement of claim contains insufficient particulars under paragraph (2) and (3), the court may order a party to provide such further particulars as it considers appropriate.

Court's indication to parties

13. The court shall consider and indicate to the parties as soon as is practicable whether periodical payments or a lump sum is likely to be the more appropriate form for all or part of an award of damages.

Factors to be taken into account

14.—(1) When considering—

(a) its indication as to whether periodical payments or a lump sum is likely to be the more appropriate form for all or part of an award of damages under rule 3; or

(b) whether to make an order under section 2(1)(a) of the 1996 Act,

the court shall have regard to all the circumstances of the cases and in particular the form of award which best meets the plaintiff's needs, having regard to the factors set out in paragraph (2).

(2) The factors referred to in paragraph (1) are—

(a) the scale of the annual payments taking into account any deduction for contributory negligence;

(b) the form of award preferred by the plaintiff including—

(a) New Part inserted by S.R. 2006 No. 486 with effect from 08.01.07

(b) 1996 c. 48 to which the most recent relevant amendments were made by sections 100 and 101 of the Courts Act 2003 (c. 39)

(c) Section 2 is substituted by section 100 of the Courts Act 2003 (c. 39)

(i) the reasons for his preference; and

(ii) the nature of any financial advice he received when considering the form of the award;

(c) the form of award preferred by the defendant including the reasons for the defendant's preference.

The award

15.—(1) Where the court awards damages in the form of periodical payments, the order must specify—

(a) the annual amount awarded, how each payment is to be made during the year and at what intervals;

(b) the amount awarded for the future—

(i) loss of earnings and other income; and

(ii) care and medical costs and other recurring or capital costs;

(c) that the plaintiff's annual future pecuniary losses, as assessed by the court, are to be paid for the duration of the plaintiff's life, or for such other period as the court orders; and

(d) that the amount of the payments shall vary annually by reference to the retail prices index, unless the court orders otherwise under section 2(9) of the 1996 Act.

(2) Where the court orders that any part of the award shall continue after the plaintiff's death, for the benefit of the plaintiff's dependants, the order must also specify the relevant amount and duration of the payments and how each payment is to be made during the year and at what intervals.

(3) Where the court makes an order under paragraph (2), the order must also specify the relevant amount and duration of the payments and how each payment is to be made during the year and at what intervals.

(4) Where an amount awarded under paragraph (1)(b) is to increase or decrease on a certain date, the order must also specify—

(a) the date on which the increase or decrease will take effect; and

(b) the amount of the increase or decrease at current value.

(5) Where the damages for substantial capital purchases are awarded under paragraph (1)(b)(ii), the order must also specify—

(a) the amount of the payments at current value;

(b) when the payments are to be made; and

(c) that the amount of the payments shall be adjusted by reference to the retail prices index, unless the court orders otherwise under section 2(9) of the 1996 Act.

Continuity of payment

16.—(1) An order for periodical payments shall specify that the payments must be funded in accordance with section 2(4) of the 1996 Act, unless the court orders an alternative method of funding.

(2) Before ordering an alternative method of funding, the court must satisfy itself that—

(a) the continuity of payment under the order is reasonably secure;

(b) a method of funding provided for under section 2(4) of the 1996 Act is not possible or there are good reasons to justify an alternative method of funding;

(c) that the proposed method of funding can be maintained for the duration of the award or for the proposed duration of the method of funding; and

(d) that the proposed method of funding will meet the level of payment ordered by the court.

(3) An order under paragraph (2) must specify the alternative method of funding.

Assignment or charge

17. Where the court under section 2(6)(a) of the 1996 Act is satisfied that special circumstances makes an assignment or charge of periodical payments necessary, it shall in deciding whether or not to approve the assignment or charge, also have regard to—

(a) whether the capitalised value of the assignment or charge represents value for money;

(b) whether the assignment or charge is in the claimant's best interests, taking into account whether these interests can be met in some other way; and

(c) how the claimant will be financially supported following the assignment of the charge.]

ORDER 38

EVIDENCE

I. GENERAL RULES

General rule: Witness to be examined orally

1. Subject to the provisions of these rules and of [(**a**) the Civil Evidence (Northern Ireland) Order 1997] and of any other provision relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of witnesses orally and in open court.

[(**b**) *Medical reports, maps, plans etc may be given in evidence*

1A.—(1) Unless the Court otherwise orders, [(**c**) any report or other accompanying or supplemental document served or disclosed pursuant to the provisions of Order 25 or of rule 3B of this Order] or any map, plan, drawing, photograph or model produced pursuant to the provisions of rule 3A of this Order by any party to an action to the other parties may be given in evidence at the trial of the action or an assessment of damages by the party who has disclosed or produced it.

(2) Any other party may, on giving sufficient notice to the party making the disclosure or production specified in paragraph (1), require the maker of any such [(**d**)...] report to give oral evidence or require any such map, plan, drawing, photograph or model to be proved, and in any such case paragraph (1) shall not apply.

(3) Where a medical witness or other expert witness is unable to attend court to give oral evidence at the trial of an action or an assessment of damages the Court may direct that his written report or reports may be given in evidence or that any such map, plan, drawing, photograph or model may be admitted in evidence without further proof thereof, and in such case paragraph (2) shall not apply.

Number of expert witnesses

1B. Unless the Court otherwise orders, the number of expert witnesses who may be called by any party to give oral evidence in any action shall be limited to two medical experts and one other expert of any other kind.]

Evidence by affidavit

2.—(1) The Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.

(2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need attend the trial for the purpose.

(3) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence may be given by affidavit unless in the case of any such cause, matter or application any provision of these Rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an

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(**a**) Words substituted by S.R. 1999 No. 333 with effect from 6.9.99
(**b**) Rules 1A and 1B inserted by S.R. 1991 No. 330 with effect from 2.9.91
(**c**) Words substituted S.R. 2009 No. 230 with effect from 07.09.09
(**d**) Word omitted by 2009 No. 230 with effect from 07.09.09

order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the Court.

[*E.r.* 2]

Evidence of particular facts

3.—(1) Without prejudice to rule 2, the Court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order.

(2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial—

(a) by statement on oath of information or belief, or

(b) by the production of documents or entries in books, or

(c) by copies of documents or entries in books, or

(d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district by the production of a specified newspaper which contains a statement of that fact [, or

(e) by the examination of witnesses orally by [(a) video link,] telephone or any other method of direct communication.(b)].

[*E.r.* 3]

[(c) *Evidence of plans, photographs etc.*

3A. Unless, at or before the trial, the court for special reasons otherwise orders, no map, plan or other drawing, photograph or model shall be receivable in evidence at the trial of an action unless at least 3 weeks before the commencement of the trial the parties, other than the parties producing it, have been given an opportunity to inspect it and to agree to its admission without further proof.]

[*E.r.* 5]

[(d) *Disclosure of evidence in clinical negligence*

3B.—(1) For the purposes of this rule—

(a) "clinical negligence" means negligence in connection with the diagnosis of any illness, or the care or treatment of any patient, in consequence of any act or omission to act by a person employed or engaged for such purposes; and

(b) "medical evidence" means—

(i) the evidence contained in any medical report or other accompanying or supplemental document emanating from the maker of the report which is intended by him to accompany or supplement such report and includes surgical and radiological evidence and any ancillary expert or technical evidence; and

(ii) any other evidence of a medical, surgical or radiological nature which a party proposes to adduce at the trial by means of oral testimony.

(2) In actions grounded on an allegation of clinical negligence—

(a) where the plaintiff proposes to adduce at the trial evidence (other than medical evidence) obtained from any expert for the purpose of assisting the Court in assessing damages, he shall—

(a) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07
(b) Paragraph inserted by S.R. 2005 No. 163 with effect from 18.04.05
(c) Rule 3A inserted by S.R. 1986 No. 128 with effect from 1.09.86
(d) Rule 3B inserted by S.R. 2009 No. 230 with effect from 07.09.09

(i) insofar as he then has in his possession or power that evidence, disclose it to the other party or parties not later than 10 weeks from the close of the pleadings or such other period as the Court may direct; and

(ii) insofar as he thereafter obtains any such evidence before the date of the trial, disclose it to the other party or parties within 21 days of receiving it and in any case before the first day of the trial; and

(b) where the defendant or any other party proposes to adduce at the trial evidence (other than medical evidence) obtained from any expert for the purpose of assisting the Court in assessing damages, he shall—

(i) insofar as he then has in his possession or power that evidence, disclose it to the plaintiff and any other party or parties not later than 20 weeks from the close of the pleadings or such other period as the Court may direct; and

(ii) insofar as he thereafter obtains any such evidence before the date of trial, disclose it to the plaintiff and any other party or parties within 21 days of receiving it and in any case before the first day of the trial.]

Revocation or variation of orders under rule 2, [**(a)**, *3 or 3A*]

4. Any order under rule 2, [**(a)**, 3 or 3A] (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

[E.r. 6]

Evidence of finding on foreign law

5.—(1) A party to any cause or matter who intends to adduce in evidence a finding or decision on a question of foreign law by virtue of section 114(4) of the Act shall, not later than 21 days before the date of the trial or within such other period as the Court may specify, in accordance with section 114(5) of the Act, serve written notice that he intends to do so on each of the other parties to the proceedings or his solicitor.

(2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.

(3) In any cause or matter in which the evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.

[E.r. 7]

Application to trial of issues, references, etc.

6. The foregoing rules of this Order shall apply to trials of issues or questions of the fact or law, references, inquiries and assessments of damage as they apply to the trial of actions.

[E.r. 8]

Depositions: when receivable in evidence at trial

7.—(1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless—

(*a*) the deposition was taken in pursuance of an order under Order 39, rule 1, and

(*b*) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.

(a) Words substituted by S.R. 1986 No. 128 with effect from 01.09.86

(2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.

(3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

[*E.r.* 9]

Court documents admissible or receivable in evidence

8.—(1) Office copies of writs, records, pleadings and documents filed in the High Court shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible.

(2) Without prejudice to the provisions ;of any statutory provision, every document purporting to be sealed with the seal of the Court of Judicature shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of, an office of the Court of Judicature shall be deemed to be an office copy of that document without further proof unless the contrary is shown.

[*E.r.* 10]

Evidence of consent to new trustee to act

9. A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person shall be evidence of such consent.

[*E.r.* 11]

Evidence at trial may be used in subsequent proceedings

10. Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter.

[*E.r.* 12]

Order to produce document at proceeding other than trial

11.—(1) At any stage in a cause or matter the Court may order any person to attend any proceedings in the cause or matter and produce any document, to be specified or described in the order, the production of which appears to the Court to be necessary for the purpose of that proceeding.

(2) No person shall be compelled by an order under paragraph (1) to produce any document at a proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

[*E.r.* 13]

II. Writs of Subpoena

Form and issue of writ of subpoena

12.—(1) A writ of subpoena must be in Form 24, 25 or 26 in Appendix A, whichever is appropriate.

(2) Issue of a writ of subpoena takes place upon its being sealed by an officer of the appropriate office.

[(a)...]

[*E.r.* 14]

More than one name may be included in one writ of subpoena

13. The names of two or more persons may be included in one writ of subpoena ad testificandum.

[*E.r.* 15]

Amendment of writ of subpoena

14. Where there is a mistake in any person's name or address in a writ of subpoena then, if the writ has not been served, the party by whom the writ was issued may have the writ re-sealed in correct form [(**a**) . . .]

[*E.r.* 16]

Service of writ of subpoena

15. A writ of subpoena must be served personally and, subject to rule 17, the service shall not be valid unless affected within 12 weeks after the date of issue of the writ. [(**b**) and not less than four days, or such other period as the Court may fix, before the day on which attendance before the court is required.]

[*E.r.* 17]

Duration of writ of subpoena

16. Subject to rule 17, a writ of subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

[*E.r.* 18]

Writ of subpoena in aid of inferior court or tribunal

17.—(1) The office of the Court of Judicature out of which a writ of subpoena ad testificandum or a writ of subpoena duces tecum in aid of an inferior court or tribunal may be issued is the Crown Office, and no order of the Court for the issue of such a writ is necessary.

(2) A writ of subpoena in aid of an inferior court or tribunal continues to have effect until the disposal of the proceedings before that court or tribunal at which the attendance of the witness is required.

(3) A writ of subpoena issued in aid of an inferior court or tribunal must be served personally.

(4) Unless a writ of subpoena issued in aid of an inferior court or tribunal is duly served on the person to whom it is directed not less than 4 days, or such other period as the Court may fix, before the day on which the attendance of that person before the court or tribunal is required by the writ, that person shall not be liable to any penalty or process for failing to obey the writ.

(5) An application to set aside a writ of subpoena issued in aid of an inferior court or tribunal may be heard by the Master (Queen's Bench and Appeals).

[*E.r.* 19]

[(**c**) III. HEARSAY EVIDENCE ADMISSIBLE UNDER THE CIVIL EVIDENCE (NORTHERN IRELAND) ORDER 1997

Interpretation and application

18.—(1) In this Part of this Order "hearsay evidence" means evidence consisting of hearsay within the meaning of Article 3(3) of the Civil Evidence (Northern Ireland) Order 1997 (NI 21) (in this rule referred to as "the 1997 Order").

(2) Expressions used in this Part of this Order and in the 1997 Order have the same meaning in this Part as they have in that Order.

(3) This Part of this Order applies in relation to the trial or hearing of an issue or question arising in a cause or matter, and to a reference, inquiry or assessment of damages, as it applies to the trial or hearing of a cause or matter.

(**a**) Words deleted by S.R. 1982 No. 217 with effect from 01.09.82
(**b**) Words added by S.R. 1983 No. 5 with effect from 28.02.83
(**c**) Part III substituted by S.R. 1999 No. 333 with effect from 06.09.99

[*Supplt. No. 31 (September 1999)*]

ORDER 38

Power to call witness for cross-examination on hearsay evidence

19.—(1) Where a party to civil proceedings adduces hearsay evidence of a statement made by a person but does not call the person who made the statement to give evidence, the Court may, on the application of another party, allow that other party to call and cross-examine the person on the statement as if he had been called by the first-mentioned party and as if the hearsay statement were his evidence in chief.

(2) Where the Court allows another party to call and cross-examine the person who made the statement, it may give such directions as it thinks fit to secure the attendance of that person as a witness and as to the procedure to be followed.

Credibility

20. If—

(a) a party has indicated an intention to adduce hearsay evidence of a statement made by a person who will not be called to give evidence;

(b) another party wishes to attack the credibility of the person who made the statement,

that other party shall, so far as is reasonable in the circumstances, notify the party tendering the hearsay evidence of his intention.

Powers exercisable in chambers

21. The jurisdiction of the court under this Part of this Order may be exercised in chambers.]

ORDER 39

EVIDENCE BY DEPOSITION

Power to order depositions to be taken

1.—(1) The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order for the examination on oath before a judge, an officer of the Court or some other person, at any place, of any person.

(2) An order under paragraph (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court thinks fit [(**a**), and may contain an order for the production of any document which appears to the court to be necessary for the purposes of the examination].

[*E.r* 1]

Where person to be examined is out of the jurisdiction

2.—(1) Where the person in relation to whom an order under rule 1 is required is out of the jurisdiction, an application may be made—

(*a*) for an order under that rule for the issue of a letter of request to the judicial authorities of the country in which that person is to take, or cause to be taken, the evidence of that person, or

(*b*) if the government of that country allows a person in that country to be examined before a person appointed by the Court, for an order under that rule appointing a special examiner to take the evidence of that person in that country.

(2) An application may be made for the appointment as special examiner of a British consul in the country in which the evidence is to be taken or his deputy—

(*a*) if there subsists with respect to that country a Civil Procedure Convention providing for the taking of the evidence of any person in that country for the assistance of proceedings in the High Court, or

(*b*) with the consent of the Secretary of State.

[*E.r* 2]

Order for issue of letter of request

3.—(1) Where an order is made under rule 1 for the issue of a letter of request to the judicial authorities of a country to take, or cause to be taken, the evidence of any person in that country the following provisions of this rule shall apply.

(2) The party obtaining the order must prepare the letter of request and lodge it in the Central Office.

(3) If the evidence of the person to be examined is to be obtained by means of written questions, there must be lodged with the letter of request a copy of the interrogatories and cross-interrogatories to be put to him on examination.

(4) Each document lodged under paragraph (2) or (3) must be accompanied by a translation of the document in the official language of the country in which the examination is to be taken or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where the examination is to be taken, unless—

(*a*) the master has given a general direction in relation to that country that no translation need be provided, or

(*b*) the official language or one of the official languages of that country is English.

(5) Every translation lodged under paragraph (4), must be certified by the person making it to be a correct translation; and the certificate must contain a statement of

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(**a**) Words inserted by S.R. 1985 No. 170 with effect from 2.9.85

that person's full name, of his address and of his qualifications for making the translation.

(6) The party obtaining the order must, when he lodges in the Central Office the documents mentioned in paragraphs (2) to (5), also file in that office an undertaking signed by him or his solicitor to be responsible personally for all expenses incurred by the Secretary of State in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the Finance Officer of the office of the Secretary of State and to produce a receipt for the payment to the proper officer of the High Court. [*E.r.* 3]

[(**a**) *Examination otherwise than on oath*

3A. Notwithstanding the provisions of rule 1, where the person to be examined is out of the jurisdiction that person may be examined on oath or affirmation in accordance with the procedures of the country in which the examination is to take place.] [*E.r* 3A]

Enforcing attendance of witness at examination

4. Where an order has been made under rule 1—

(*a*) for the examination of any person before an officer of the Court or some other person (in this rule and rules 5 to 14 referred to as "the examiner"), or

(*b*) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document at the examination may be enforced by writ of subpoena in like manner as the attendance of a witness and the production by a witness of a document at a trial may be enforced. [*E.r* 4]

Refusal of witness to attend, be sworn, etc.

5.—(1) If any person, having been duly summoned by writ of subpoena to attend before the examiner, refuses or fails to attend or refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document therein, a certificate of his refusal or failure, signed by the examiner, must be filed in the Central Office and upon the filing of the certificate the party by whom the attendance of that person was required may apply to the Court for an order requiring that person to attend, or to be sworn, or to answer any question or produce any document, as the case may be.

(2) An application for an order under this rule may be made ex parte.

(3) If the Court makes an order under this rule it may order the person against whom the order is made to pay any costs occasioned by his refusal or failure.

(4) A person who wilfully disobeys any order made against him under paragraph (1) is guilty of contempt of court. [*E.r* 5]

Appointment of time and place for examination

6.—(1) The examiner must give the party on whose application the order for examination was made a notice appointing the place and time at which, subject to any application by the parties, the examination shall be taken, and such time shall, having regard to the convenience of the persons to be examined and all the circumstances of the case, be as soon as practicable after the making of the order.

(2) The party to whom a notice under paragraph (1) is given must, on receiving it, forthwith give notice of the appointment to all the other parties. [*E.r* 6]

(**a**) Rule 3A added by S.R. 1985 No. 170 with effect from 2.9.85

Examiner to have certain documents

7. The party on whose application the order for examination before the examiner was made must furnish the examiner with copies of such of the documents in the cause or matter as are necessary to inform the examiner of the questions at issue in the cause or matter.

[*E.r.* 7]

Conduct of examination

8.—(1) Subject to any directions contained in the order for examination—

(*a*) any person ordered to be examined before the examiner may be cross-examined and re-examined, and

(*b*) the examination, cross-examination and re-examination of persons before the examiner shall be conducted in like manner as at the trial of a cause or matter.

(2) The examiner may put any question to any person examined before him as to the meaning of any answer made by that person or as to any matter arising in the course of the examination.

(3) The examiner may, if necessary, adjourn the examination from time to time.

[*E.r.* 8]

Examination of additional witnesses

9. The examiner may, with the written consent of all the parties to the cause or matter, take the examination of any person in addition to those named or provided for in the order for examination, and must annex such consent to the original deposition of that person.

[*E.r.* 9]

Objections to questions

10.—(1) If any person being examined before the examiner objects to answer any questions put to him, or if objection is taken to any such question, that question, the ground for the objection and the answer to any such question to which objection is taken must be set out in the deposition of that person or in a statement annexed thereto.

(2) The validity of the ground for objecting to answer any such question or for objecting to any such question shall be decided by the Court and not by the examiner, but the examiner must state to the parties his opinion thereon, and the statement of his opinion must be set out in the deposition or in a statement annexed thereto.

(3) If the court decided against the person taking the objection it may order him to pay the costs occasioned by his objection.

[*E.r.* 10]

Taking of depositions

11.—(1) The deposition of any person examined before the examiner must be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner but, subject to paragraph (2) and rule 10(1) the deposition need not set out every question and answer so long as it contains as nearly as may be the statement of the person examined.

(2) The examiner may direct the exact words of any particular question and the answer thereto to be set out in the deposition if that question and answer appear to him to have special importance.

(3) The deposition of any person shall be read to him, and he shall be asked to sign it, in the presence of such of the parties as may attend, but the parties may agree in writing to dispense with the foregoing provision.

If a person refuses to sign a deposition when asked under this paragraph to do so, the examiner must sign the deposition.

(4) The original deposition of any person, authenticated by the signature of the examiner before whom it was taken, must be sent by the examiner to the Central Office and shall be filed therein.

[(**a**) (5) Where a deposition is filed in the Central Office and the cause or matter is proceeded in the Chancery Division, a copy of the deposition shall be made in the Central Office and transmitted to the Chancery Office].

[*E.r.* 11]

Time taken by examination to be indorsed on depositions

12. Before sending any deposition to the Central Office under rule 11(4), the examiner must indorse on the deposition a statement signed by him of the time occupied in taking the examination and the fees received in respect thereof.

[*E.r.* 12]

Special report by examiner

13. The examiner may make a special report to the Court with regard to any examination taken before him and with regard to the absence or conduct of any person there at, and the Court may direct such proceedings to be taken, or make such order, on the report as it thinks fit.

[*E.r.* 13]

Order for payment of examiner's fees

14.—(1) If the fees and expenses due to an examiner are not paid he may report that fact to the Court, and the Court may direct the official solicitor to apply for an order against the party on whose application the order for examination was made to pay the examiner the fees and expenses due to him in respect of the examination.

(2) An order under this rule shall not prejudice any determinatioin on the taxation of costs or otherwise as to the party by whom the costs of the examination are ultimately to be borne.

[*E.r.* 14]

Perpetuation of testimony

15.—(1) Witnesses shall not be examined to perpetuate testimony unless an action has been begun for the purpose.

(2) Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any real or personal property, the right or claim to which cannot be brought to trial by him before the happening of such event, may begin an action to perpetuate any testimony which may be material for establishing such right or claim.

(3) No action to perpetuate the testimony of witnesses shall be set down for trial.

[*E.r.* 15]

(**a**) Paragraph (5) added by S.R. 1983 No. 5 with effect from 28.2.1983

[(a) ORDER 40

COURT EXPERT

Appointment of expert to report on certain questions

1.—(1) In any cause or matter in which any question for an expert witness arises the Court may at any time, on the application of any party or of its own motion, appoint an independent expert or, if more than one such question arises, two or more experts to inquire and report upon any question of fact or opinion not involving questions of law or of construction.

An expert appointed under this paragraph is referred to in this Order as a ''court expert''.

(2) Any court expert in a cause or matter shall, if possible, be a person agreed between the parties and, failing agreement, shall be nominated by the Court.

(3) The question to be submitted to the court expert and the instructions (if any) given to him shall, failing agreement between the parties, be settled by the Court.

(4) In this rule ''expert'', in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence.

[*E.r.* 1]

Report of court expert

3.—(1) The court expert must send his report to the Court, together with such number of copies thereof as the Court may direct, and the proper officer must send copies of the report to the parties or their solicitors.

(2) The Court may direct the court expert to make a further or supplemental report.

(3) Any part of a court expert's report which is not accepted by all the parties to the cause or matter in which it is made shall be treated as information furnished to the Court and be given such weight as the Court thinks fit.

[*E.r.* 2]

Experiments and tests

3. If the court expert is of opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him to make a satisfactory report he shall inform the parties or their solicitors and shall, if possible, make an arrangement with them as to the expenses involved, the persons to attend and other relevant matters; and if the parties are unable to agree on any of those matters it shall be settled by the Court.

[*E.r.* 3]

Cross-examination of court expert

4. Any party may, within 14 days after receiving a copy of the court expert's report, apply to the Court for leave to cross-examine the expert on his report, and on that application the Court shall make an order for the cross-examination of the expert by all the parties either—

(*a*) at the trial, or

(*b*) before an examiner at such time and place as may be specified in the order.

[*E.r.* 4]

(a) Order 40 inserted by S.R. 1984 No. 354 with effect form 12.11.84

Remuneration of court expert

5.—(1) The remuneration of the court expert shall be fixed by the Court and shall include a fee for his report and a proper sum for each day during which he is required to be present either in court or before an examiner.

(2) Without prejudice to any order providing for payment of the court expert's remuneration as part of the costs of the cause or matter, the parties shall be jointly and severally liable to pay the amount fixed by the Court for his remuneration, but where the appointment of a court expert is opposed the Court may, as a condition of making the appointment, require the party applying for the appointment to give such security for the remuneration of the expert as the Court thinks fit.

[*E.r.* 5]

Calling of expert witnesses

6. Where a court expert is appointed in a cause or matter, any party may, on giving to the other parties a reasonable time before the trial notice of his intention to do so, call one expert witness to give evidence on the question reported on by the court expert but no party may call more than one such witness without the leave of the Court, and the Court shall not grant leave unless it considers the circumstances of the case to be exceptional.]

[*E.r.* 6]

ORDER 41

AFFIDAVITS

Form of affidavit

1.—(1) Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter must be entitled in that cause or matter.

(2) Where a cause or matter is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words "and other matters", and where a cause or matter is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.

(3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words "and others", and similarly with respect to defendants.

(4) Every affidavit must be expressed in the first person and [(**a**), unless the Court otherwise directs] must state the place of residence of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state that fact.

[(**b**) In the case of a deponent who is giving evidence in a professional, business or other occupational capacity the affidavit may, instead of stating the deponent's place of residence, state the address at which he works, the position he holds and the name of his firm or employer, if any.]

[(**c**) (5) Every affidavit must be bound in book form and, whether or not both sides of the paper are used, the printed, written or typed sides of the paper must be numbered consecutively.]

(6) Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(7) Dates, sums and other numbers must be expressed in an affidavit in figures and not in words.

(8) Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn.

(9) An affidavit sworn for the purposes of any proceedings may be filed with the writ, originating summons, originating motion or petition by which the proceedings are begun and when so filed the affidavit shall be marked with the record number of the proceedings.

[*E.r.* 1]

Affidavit by two or more deponents

2. Where an affidavit is made by two or more deponents, the names of the persons making the affidavit must be inserted in the jurat except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of the "above named" deponents.

[*E.r.* 2]

Affidavit by illiterate or blind person

3. Where it appears to the person administering the oath that the deponent is illiterate or blind, he must certify in the jurat that—

(*a*) the affidavit was read in his presence to the deponent,

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(**a**) Words inserted by S.R. 1981 No. 217 with effect from 1.9.82
(**b**) Words inserted by S.R. 1981 No. 217 with effect from 1.9.82
(**c**) New rule 1(5) substituted by S.R. 1985 No. 170 with effect from 2.9.85

(*b*) the deponent seemed perfectly to understand it, and

(*c*) the deponent made his signature or mark in his presence;

and the affidavit shall not be used in evidence with such a certificate unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood by the deponent.

[*E.r.* 3]

Use of defective affidavit

4. An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

[*E.r.* 4]

Contents of affidavit

[**(a)5.** An affidavit may contain statements of information or belief with the sources and grounds thereof.]

[*E.r.* 5]

Scandalous, etc., matter in affidavit

6. The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

[*E.r.* 6]

Alterations in affidavits

7.—(1) An affidavit which has in the jurat or body thereof any interlineation, erasure or other alteration shall not be filed or used in any proceedings without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

(2) Where an affidavit is sworn at any office of the Supreme Court, the official stamp of that office may be submitted for the signature or initials required by this rule.

[*E.r.* 7]

Affidavit not to be sworn before solicitor of party, etc.

8. Without prejudice to Article 78(2) of the Solicitors (Northern Ireland) Order 1976**(b)**, no affidavit shall be sufficient if sworn before the solicitor of the party on whose behalf the affidavit is to be used or before any agent, partner or employee of that solicitor.

[*E.r.* 8]

(a) New Rule (5) substituted by S.R. 2001 No. 254 with effect from 5.9.01
(b) S.I. 1976 No. 582 (N.I. 12)

Filing of affidavits

9.—(1) Every affidavit must be filed in the appropriate office.

(2) Every affidavit must be indorsed with a note showing on whose behalf it is filed, and an affidavit which is not so indorsed may not be filed or used without the leave of the Court.

[*E.r.* 9]

Use of original affidavit or office copy

10.—(1) An original affidavit may be used in any proceedings notwithstanding that it has not been filed in accordance with rule 9.

(2) Where an original affidavit is used then, unless the party whose affidavit it is undertakes to file it, he must immediately after it is used leave it with the proper officer in court or in chambers, as the case may be, and that officer shall send it to be filed.

(3) Where an affidavit has been filed, an office copy thereof may be used in any proceedings.

[*E.r.* 10]

Document to be used in conjunction with affidavit to be exhibited to it

11.—(1) Any document to be used in conjunction with an affidavit must be exhibited, and not annexed, to the affidavit.

(2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn.

The certificate must be entitled in the same manner as the affidavit and rule 1(1), (2) and [(a)] shall apply accordingly.

(3) Every exhibit referred to in an affidavit or a statement of fact shall be marked or labelled with the initials of the deponent followed by a number.

[*E.r.* 11]

Masters and certain clerks may administer oaths, etc.

12.—(1) The following officers, namely, masters and any clerk in the Supreme Court of a grade not lower than that of deputy principal shall have authority to administer oaths and take affidavits for the purpose of proceedings in the Supreme Court.

(2) For the purposes of this rule "master" includes Master (Taxing Office).

[*E.O.* 32 *r.*8]

Affidavit taken in Commonwealth country admissible without proof of seal, etc.

13. A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a court, judge, notary public or person having authority to administer oaths in a part of the Commonwealth outside Northern Ireland in testimony of an affidavit being taken before it or him in that part shall be admitted in evidence without proof of the seal or signature being the seal or signature of that court, judge, notary public or person.

[*E.r.* 12]

(a) Figure substituted by S.R. 1982 No. 217 with effect from 1.9.82

ORDER 41

Notice of affidavit

14.—(1) A party filing an affidavit intended to be used by him in any proceedings must [(**a**) serve on] every other party either a copy of the affidavit or notice of the filing.

(2) A party intending to use in any proceedings an affidavit filed by him in previous proceedings must [(**a**) serve on] every other party notice of his intention to do so.

(3) Any party intending to use an original affidavit in any proceedings, pursuant to rule 10, must [(**a**) serve] a copy of that affidavit [(**a**) on] every other party.

(**a**) Words substituted by S.R. 1981 No. 224 with effect from 1.9.81

[(a) JUDGMENTS, ORDERS, ACCOUNTS AND INQUIRIES]
ORDER 42
JUDGEMENTS

Interpretation

1. In this Order "judgment" includes order, decision or direction.

Drawing up judgments

2.—(1) Every judgment shall—

(*a*) subject to rules 3 and 7(1), be drawn up and signed by an officer of the appropriate office; and

(*b*) be sealed and filed by an officer of that office and such officer shall at the time of filing enter such judgment in the [(**b**) record] kept for the purpose and the date of filing shall be deemed to be the date of such entry.

(2) Where a judgment is filed in the Central Office, the Chancery Office, the Probate and Matrimonial Office or the Office of Care and Protection (other than a judgment in proceedings under the Mental Health (Northern Ireland) Order 1986(**c**) the proper officer shall at the time of filing make [(**d**) and entry] in the case book that a judgment has been filed in the cause or matter.

(3) Where a judgment is given by a judge a note of the judgment shall be made by the officer present at the time it was given.

(4) Where a form of judgment is prescribed and set out in Appendix A the judgment must be as nearly as possible in that form.

Judgments required to be drawn up

3.—(1) Subject to paragraph (2), every judgment of the Court shall be drawn up unless the Court otherwise directs.

(2) An order—

(*a*) which—

(i) extends the period within which a person is required or authorised by these Rules, or by any judgment, to do any act, or

(ii) grants leave for the doing of any of the acts mentioned in paragraph (3), and

(*b*) which neither imposes any special terms nor includes any special directions other than a direction as to costs,

need not be drawn up unless the Court otherwise directs.

(3) The acts referred to in paragraph (2)(a)(ii) are—

(*a*) the issue of any writ, other than a writ for service out of the jurisdiction;

(*b*) the amendment of a writ of summons or other originating process or a pleading;

(*c*) the filing of any document;

(*d*) any act to be done by an officer of the Court other than a solicitor.

[(**e**) (3A) Where on an application or appeal in respect of—

(*a*) an order of committal;

(*b*) a refusal to order release on an application for Writ of Habeas Corpus;

(a) Heading added by S.R. 1981 No. 224 with effect from 01.09.81
(b) Word substituted by S.R. 1995 No. 462 with effect from 09.01.96
(c) 1871 c. 22 repealed by SI 1986/595 (NI 4)
(d) Words substituted by S.R. 1995 No. 462 with effect from 09.01.96
(e) New Rule 3A inserted by S.R. 2000 No. 243 with effect from 02.10.00

(*c*) a refusal to grant bail;

(*d*) a secure accommodation order made under Article 44 of the Children (Northern Ireland) Order 1995(**a**),

the Court determines that a Convention right, as defined in section 1 of the Human Rights Act 1998, of the applicant or appellant have been infringed by the making of the order to which the application or appeal relates, the Court shall so specify in its judgment.].

Judgment requiring act to be done: time for doing it

4.—(1) Subject to paragraph (2), a judgment which requires a person to do an act must specify the time after the service of the judgment, or some other time, within which the act is to be done.

(2) Where the act which any person is required by any judgment to do so is to pay money to some other person, give possession of any land or deliver any goods, a time within the act is to be done need not be specified in the judgment by virtue of paragraph (1), but the foregoing provision shall not affect the power of the Court to specify such a time and to adjudge or order accordingly.

[*E.r.* 2]

Judgment requiring act to be done: order fixing time for doing it

5.—(1) Notwithstanding that a judgment which requires a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3 rule 5, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.

(2) Where, notwithstanding rule 4(1), or by reason of rule 4(2), a judgment requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time as may be specified therein.

(3) An application for an order under this rule must be made by summons and the summons must be served on the person required to do the act in question.

Judgment in favour of revisioner for detention of goods

6.—(1) Where a claim relating to the detention of goods is made by a partial owner whose right of action is not founded on a possessory title, any judgment given in respect of the claim shall, notwithstanding anything in section 3(3) of the Torts (Interference with Goods) Act 1977(**b**), be for the payment of damages only.

In this paragraph "partial owner" means one or two or more persons having interest in the goods, unless he has the written authority of every other such person to sue on the latter's behalf.

(2) This rule is without prejudice to the remedies and jurisdiction mentioned in section 3(8) of the said Act of 1977.

[*E.r.* 1A]

(a) S.I. 1995/755 (N.I. 2)
(b) 1977 c.32

Judgment in default of appearance or defence

7.—(1) A party entitled to judgment in default of appearance or defence may obtain judgment by producing the following documents to an officer of the [(**a**) appropriate office]—

(*a*) the original writ by which the proceedings were begun;

(*b*) the affidavit of service, or certificate of no defence [(**b**) served], as the case may be;

(*c*) any affidavit or certificate filed under Order 13 rule 1(3) or 4(1) to (4) or Order 19 rule 2(2) or 5(1) to (4); and

(*d*) a judgment drawn up by the party.

(2) Where the provisions of any statutory provision or these Rules enable a party to any proceedings to obtain judgment on the production of any documents, the officer of the Central Office shall not sign any such judgment until the documents which the party is required to produce are produced and the officer is satisfied that they are in order.

Date from which judgment takes effect

8.—(1) A judgment of the Court takes effect from the day of its date.

(2) Such a judgment shall be dated as of the day on which it is given, unless the Court orders it to be dated as of some other earlier or later day, in which case it shall be dated as of that day.

[*E.r.* 3]

Interest on judgment debts

9.—(1) Every judgment for the payment of money shall carry interest at the rate specified in the judgment from the time the judgment was given or from such other time as the Court may direct.

(2) Subject to any statutory provision, where the rate of interest to be paid is not specified in the judgment, interest shall be payable at the rate of [(**c**) 8] per cent per annum.

[(**d**)(3) When an order charging land under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981(**e**) or a charging order on funds, stock or shares under Article 58 of the said Order provides for the payment of interest on any sum secured by the order, such interest shall be payable at the rate specified in the judgment in respect of which the order was made or, where the rate of interest to be paid is not specified in the judgment, at the rate currently payable in respect of a judgment under paragraph (2), from the date of the registration of the order in the case of an order charging land or from the date of the order in the case of a charging order on funds, stock or shares, and for the period during which the charge is subsisting.]

Copies of judgments

10. Before a copy of a judgment is issued it must be sealed and stamped "copy" and there must be noted thereon the number of the judgment and the date of filing.

(a) Word substituted by S.R. 1992 No. 399 with effect from 01.11.92
(b) Words substituted by S.R. 1981 No. 224 with effect from 01.09.81
(c) Figure substituted by S.R. 1993 No. 143 with effect from 19.04.93
(d) New paragraph (3) substituted by S.R. 1983 No. 5 with effect from 28.02.83
(e) S.I. 1981/226 (N.I 6)

ORDER 43

ACCOUNTS AND INQUIRIES

Summary order for account

1.—(1) Where a writ is indorsed with a claim for an account or a claim which necessarily involved taking an account, the plaintiff may, at any time after the defendant has entered an appearance or after the time limited for appearing, apply for an order under this rule.

[(**a**) (1A) A defendant to an action begun by writ who has served a counterclaim, which includes a claim for an account or a claim which necessarily involves taking an account, on—

(*a*) the plaintiff, or

(*b*) any other party, or

(*c*) any person who becomes a party by virtue of such service

may apply for an order under this rule].

(2) An application under this rule must be made by summons and, if the Court so directs, must be supported by affidavit or other evidence.

(3) On the hearing of the application, the Court may, unless satisfied [(**b**) . . .] that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

[*E.r.* 1]

Court may direct taking of accounts, etc.

2.—(1) The Court may, on an application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.

(2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as may be, each distinct account and inquiry may be designated by a number.

[*E.r.* 2]

Directions as to manner of taking account [(**c**) *or making inquiry*)

3.—(1) Where the Court orders an account to be taken [(**d**) or inquiry to be made] it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or vouched [(**d**) or the inquiry is to be made].

(2) Without prejudice to the generality of paragraph (1), the Court may direct that in taking [(**e**) an] account the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.

[*E.r.* 3]

(**a**) New paragraph (1A) inserted by S.R. 1983 No. 114 with effect from 1.6.83
(**b**) Words deleted by S.R. 1983 No. 114 with effect from 1.6.83
(**c**) Words added by S.R. 1983 No. 5 with effect from 28.2.83
(**d**) Words inserted by S.R. 1983 No. 5 with effect from 28.2.83
(**e**) Words substituted by S.R. 1983 No. 5 with effect from 28.3.83

Account to be made, verified, etc.

4.—(1) Where an account has been ordered to be taken, the accounting party must make out his account and, unless the Court otherwise directs, verify it by an affidavit to which the account must be exhibited.

(2) The items on each side of the account must be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party must lodge the account with the Court and must at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

[*E.r.* 4]

Notice to be given of alleged omissions, etc., in account

5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or in any other respect must give him notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or, as the case may be, the grounds for alleging that the item is erroneous.

[*E.r.* 5]

Allowances

6. In taking any account directed by any judgment or order all just allowances shall be made without any direction to that effect.

[*E.r.* 6]

Delay in prosecution of accounts, etc.

7.—(1) If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for costs as the circumstances require.

(2) The Court may direct any party or the Official Solicitor to take over the conduct of the proceedings in question and to carry out any directions made by an order under this rule and may make such order as it thinks fit as to the payment of the Official Solicitor's costs.

[*E.r.* 7]

Distribution of fund before all persons are ascertained

8. Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

[*E.r* 8]

Guardian's accounts

9. The accounts of a person appointed guardian of a minor's estate must be verified and passed in [(**a**) such] manner as the Court may direct.

[*E.r.* 9]

(**a**) Word substituted by S.R. 1983 No. 5 with effect from 28.2.83

[(a) ORDER 44

Proceedings under Judgments and Orders: Chancery Division

Application to orders

1. In this Order references to a judgment include references to an order.

[*E.r.* 1]

Service of notice of judgment on person not a party

2.—(1) Where in an action for—

(*a*) the administration of the estate of a deceased person, [(**b**) ...]

(*b*) the execution of a trust, [(**b**) ...]

(*c*) the sale of any property, [(**c**) or]

[(**d**) (d) the possession of land,]

the Court gives a judgment or makes a direction which affects persons not parties to the action, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any such person and any person so served shall, subject to paragraph (4), be bound by the judgment as if he had originally been a party to the action.

(2) If it appears that it is not practicable to serve notice of a judgment on a person directed to be served the Court may dispense with service and may also order that such person be bound by the judgment.

[(**e**)(2A) Order 6 rule 6(4) and (6) shall apply in relation to a notice of judgment under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff.]

(3) Every notice of a judgment for service under this rule must be indorsed with a memorandum in Form No.36 in Appendix A [(**f**); and the copy of the notice to be served shall be a sealed copy].

(4) A person served with notice of a judgment may, within one month after service of the notice on him and after entering an appearance apply to the court to discharge, vary or add to the judgment.

(5) A person served with notice of a judgment may, [(**g**) after entering an appearance], attend the proceedings under the judgment.

(6) Order 12 rules 1 to 4, shall apply in relation to the entry of appearance to a notice of judgment as if the judgment were a writ, the person by whom the notice is served were the plaintiff and the person on whom it is served were a defendant.

[*E.r.* 2]

Directions by the Court

3.—(1) Where a judgment given in a cause or matter in the Chancery Division contains directions which make it necessary to proceed in chambers under the judgment the Court may, when giving the judgment or at any time during proceedings under the judgment, give further directions for the conduct of those proceedings, including, in particular, directions with respect to—

(*a*) the manner in which any account or inquiry is to be prosecuted,

(*b*) the evidence to be adduced in support thereof,

(*c*) the preparation and service on the parties bound thereby of the draft of any deed or other instrument which is directed by the judgment to be settled by the Court and the service of any objections to the draft,

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(**a**) New Order substituted by S.R. 1983 No. 5 with effect from 28.02.83
(**b**) Words deleted by S.R. 2001 No. 254 with effect from 05.09.01
(**c**) Word added by S.R. 2001 No. 254 with effect from 05.09.01
(**d**) New sub-paragraph inserted by S.R. 2001 No. 254 with effect from 05.09.01
(**e**) Paragraph (2A) inserted by S.R. 1992 No. 399 with effect from 01.11.92
(**f**) Words added by S.R. 1992 No. 399 with effect from 01.11.92
(**g**) Words substituted by S.R. 1992 No. 399 with effect from 01.11.92

(*d*) without prejudice to Order 15 rule 18, the parties required to attend all or any part of the proceedings,

(*e*) the representation by the same solicitor of parties who constitute a class and by different solicitors of parties who ought to be separately represented, and

(*f*) the time within which each proceeding is to be taken, and may fix a day or days for the further attendance of the parties.

(2) The Court may revoke or vary any directions given under this rule.

[*E.r.* 3]

Application of rules 5 to 8

4. Rules 5 to 8 apply—

(*a*) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other ascertained claimants to be made, and

(*b*) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made,

and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs an account of debts or other liabilities to be taken or any inquiry to be made.

[*E.r.* 4]

Advertisements for creditors and other claimants

5. The Court may, when giving a judgment or at any stage of proceedings under a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

[*E.r.* 5]

Examination of claims

6.—(1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must—

(*a*) examine the claims of persons claiming to be creditors of the estate,

(*b*) determine, so far as he is able, to which of such claims the estate is liable, and

(*c*) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them and listing all the other debts of the deceased which are or may still be due.

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must—

(*a*) examine the claims,

(*b*) determine, so far as he is able, which of them are valid, and

(*c*) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them.

(3) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the affidavit required by this rule.

[*E.r.* 6]

Adjudication on claims

7. For the purpose of adjudicating on claims the Court may—

(*a*) direct any claim to be investigated in such manner as it thinks fit,

(*b*) require any claimant to attend and prove his claim or to furnish further particulars or evidence of it, or

(*c*) allow any claim after or without proof thereof.

[*E.r.* 7]

Notice of adjudication

8. The Court shall give directions that there be served on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

[*E.r.* 8]

Interest on debts

9.—(1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed—

(*a*) on any such debt as carries interest, at the rate it carries, and;

(*b*) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with paragraph (1)(*b*) out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.

(3) For the purposes of this rule "debt" includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1)(*b*) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

[*E.r.* 9]

Interest on Legacies

10. Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the rate of [(**a**) £6] per cent. per annum beginning at the expiration of one year after the testator's death.

[*E.r.* 10]

Master's order

11.—(1) The result of proceedings before a master under a judgment shall be stated in the form of an order.

(2) Subject to any direction of the master under paragraph (3) or otherwise an order under this rule shall have effect as a final order disposing of the cause or matter in which it is made.

(3) An order under this rule shall contain such directions as the master thinks fit as to the further consideration, either in court or in chambers, of the cause or matter in which it is made.

(4) Every order made under this rule shall have immediate binding effect on the parties to the cause or matter in which it is made and copies of the order shall be served on such of the parties as the master may direct.

[*E.r.* 11]

Appeal against master's order

12.—(1) Subject to paragraph (2), Order 58, rule 1 shall apply to an order under this Order as it applies to any judgment, order or decision of a master.

(2) If the order is to be acted on by the Accountant General or is an order passing a receiver's account, notice of appeal must be issued not later than two clear days after the making of the order and, where the order is to be acted on by the Accountant General, a duplicate of it must be served on the Accountant General as soon as practicable after it is made.]

[*E.r.* 12]

(**a**) New figure substituted by S.R. 1984 No. 110 with effect from 1.5.84

ENFORCEMENT OF JUDGMENTS AND ORDERS

ORDER 45

ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL

Interpretation

1. In this Order [(**a**) "the Order of 1981" means the Judgments Enforcement (Northern Ireland) Order 1981(**b**)].

Enforcement of judgment, etc., for payment of money into court

2.—(1) Subject to the provisions of these rules, a judgement or order for the payment of money into court may be enforced by one or more of the following means, that is to say—

(*a*) the appointment of a receiver;

(*b*) in a case in which rule [(**c**) 4] applies, an order of committal under Order 52.

(2) Paragraph (1) is without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the power of a court to make a committal order under [(**d**) Articles 107 to 110 of the Order of 1981] or to the enactments relating to bankruptcy or the winding up of companies.

[*E.r.* 1]

Enforcement of judgment possession of land

3. Without prejudice to [(**a**) Article 53 of the Order of 1981] and subject to the provisions of these rules, a judgement or order for the giving of possession of land may be enforced in a case which rule [(**c**) 4] applies by an order of committal under Order 52.

Enforcement of judgment to do so or abstain from doing any act

4.—(1) Where—

(*a*) a person required by a judgment or order to do an act within a time specified in the judgement or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, rule 5, or

(*b*) a person disobeys a judgement or order requiring him to abstain from doing an act,

then, without prejudice to [(**a**) Article 111 of the Order of 1981] and subject to the provision of these rules, the judgement or order may, subject to [(**a**) Articles 107 to 110 of the Order of 1981], be enforced by an order of committal under Order 52.

(2) Where a judgement or order requires a person to do an act within a time therein specified and an order is subsequently made under Order 42, rule 5 requiring the Act to be done with some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to the order made under Order 42 rule 5.

[*E.r.* 1]

Service of copy of judgment, etc., prerequisite to enforcement under rule [(**c**) 4]

5.—(1) In this rule references to an order shall be construed as including references to a judgment.

(**a**) Words substituted by S.R. 1981 No. 224 with effect from 1.9.81
(**b**) S.I. 1981/224 (N.I. 6)
(**c**) Figure 4 substituted by S.R. 1982 No. 217 with effect from 1.9.82
(**d**) Words substituted by S.R. 1981 No. 224 with effect from 1.9.81

(2) Subject to Order 24, rule 15(3), Order 26, rule 6(3), and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 4 unless—

(*a*) a copy of the order has been served personally on the person required to do or abstain from doing the act in question, and

(*b*) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.

(3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced by an order of sequestrian unless a copy of the order requiring the body to do the act has been served on an officer of the company before the expiration of the time within which the body was required to do the act.

[(**a**)(4) There must be prominently displayed on the front of the copy of an order served under this rule a warning in Form No. 67 or No. 68 in Appendix A, as appropriate.].

(5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order made under Order 3, rule 5, extending or abridging the time for doing the act and, where the first-mentioned order was made under Order 42, rule 5, a copy of the previous order requiring the act to be done.

(6) An order requiring a person to abstain from doing an act may be enforced under rule 4 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order had notice thereof either—

(*a*) by being present when the order was made, or

(*b*) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

(7) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

[*E.r.* 7]

Court may order act to be done at expense of disobedient party

6. If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers under section 33 of the Act and its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person

(**a**) Paragraph 4 substituted by S.R. 2000 No. 42 with effect from 27.3.00

appointed by the Court, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court may direct and an order for payment by the disobedient party of the amount so ascertained and costs may be made by the Court.

[*E.r.* 8]

Enforcement by or against person not being a party

7.—(1) Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

(2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

[*E.r.* 9]

Conditional judgment: waiver

8. A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

[*E.r.* 10]

Matters occurring after judgment: stay of enforcement, etc.

9. A party against whom a judgment has been given or an order made may apply to the Court for a stay of enforcement of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

[*E.r.* 11]

ORDER 46

LEAVE TO ENFORCE JUDGMENTS

Application for leave to enforce

1.—(1) Subject to Order 81, rule 5, where leave to enforce a judgment or order is required an application for such leave may be made ex parte unless the Court directs it to be made by summons.

(2) Such an application must be supported by an affidavit—

(*a*) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date of the application;

(*b*) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to enforce the judgment or order in question and that the person against whom it is sought to enforce is liable to enforcement under it.

(3) The Court hearing such application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

[*E.r.* 4]

ORDER 47

SEQUESTRATION

Application for order of sequestration

1.—(1) An application for an order of sequestration must be made to a judge by motion.

(2) Subject to paragraph (3), the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person against whose property the order of sequestration under [(**a**) Articles 111 to 113 of the Judgments Enforcement (Northern Ireland) Order 1981] is sought.

(3) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of the notice of motion under this rule if it thinks it just to do so.

(4) The judge hearing an application for an order of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 8, but, except in such a case, the application shall be heard in open court.

[*E.O.* 46 *r.* 5]

(**a**) Words substituted by S.R. 1981 No. 224 with effect from 1.9.81

ORDER 48

EXAMINATION OF PARTY LIABLE TO SATISFY JUDGMENT

Examination of party liable to satisfy judgment other than a judgment for the payment of money

1.—(1) Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than a judgment or order for the payment of money, the Court may make an order for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order.

(2) An order under this rule must be served personally on the party liable to satisfy the judgment or order.

[*E.r.* 2]

Examiner to make record of statement pursuant to examination under rule 1

2. The officer conducting the examination shall take down, or cause to be taken down, in writing the statement made by the person at the examination, read it to him and ask him to sign it; and if he refuses the officer shall sign the statement.

[*E.r.* 3]

ORDER 49

[No Order made]

ORDER 50

FUNDS IN COURT: STOP ORDER

Funds in Court: stop order

1.—(1) The Court, on the application of any person—

(*a*) who has a mortgage or charge on the interest of any person in funds in court, or

(*b*) to whom that interest has been assigned

may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant.

(2) An application for an order under this rule must be made by summons in the cause or matter relating to the funds in court, or, if there is no such cause or matter, by originating summons.

(3) The summons must be served on every person whose interest may be affected by the order applied for and on the Accountant General but shall not be served on any other person.

(4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds, occasioned by the application.

[*E.r.* 10]

ORDER 51

[No Order made]

ORDER 52

COMMITTAL

Committal for contempt of court

1.—(1) The power of the High Court or Court of Appeal to punish for contempt of court may be exercised by an order of committal.

(2) Where contempt of court—

(*a*) is committed in connection with—

(i) any proceedings in the High Court, or

(ii) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court, or

(iii) proceedings in an inferior court, or

(*b*) is committed otherwise than in connection with any proceedings,

then, subject to paragraph (3) and rule 5, an order of committal may be made only by a court of the High Court consisting of two or more judges, and in this Order the word "Court" shall be construed accordingly save where the context or paragraph (4) otherwise requires.

(3) Where civil contempt of court is committed in connection with any proceedings in the High Court, an order of committal may be made by a single judge.

(4) Where contempt of court is committed in relation to the Court of Appeal or in connection with any proceedings therein, an order of committal may be made by that Court as well as by the Court under paragraph (2).

(5) Every order of committal may be directed to any police officer or to such other person as the Court may order.

[(**a**)(6) A court of two or more judges exercising jurisdiction pursuant to this rule shall be called a Divisional Court.]

[*E.r.* 1]

Application to the Court

2.—(1) Except under rule 1(3), no application to the Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made ex parte to a judge in chambers or to a single judge of the Court of Appeal and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than the preceding day to the Crown Office and must at the same time lodge in that Office copies of the statement and affidavit.

(4) Where an application for leave under paragraph (2) is refused, the applicant may make a fresh application for such leave to the appropriate court.

(5) An application made by virtue of paragraph (4) must be made within 8 days after the judge's refusal to give leave or, if the appropriate court does not sit within that period, on the first day on which it sits thereafter.

[*E.r.* 2]

(**a**) Paragraph (6) added by S.R. 1984 No. 354 with effect from 12.11.84

Application for order after leave to apply granted

3.—(1) When leave has been granted under rule 2 to apply for an order of committal, the application for the order must be made by motion to the appropriate Court and, unless the Court or judge granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing.

(2) Unless within 14 days after such leave was granted the motion is entered for hearing the leave shall lapse.

(3) Subject to paragraph (4), the notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the Court or judge under Order 65, rule 4, the Court or judge may dispense with service of the notice of motion under this rule if it or he thinks it just to do so.

[*E.r.* 3]

Application for order under rule 1(3)

4.—(1) An application for an order of committal under rule 1(3) must be made by motion and be supported by an affidavit.

(2) Subject to paragraph (3), the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally [(**a**) on the person sought to be committed.]

(3) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of the notice under this rule if it thinks it just to do so.

Where person sought to be committed fails to appear

5. Where on the hearing of the motion the person sought to be committed fails to appear the Court may make an order of committal against him if it thinks it just to do so.

Saving for power to committ without application for purpose

6. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the High Court or Court of Appeal to make an order of committal of its own motion against a person guilty of contempt of court.

[*E.r.* 5]

Contempt in presence of judge

7.—(1) Without prejudice to rule 6, any person who, in the presence of a judge sitting in the High Court or Court of Appeal appears to be guilty of contempt of court may immediately be called upon to show cause why an order of committal should not be made against him or he may be ordered to appear on some future date, with or without recognizances, before the High Court or Court of Appeal to show cause why an order of committal should not be made against him.

(2) Where the High Court or Court of Appeal directs that recognizances shall be entered into, the Court shall determine the number of sureties, if any, the amount in which the person who appears to be guilty of contempt and any sureties are to be bound and the conditions to be indorsed on the recognizances with a view to the recognizances being taken subsequently.

(**a**) Words added by S.R. 1984 No. 354 with effect from 12.11.84

(3) Any such recognizance may be entered into before a master who before taking the recognizance of a surety must satisfy himself that the surety is a suitable person to enter into a recognizance.

Provisions as to hearing

8.—(1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say—

(*a*) where the application arises out of proceedings relating to the wardship or adoption of a minor or wholly or mainly to the guardianship, custody, maintenance or unbringing of a minor, or rights of access to a minor;

(*b*) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the [(**a**) Mental Health (Northern Ireland) Order 1986(**b**)] or any other incapacitating condition;

(*c*) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;

(*d*) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private;

but, except as aforesaid, the application shall be heard in open court.

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state—

(*a*) the name of that person,

(*b*) in general terms the nature of the contempt of court in respect of which the order of committal is being made, and

(*c*) [(**c**) the length of the period for which he is being committed.]

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under rule 2.

The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 8.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give or adduce on his own behalf, he shall be entitled to do so.

(5) In this rule references to a court sitting in private include references to a court sitting in camera and a judge in chambers.

[*E.r.* 6]

Power to suspend execution of committal order

9.—(1) The Court by which an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

[*E.r.* 7]

(**a**) Words substituted by S.R. 1986 No. 184 with effect from 31.7.86
(**b**) S.I. 1986/595 (N.I. 4)
(**c**) Words substituted by S.R. 1992 No. 399 with effect from 1.11.92

Discharge of person committed

10.—(1) The Court may, on the application of any person committed to prison until further order for any contempt of court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in court or elsewhere, and an order of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the sequestrators appointed by the order of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the sequestrators as it thinks fit.

[*E.r.* 8]

Saving for other powers

11. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any statutory provision in like manner as if he had been guilty of contempt of the High Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

[*E.r.* 9]

JUDICIAL REVIEW, APPEALS ETC.

ORDER 53

APPLICATIONS FOR JUDICIAL REVIEW

Procedure for application for judicial review

1. There shall be a procedure, to be known as an application for judicial review, under which application may be made to the Court for one or more of the following forms of relief, that is to say, relief by way of—

(*a*) an order of mandamus;

(*b*) an order of certiorari;

(*c*) an order of prohibition;

(*d*) a declaration;

(*e*) an injunction.

[*E.r.* 1]

Exercise of jurisdiction in a criminal cause or matter

2.—(1) Save as otherwise provided by this Order and subject to paragraph (3) and to rules 3(3) and 8(1), in a criminal cause or matter the jurisdiction of the Court on or in connection with an application for judicial review shall be exercised by three judges sitting together.

(2) Where the Lord Chief Justice so directs, such jurisdiction may be exercised by two judges.

(3) In vacation any jurisdiction under this rule may, where necessary, be exercised by a single judge.

(4) No appeal shall lie from an order made by a judge exercising jurisdiction under paragraph (3), but an application may be made by motion within 10 days to the court, constituted in accordance with paragraph (1) or (2), to set aside or discharge the order and to substitute such other order as the Court may think fit.

(5) Where in accordance with paragraph (2) a matter is heard before two judges and those judges differ in opinion, it shall be re-heard and determined by three judges.

(6) Notwithstanding this rule, any jurisdiction on consent may be exercised by a single judge in accordance with section 16(5) of the Act.

[**(a)** (7) A court of two or more judges exercising jurisdiction pursuant to this rule shall be called a Divisional Court].

Grant of leave to apply for judicial review

3.—(1) Leave of the Court shall be obtained in accordance with this rule before any application for judicial review, other than an application for an order of certiorari by the Attorney General acting on behalf of the Crown, is made.

(2) An application for leave must be made ex parte by lodging in the Central Office—

(*a*) a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and

(*b*) an affidavit or affidavits, as the case may require, verifying the facts relied on.

(a) Paragraph (7) added by S.R. 1982 No. 217 with effect from 1.9.82

(3) The jurisdiction of the Court to consider and determine an application for leave may be exercised [(**a**). . .] in chambers.

(4) Without prejudice to its powers under section 18(2)(*d*) of the Act and Order 20, rule 8, the Court hearing an application for leave may direct or allow the applicant's statement to be amended, whether by specifying different or additional grounds or otherwise, on such terms, if any, as it thinks fit.

(5) The Court shall not, having regard to section 18(4) of the Act, grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(6) Such leave shall not be granted if, having regard to the nature of the persons and bodies against whom relief may be granted by way of an order of mandamus, prohibition or certiorari, the Court is satisfied that the case is one in respect of which relief could not be granted by way of any such order.

(7) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(8) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(9) The Court on considering an application for leave may make an order granting relief by way of an order of mandamus, certiorari or prohibition where it considers that in the special circumstances of the case such an order should be made forthwith.

(10) Upon consideration of an application for leave the Court may direct the applicant to appear before it and no application for leave shall be refused without first giving the applicant an opportunity of being heard.

(11) In a criminal cause or matter the Court shall, for the purposes of paragraph (9), or a refusal of leave under paragraph (10), be constituted in accordance with rule 2.

(12) The applicant shall be informed of the result of the application, unless it has been decided in his presence.

(13) Where leave to apply for judicial review is granted, then (without prejudice to the generality of section 19 of the Act)—

(*a*) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(*b*) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

[*E.r.* 3]

Delay in applying for relief

[(**b**) **4.**—(1) An application for leave to apply for judicial review shall be made [(**c**). . .] within three months from the date when grounds for the

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(**a**) Words deleted by S.R. 1984 No. 354 with effect from 12.11.84
(**b**) New rule 4 substituted by S.R. 1989 No. 289 with effect from 1.9.89
(**c**) Words omitted by S.R. 2017 No. 213 with effect from 08.01.18

application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.

(2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.

(3) Paragraph (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.]

Mode of applying for judicial review

5.—(1) Where leave has been granted to make an application for judicial review, the application shall be made to the Court by originating motion, and the grounds relied on and the relief granted shall only be one or more of those specified in the application.

(2) The application shall be grounded on the original statement and affidavit or affidavits lodged in support of the application for leave.

(3) The notice of motion must be served on all persons directly affected and, where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the notice must also be served on the clerk or registrar of the court and, where any objection to the conduct of the judge is to be made, on the judge. For the purpose of this paragraph the expression "court" and "judge" shall be deemed to include a tribunal and the president or chairman of a tribunal respectively.

(4) Unless the Court granting leave has otherwise directed, there must be at least 10 days between the service of the notice of motion and the day named therein for hearing.

(5) A notice of motion must be issued within 14 days after the grant of leave or else leave shall lapse.

(6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion must be filed before the motion is entered for hearing and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion.

(7) If on the hearing of the motion the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice may be served on that person.

(8) Except in a criminal cause or matter, the Court of Appeal may hear and determine an application for an order under this rule where the Court has granted leave under rule 3 on appeal from the refusal of such leave by the Court.

Statements and affidavits

6.—(1) Copies of the statement in support of the application for leave under rule 3 must be served with the notice of motion and, subject to paragraph (2), no grounds shall be relied upon nor any relief sought at the hearing except the grounds and relief set out in the statement.

[(a) (2) The Court may on the hearing of the motion direct or allow the applicant to amend his statement, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used by him.]

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application must supply to every other party on demand and on payment of the proper charges copies of every affidavit which he proposes to use at the hearing including, in the case of the applicant, the affidavit or affidavits in support of the application for leave under rule 3.

[*E.r.* 6]

Claims for damages

7.—(1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if—

(*a*) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates, and

(*b*) the Court is satisfied that, if the claim had been made in a separate action begun by the applicant at the time of making his application, he would have been entitled to such damages.

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

[*E.r.* 7]

Application for discovery, interrogatories, cross-examination, etc.

8.—(1) Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to a judge in chambers. In this paragraph "interlocutory application" includes an application for an order under Order 24 or Order 26 or Order 38 rule 2(3), or for an order dismissing the proceedings by consent of the parties.

(2) In relation to an order made by a master pursuant to paragraph (1), Order 58, rule 1, shall have effect as if a reference to the Court were substituted for the reference to a judge in chambers.

(3) In a criminal cause or matter no appeal shall lie from an order made by a judge pursuant to paragraph (1), but an application may be made by motion within 5 days to the Court, constituted in accordance with rule 2, to set aside or discharge the order and to substitute such other order as the Court may think fit.

(4) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

[*E.r.* 8]

Hearing of application for judicial review

9.—(1) On the hearing of any motion under rule 5, any person who desires to be heard in opposition to the motion, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion.

(a) New paragraph (2) substituted by S.R. 1993 No. 143 with effect from 19.04.93

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion he has lodged in the Central Office a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion.

(3) Where an order of certiorari is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into the Queen's Bench Division.

(4) Where—

(*a*) the relief sought is an order of certiorari, and

(*b*) the court is satisfied that there are grounds for quashing the decision in issue,

the Court may, instead of quashing the decision, remit the matter to the lower deciding authority concerned, with a direction to reconsider it and reach a decision in accordance with the ruling of the Court or may reverse or vary the decision of the lower deciding authority.

[(**a**) (5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ; and Order 28, rule 8, shall apply as if the application had been made by summons.]

[*E.r.* 9]

Right of appeal

10. Leave shall not be required for an appeal to the Court of Appeal from—

(*a*) an order refusing an application for leave under rule 3; or

(*b*) an order granting or refusing an application for judicial review.

11. The provisions of this Order shall apply to an application under section 24 of the Act as they apply to an application for judicial review.

(**a**) New paragraph (5) substituted for paragraphs (5) and (6) by S.R. 1989 No. 289 with effect from 1.9.89

[(a) ORDER 53A

APPLICATIONS FOR STATUTORY REVIEW UNDER SECTION 103A OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

Interpretation

1.—(1) In this Order—

"the 2002 Act" means the Nationality, Immigration and Asylum Act 2002(**b**) and a section referred to by number means the section so numbered in the Act;

"the 2004 Act" means the Asylum and Immigration (Treatment of Claimants etc.) Act 2004;(**c**)

"appeal" means appeal to the Asylum and Immigration Tribunal under section 82 or 83 of the 2002 Act or section 40A of the British Nationality Act 1981;

"appellant" means the appellant in the appeal to the Asylum and Immigration Tribunal;

"applicant" means the person applying to the High Court for an order for reconsideration under section 103A;

expressions used in this Order which are used in the 2002 Act have the same meaning in this Order as in the 2002 Act;

"filter provision" means paragraph 30 of Schedule 2 to the 2004 Act;

"order for reconsideration" means an order under section 103A(1) requiring the Asylum and Immigration Tribunal to reconsider its decision on an appeal; and

"Tribunal" means the Asylum and Immigration Tribunal established under section 81.

(2) Any reference in this Order to a period of time specified in—

(a) section 103A(3) for making an application for an order for reconsideration; or

(b) paragraph 30(5)(b) of Schedule 2 to the 2004 Act for giving notice under that paragraph,

includes a reference to that period as varied by any order under section 26(8) of the 2004 Act.

(3) Order 3, rule 2 applies to the calculation of periods of time specified in—

(a) section 103A(3); and

(b) paragraph 30(5)(b) of Schedule 2 to the 2004 Act.

(4) Except as provided otherwise, the provisions of this Order apply to an application for an order for reconsideration regardless of whether the filter provision has effect in relation to that application.

Disapplication of certain rules to this Order

2.—(1) Order 8, rule 3(1) shall not apply to applications by originating motion under this Order.

(2) Where the applicant was the appellant in the appeal to the Tribunal, Order 8, rule 2 and Order 10, rule 5 shall not apply to applications by originating motion under this Order.

(**a**) New Order 53A inserted by S.R. 2005 No. 146 with effect from 18.04.05
(**b**) 2002 c. 41
(**c**) 2004 c. 19

[*Supplt. No. 45 (April 2007)*]

ORDER 53A

[(a) *Representation of applicants while filter provision has effect*

2A.—(1) This rule applies during any period in which the filter provision has effect.

(2) An applicant may, for the purpose of taking any step under rules 3 or 4, be represented by any person permitted to provide him with immigration advice or services under section 84 of the Immigration and Asylum Act 1999(**b**).

(3) Where a representative is acting for an appellant who is within the jurisdiction, a document must be served on the appellant by—

(a) serving it on the representative; or

(b) serving it on the appellant personally or sending it to his address by ordinary first class post,

but if the document is served on the appellant under (b), a copy must also at the same time be sent to his representative.]

Application for order for reconsideration under section 103A of the 2002 Act

3.—(1) An application for an order for reconsideration shall be commenced by originating motion in Form 11A and the notice of the motion is referred to in this Order as "notice of application".

(2) Subject to paragraph (6), the notice of application under paragraph (1) shall be lodged—

(a) during any period in which the filter provision has effect, with the Tribunal; and

(b) at any other time, in the Central Office.

(3) The notice of application must state the grounds upon which it is contended that the Tribunal made an error of law and the reasons in support of those grounds.

(4) [(**c**) During any period in which the filter provision does not have effect, the notice of application] lodged under paragraph (2) shall be accompanied by—

(a) the notice of the immigration, asylum or nationality decision to which the appeal related;

(b) any other document which was served on the appellant giving reasons for that decision;

(c) the grounds of appeal to the Tribunal;

(d) the Tribunal's determination on the appeal; and

(e) any other documents which were before the Tribunal which are material to the application.

[(**d**) (4A) During any period in which the filter provision has effect, the applicant must lodge with the notice of application a list of the documents referred to in paragraph (4)(a) to (e).]

(5) Where the applicant—

(a) was the respondent to the appeal; and

(**a**) New Rule 2A inserted by S.R. 2007 No. 189 with effect from 16.04.07

(**b**) 1999 c.33 Part V of that Act has been amended by the Nationality, Immigration and Asylum Act 2002 (c. 41), Section 140 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), Sections 37 to 41 and Schedule 4

(**c**) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07

(**d**) Paragraph inserted by S.R. 2007 No. 189 with effect from 16.04.07

(b) was required under the Asylum and Immigration Tribunal (Procedure) Rules 2005(**a**) to serve the Tribunal's determination on the appellant,

the notice of application must contain a statement of the date on which and the means by which the determination was so served.

(6) Where the applicant is in detention under the Immigration Acts, an application for an order for reconsideration may be made –

(a) in accordance with paragraphs (2) to (4); or

(b) by serving it on the person having custody of him.

(7) Where an application is served in accordance with paragraph (6)(b), the person on whom the application is served shall –

(a) endorse on the notice of application the date that it was served on him;

(b) give to the applicant an acknowledgement in writing of receipt of the application; and

(c) within 2 days, forward the notice of application and the accompanying documents –

(i) during any period in which the filter provision has effect, to the Tribunal; and

(ii) at any other time, to the Central Office.

Application to extend time limit

4. An application to extend the time limit for making an application under section 103A(1) shall –

(a) be included in the notice of application lodged under rule 3;

(b) set out the grounds on which it is contended that the application could not reasonably have been lodged within the time limit; and

(c) be supported by an affidavit verifying the facts relied on.

Applications under paragraph 30(5)(a) of Schedule 2 to the 2004 Act

5.—(1) This rule applies during any period in which the filter provision has effect.

(2) Where the applicant receives a notice from the Tribunal that it –

(a) does not propose to make an order for reconsideration; or

(b) does not propose to allow the application to be made outside the relevant time limit,

and the applicant wishes the Court to consider the application, the applicant must lodge a notice in Form 11B in the Central Office in accordance with paragraph 30(5)(a) and (b) of Schedule 2 to the 2004 Act.

[(**b**) (2A) The applicant must lodge with the notice—

(a) a copy of the tribunal's notification that it does not propose to make an order for reconsideration or does not propose to allow the application to be made outside the relevant time limit;

(b) any other document which was served on the appellant by the Tribunal giving reasons for its decision in paragraph (a);

(**a**) S.I. 2005 No. 203 (L. 1)

(**b**) Paragraph inserted by S.R. 2007 No.189 with effect from 16.04.07

(c) written evidence in support of any application by the applicant to make the application outside the relevant time limit, if applicable; and

(d) a copy of the application for reconsideration under section 103A of the 2002 Act, as submitted to the Tribunal under rule 3(1)(a).]

(3) Where the applicant –

(a) was the respondent to the appeal; and

(b) was required under the Asylum and Immigration Tribunal (Procedure) Rules 2005 to serve the Tribunal's determination on the appellant,

the notice lodged under paragraph (2) shall contain a statement of the date on which and the means by which the determination was so served.

(4) A notice which is lodged outside the period specified in paragraph 30(5)(b) of Schedule 2 to the 2004 Act must –

(a) set out the grounds on which it is contended that the notice could not reasonably practicably have been lodged within that period; and

(b) be supported by written evidence verified by affidavit.

(5) If the applicant wishes to respond to the reasons given by the member of the Tribunal for his decision that he –

(a) does not propose to make an order for reconsideration; or

(b) does not propose to allow the application for an order for reconsideration to be made outside the relevant time limit,

the notice lodged under paragraph (2) shall be accompanied by a written submission setting out the grounds upon which the applicant disputes any of the reasons given by the member of the Tribunal and giving reasons in support of those grounds.

Written submissions

6. Where an application is for an order for reconsideration of a decision of the Tribunal to grant an appeal, the Court may order that written submissions may be lodged by the other party within a time limit to be fixed by the Court.

Determination of the application by the Court

7.—(1) The Court shall determine an application for an order for reconsideration without a hearing.

(2) Unless it orders otherwise, the Court will not receive evidence which was not submitted to the Tribunal.

Service of order

8.—(1) The proper officer shall serve copies of the order of the Court on –

(a) the applicant and the other party to the appeal, except where paragraph (2) applies; and

(b) the Tribunal.

(2) Where [(**a**) the appellant is within the jurisdiction and] the application relates, in whole or in part, to an asylum claim, the proper officer shall send a copy of the order of the Court to the Secretary of State.

(3) Where the proper officer sends an order to the Secretary of State under paragraph (2), the Secretary of State must –

(**a**) Words inserted by S.R. 2007 No.189 with effect from 16.04.07

(a) serve the order on the appellant; and

(b) [(**a**) immediately after serving the order, notify—

(i) the Court; and

(ii) where the order requires the Tribunal to reconsider its decsion on the appeal, the Tribunal,

on what date and by what method the order was served.]

(4) The Secretary of State must provide the notification required by paragraph (3)(b) no later than 28 days after the date on which the proper officer sends him a copy of the order.

(5) If the Court does not receive the notification under paragraph (3)(b) [(**b**) (i)] within the time specified therein, the proper officer may serve the order on the appellant.

[(**c**) (5A) Where the Court serves an order for reconsideration under paragraph (5), it will notify the Tribunal of the date on which the order was served.]

(6) Where paragraph (2) applies, the provisions of Order 66 rule 5(b) shall not apply until either the Secretary of State has given the Court the notification required by paragraph (3)(a) or until 28 days after the proper officer sent a copy of the order to the Secretary of State, whichever is earlier.]

[(**d**) *Continuing an application in circumstances in which it would otherwise be treated as abandoned*

9.—(1) This rule applies to an application under section 103A of the 2002 Act which—

(a) would otherwise be treated as abandoned under section 104(4A) of the 2002 Act; but

(b) meets the conditions set out in section 104(4B) or section 104(4C) of the 2002 Act.

(2) Where section 104(4A) of the 2002 Act applies and the applicant wishes to pursue the application, the applicant must lodge a notice in the Central Office—

(a) where section 104(4B) of the 2002 Act applies, within 28 days of the date on which the applicant received notice of the grant of leave to enter or remain in the United Kingdom for a period exceeding 12 months; or

(b) where section 104(4C) of the 2002 Act applies, within 28 days of the date on which the applicant received notice of the grant of leave to enter or remain in the United Kingdom.

(3) Where the applicant does not comply with the time limits specified in paragraph (2), the application will be treated as abandoned in accordance with section 104(4) of the 2002 Act.

(4) The applicant must serve the notice lodged under paragraph (2) on the other party to the appeal.

(5) Where section 104(4B) of the 2002 Act applies, the notice lodged under paragraph (2) must state—

(a) the applicant's full name and date of birth;

(**a**) Sub-paragraph substituted by S.R. 2007 No.189 with effect from 16.04.07
(**b**) Letter inserted by S.R. 2007 No.189 with effect from 16.04.07
(**c**) Paragraph inserted by S.R. 2007 No.189 with effect from 16.04.07
(**d**) New Rule inserted by S.R. 2007 No.189 with effect from 16.04.07

(b) the High Court reference number;

(c) the Home Office reference number, if applicable;

(d) the date on which the applicant was granted leave to enter or remain in the United Kingdom for a period exceeding 12 months; and

(e) that the applicant wishes to pursue the application insofar as it is brought on grounds relating to the Refugee Convention specified in section 84(1)(g) of the 2002 Act.

(6) Where section 104(4C) of the 2002 Act applies, the notice lodged under paragraph (2) must state—

(a) the applicant's full name and date of birth;

(b) the High Court reference number;

(c) the Home Office reference number, if applicable;

(d) the date on which the applicant was granted leave to enter or remain in the United Kingdom; and

(e) that the applicant wishes to pursue the application insofar as it is brought on grounds relating to Article 20A of the Race Relations (Northern Ireland) Order 1997(**a**) specified in section 84(1)(b) of the 2002 Act.

(7) Where an applicant has lodged a notice under paragraph (2) the Court will notify the applicant of the date on which it received the notice.

(8) The Court will send a copy of the notice issued under paragraph (7) to the other party to the appeal.].

(**a**) SI 1997/869 (NI 6) to which the most recent relevant amendments were made by S.R. 2003 No. 431

ORDER 54

APPLICATIONS FOR WRIT OF HABEAS CORPUS

Application for writ of habeus corpus ad subjiciendum

1.—(1) Subject to paragraph (2), an application for a writ of habeas corpus ad subjiciendum shall be made ex parte or by originating notice of motion to the Court.

(2) A civil application for a writ of habeas corpus ad subjiciendum relative to the custody, care or control of a minor shall be made ex parte or by originating summons to a judge in chambers who shall for this purpose be deemed to constitute the Court.

(3) The application must, subject to paragraph (4), be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(4) Where the person restrained is unable for any reason to make the affidavit required by paragraph (3), the affidavit may be made by some other person on his behalf and that affidavit must state for what reason the person detained is unable to make the affidavit himself.

Power of court to which ex parte application made

2.—(1) Where an application is made ex parte, the court may make an order forthwith for the writ to issue or may direct that an application be made—

(*a*) by originating motion where the application is made in court, or

(*b*) by originating summons where the application is made in chambers.

(2) The summons or notice of motion must be served on the person against whom the issue of the writ is sought and on such other persons as the Court may direct, and, unless the Court otherwise directs, there must be at least 8 clear days between the service of the summons or notice and the date named therein for the hearing of the application.

Copies of affidavits to be supplied.

3. Every party to an application under rule 1 must supply to every other party on demand and on payment of the proper charges copies of the affidavits which he proposes to use at the hearing of the application.

Power to order release of person restrained

4.—(1) Without prejudice to rule 2(1), the Court hearing an application for a writ of habeas corpus ad subjiciendum may in its discretion order that the person restrained be released, and such order shall be a sufficient warrant to any governor of a prison, constable or other person for the release of the person under restraint.

(2) Where such an application in a criminal cause or matter is heard by a single judge and the judge does not order the release of the person restrained, he shall direct that the application be made by originating motion to a court consisting of two or more judges.

Directions as to return of writ

5. Where a writ of habeas corpus ad subjiciendum is ordered to issue, the Court by which the order is made shall give directions as to the Court before which, and the date on which, the writ is returnable.

Service of writ and notice

6.—(1) Subject to paragraphs (2) and (3), a writ of habeas corpus ad subjiciendum must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to a governor of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice, in Form No. 60 in Appendix A, stating the Court before which and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

Return of the writ

7.—(1) The return to a writ of habeas corpus ad subjiciendum must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

(2) The return may be amended, or another return substituted therefor, by leave of the Court before which the writ is returnable.

Procedure at hearing of writ

8. When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then the counsel for the opposite party, and then one counsel for the person restrained in reply.

Bringing up prisoner to give evidence, etc.

9.—(1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum must be made ex parte on affidavit to a judge in chambers.

(2) An application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any cause or matter, civil or criminal, before any court or tribunal must be made ex parte on affidavit to a judge in chambers.

Form of writ

10. A writ of habeas corpus must be as nearly as possible in Form No. 59, 61 or 62 in Appendix A.

[**(a) 11.** A court of two or more judges exercising jurisdiction pursuant to this Order shall be called a Divisional Court].

(a) Rule 11 added by S.R. 1982 No. 217 with effect from 1.9.82

ORDER 55

APPEALS TO THE HIGH COURT (OTHER THAN CASES STATED)

PART I

COUNTY COURT APPEALS

Interpretation

1. In this Part "the Order" means the County Courts (Northern Ireland) Order 1980(**a**).

Lodgment and entry of appeal

2.—(1) The appellant must lodge two copies of the notice of appeal in Form No. 37 in Appendix A in the Central Office within a period of 21 days commencing on the date on which the decree was pronounced in the County Court.

(2) One of the two copies of the notice of appeal must be duly stamped and endorsed with particulars of service.

(3) The proper officer shall on lodgment of the notice of appeal enter the appeal for hearing and send a copy of the notice of appeal lodged under this rule to the Chief Clerk of the court of trial who shall thereupon complete Form 37A in Appendix A and send it to the proper officer together with [(**b**) a certified copy of the original decreee appealed against].

(4) In a probate suit or any other matter where an original decree appealed from has been entered up in the permanent [(**c**) records] of the county court, an office copy certified by the appropriate officer may be sent to the proper officer of the Central Office instead of the original.

Service of notice of appeal

3. The appellant must, within the period of 21 days mentioned in rule 2(1), serve a copy of the notice of appeal on all parties to the proceedings in the court below who are directly affected by the appeal and, subject to rule 4, it shall not be necessary to serve the notice on parties not so affected.

Directions as to service

4.—(1) A judge may in any case direct that the notice of appeal be served upon any party to the proceedings in the county court on whom it has not been served, or upon any person not a party to those proceedings.

(2) In any case where a direction is given under this rule the judge may—

(*a*) postpone or adjourn the hearing of the appeal for such period and upon such terms as may be just;

(*b*) give such judgment and make such order on the appeal as might have been given or made if the person served in pursuance of the direction had originally been a party.

(**a**) S.I. 1980 No. 397 (N.I. 3)
(**b**) Words substituted by S.R. 1984 No. 354 with effect from 12.11.84
(**c**) Word substituted by S.R. 1995 No. 462 with effect from 9.1.96

Application to state case treated as notice of appeal

5.—(1) Where—

(*a*) any party has applied to a county court judge to state a case under Article 61 of the Order; and

(*b*) any other party lodges a notice of appeal against the decree under Article 60 of the Order;

then, unless the parties otherwise agree, the application to state a case under Article 61 of the Order shall have effect as if it were a notice of appeal lodged under rule 2 against the decree.

(2) Subject to any direction by a judge, service of a copy of the application to state a case on the other party shall be deemed to be service for the purpose of rule 3.

(3) The proper officer, on the lodgment of the notice of appeal to which this rule applies, shall inform the applicant—

(*a*) that a notice of appeal has been lodged under Article 60 of the Order; and

(*b*) that unless the parties otherwise agree, his application to state a case shall have effect as if it were a notice of appeal against the decree under Article 60 of the Order.

(4) The parties shall inform the proper officer, not later than 14 days from the date of the lodgment of the notice of appeal, of any agreement reached between the parties concerning the manner of questioning the decision of the county court judge.

More than one appellant

6.—(1) Where two or more parties each lodge a notice of appeal against the same decree the appeals shall be listed and heard together unless the judge otherwise directs.

(2) The judge may declare any one or more of the parties appealing to be separately entitled or liable to the costs of such appeal or any part thereof.

[**(a)** *Appeal books*

6A. The appellant must, not later than 14 days after lodging the notice of appeal, lodge in the appropriate office one appeal book (unless the Master directs a different number) containing the following documents, namely—

(*a*) a copy of the notice of appeal;

(*b*) a copy of civil bill or other originating process;

(*c*) the legal aid certificate, if any; and

(*d*) any other documents which may be relevant to the appeal.]

Venue

7. The Court may, in accordance with section 58 of the Act, either of its own motion or on the application by summons of any party, direct that an appeal be listed for hearing outside the Royal Courts of Justice.

Lodgment not to be disclosed

8. On the hearing of any appeal, in an action commenced by ordinary civil bill or remitted to the county court, where any money has been paid into the county court, that fact shall not be communicated to the judge until all questions of liability and the amount of the debt or damages have been decided, and the judge, in exercising a discretion as to costs, shall take into account both the fact that the money has been paid into the county court and the amount of such payment.

(a) Rule 6A inserted by S.R. 1984 No. 354 with effect from 12.11.84

Stay of enforcement

9. The lodgment of a notice of appeal shall not operate as a stay of enforcement on foot of the decree, unless security is given for the costs of the appeal in accordance with directions to be given by the Master.

Withdrawal of appeal

10.—(1) An appellant may withdraw his appeal by—

(*a*) lodging a notice of withdrawal with the proper officer in the Central Office at least 2 clear days before the day fixed for the hearing of the appeal;

(*b*) serving a copy of the notice of withdrawal at least 2 clear days before the day fixed for the hearing on every other party who was served with a notice of appeal; and

(*c*) paying the costs appropriate to such withdrawal.

(2) Where an appeal is withdrawn or struck out the appeal shall be treated as having been dismissed by the Court.

Striking out an appeal

11. Where an appellant fails to comply with any of the provisions of this Part, any other party may apply to a judge to have the appeal struck out.

Discharge of security, etc.

12. Where the appeal is withdrawn or struck out—

(*a*) any security given for costs shall abide the order of the Master; and

(*b*) any stay of enforcement under this Part shall stand discharged.

[**(a) 12A.** The proper officer shall send a copy of any order made under this Part to the Chief Clerk of the county court appealed from.]

PART II

APPEALS, REFERENCES AND APPLICATIONS UNDER STATUTORY PROVISIONS

Application

13.—(1) Subject to paragraphs (2) and (3), an appeal to the High Court or a Judge thereof pursuant to the provisions of any statutory provision must be brought in accordance with the rules of this Part.

(2) This Part shall not apply to a county court appeal or an appeal by way of case stated.

(3) The following rules of this Part shall, in relation to an appeal to which this Part applies, have effect subject to any provision made in relation to that appeal by any other provisions of these Rules or by or under any statutory provision.

Notice and entry of appeal

14.—(1) Every appeal must be brought by originating motion entitled in the matter of the relevant statute and shall specify the grounds upon which the appellant relies.

(2) The appellant must, within 21 days from receiving notice of the judgment, order, decree, decision, determination or award against which he

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(a) Rule 12A added by S.R. 1982 No. 217 with effect from 1.9.82

appeals, issue the notice of motion and enter the appeal for hearing in the office of the Division to which the subject-matter of the appeal is assigned.

Service of notice of motion

15.—(1) The appellant, on entering the appeal for hearing must, within 21 days mentioned in rule 14, serve a copy of the notice of motion personally, or by sending it by prepaid post to every person affected by the appeal.

(2) The Court may direct that the notice of appeal be served upon such other person or persons in such manner as it may direct.

Appeal books

16. The appellant must, not later than 7 days after entering the appeal for hearing, lodge in the appropriate office one appeal book (unless the Master directs a different number) containing the following documents, namely—

(*a*) the notice of motion;

(*b*) the judgment, order, decree, decision, determination or award appealed against;

(*c*) in the case of a reference, the reference;

(*d*) the legal aid certificate, if any;

(*e*) any other documents relevant to the appeal.

Application for leave to appeal

17. In any case where leave to appeal is required application for such leave may be made ex parte to a judge in the first instance.

Security for costs in tax cases

18. In any appeal against the imposition of a tax or duty, the respondent may apply to a judge by motion on notice for an order staying the proceedings until the appellant shall pay into court or give security for the sum in dispute, and such order may be made therein as the judge may think fit.

References

[**(a) 19.**—(1) Subject to paragraph (2), the rules of this Part shall apply mutatis mutandis to any case not otherwise provided for where by any statutory provision, any matter or question, whether of law or fact, may be submitted or referred to the Court for its decision or opinion.

(2) Where the Registrar of Titles refers an application under section 53 of the Land Registration Act (Northern Ireland) 1970**(b)** to the High Court for decision, the time limit imposed by rules 14(2) and 15(1) shall be 6 weeks instead of 21 days.]

Applications

20. Any application under the provisions of any statutory provision, not otherwise provided for (other than an application by way of appeal or reference) may be brought in the manner in which appeals may be brought under the foregoing rules of this Part.

Copies of orders

21. The proper officer shall send a copy of any final order made under this Part to the court or tribunal concerned in the decision.

Application of Order 59

22. The provisions of Order 59, rule 10 shall apply to an appeal or reference under this Part.

(a) New rule 19 substituted by S.R. 1982 No. 219 with effect from 1.9.82
(b) 1970 c.18 (N.I.)

appeals, issue the notice of motion and enter the appeal for hearing in the office of the Division to which the subject-matter of the appeal is assigned.

Service of notice of motion .

15.—(1) The appellant, on entering the appeal for hearing must, within 21 days mentioned in rule 14, serve a copy of the notice of motion personally, or by sending it by prepaid post to every person affected by the appeal.

(2) The Court may direct that the notice of appeal be served upon such other person or persons in such manner as it may direct.

Appeal books

16. The appellant must, not later than 7 days after entering the appeal for hearing, lodge in the appropriate office one appeal book (unless the Master directs a different number) containing the following documents, namely—

(a) the notice of motion;

(b) the judgment, order, decree, decision, determination or award appealed against;

(c) in the case of a reference, the reference;

(d) the legal aid certificate, if any;

(e) any other documents relevant to the appeal.

Application for leave to appeal

17. In any case where leave to appeal is required application for such leave may be made ex parte to a judge in the first instance.

Security for costs in tax cases

18. In any appeal against the imposition of a tax or duty, the respondent may apply to a judge by motion on notice for an order staying the proceedings until the appellant shall pay into court or give security for the sum in dispute, and such order may be made therein as the judge may think fit.

References

[(**a**) **19.**—(1) Subject to paragraph, (2), the rules of this Part shall apply mutatis mutandis to any case not otherwise provided for where by any statutory provision, any matter or question, whether of law or fact, may be submitted or referred to the Court for its decision or opinion.

(2) Where the Registrar of Titles refers an application under section 53 of the Land Registration Act (Northern Ireland) 1970(**b**) to the High Court for decision, the time limit imposed by rules 14(2) and 15(1) shall be 6 weeks instead of 21 days.]

Applications

20. Any application under the provisions of any statutory provision, not otherwise provided for (other than an application by way of appeal or reference) may be brought in the manner in which appeals may be brought under the foregoing rules of this Part.

[(**c**) *Applications under section 96AA of the Sexual Offences Act 2003*

20A.—(1) This rule applies to an application under section 96AA of the Sexual Offences Act 2003 for an order that the applicant shall cease to be subject to the notification requirements imposed by Part 2 of that Act ("a section 96AA application").

(**a**) New rule 19 substituted by S.R. 1982 No. 219 with effect from 1.9.82
(**b**) 1970 c. 18 (N.I.)
(**c**) New paragraph inserted by S.R. 2015 No. 235 with effect from 19.5.15

(2) The rules of this Part apply to a section 96AA application with the modifications set out in paragraphs (3) and (4) and any other necessary modifications.

(3) The time limit in rule 14(2) shall not apply to a section 96AA application.

(4) In the application of rule 15(1) to a section 96AA application—

(i) the notice of motion shall be served within 21 days of the date upon which the application is entered for hearing; and

(ii) the persons to be served with the application shall include the Police Service of Northern Ireland.]

Copies of orders

21. The proper officer shall send a copy of any final order made under this Part to the court or tribunal concerned in the decision.

Application of Order 59

22. The provisions of Order 59 rule 10 shall apply to an appeal or reference under this Part.

ORDER 56

APPEALS TO THE HIGH COURT BY CASE STATED: GENERAL

Proceedings on case stated

1.—(1) Subject to the provisions of any statutory provision or of these Rules, the party (hereinafter called "the applicant") at whose instance a case has been stated by a court, tribunal or person on a point of law for the opinion of the High Court must, within 14 days after receiving it—

(*a*) enter the appeal for hearing by lodging the case stated with a duly stamped requisition for hearing in the Central Office;

(*b*) serve a copy of the case stated with the date of such entry endorsed thereon upon every other party to the appeal.

(2) Where a case may be stated for the opinion of the High Court under the provisions of any statutory provision and in so far as it makes no provision as to the procedure for stating and sending the case to the applicant then—

(*a*) the requisition to state the case must be lodged with the court, tribunal or person within 6 weeks commencing on the day the decision complained of was sent to the applicant; and

(*b*) the case must be settled by the court, tribunal or person and sent to the applicant within a period of 6 weeks commencing on the day the requisition was received.

Appeal books

2. The applicant after entering an appeal for hearing must within 14 days lodge in the appropriate office an appeal book (unless the master otherwise directs) containing the following documents, namely—

(*a*) the requisition to state a case;

(*b*) the case stated;

(*c*) the legal aid certificate (if any);

(*d*) any other documents which may be relevant to the appeal.

Signing of case stated

3. A case stated by a tribunal must be signed by the chairman as president of the tribunal and a case stated by any other person must be signed by him or by a person authorised in that behalf to do so.

Withdrawal of case stated

4.—(1) The applicant or any other person having carriage of the appeal may at any time before the date fixed for hearing apply to the court by motion on notice to withdraw the appeal.

(2) On the hearing of an application to withdraw an appeal any other party may apply to proceed with the appeal in the place of the applicant.

Copies of orders

5. The proper officer shall send a copy of any final order made under this Order to the court or tribunal concerned in the decision.

ORDER 57

CROWN SIDE PROCEEDINGS: GENERAL

Custody of records

1. The Master (Queen's Bench and Appeals) shall have the care and custody of the records and other proceedings on the Crown Side.

[*E.r.* 6]

Affidavits

2. Affidavits used on the Crown Side shall be intituled "In the High Court of Justice in Northern Ireland, Queen's Bench Division, Crown Side".

Estreat of recognizances

3.—(1) Every recognizance acknowledged in or removed into the Queen's Bench Division must be filed in the Crown Office.

(2) No recognizance shall be estreated without the order of a judge.

(3) Every application to estreat a recognizance in the Queen's Bench Division must be made by summons to a judge in chambers and must be supported by an affidavit showing in what manner the breach has been committed and proving that the summons was duly served.

(4) A summons under this rule must be served at least 2 clear days before the day named therein for the hearing.

(5) On the hearing of the application the judge may, and if requested by any party shall, direct any issue of fact in dispute to be tried by a jury.

(6) If it appears to the judge that a default has been made in performing the conditions of the recognizance, the Judge may order the recognizance to be estreated.

Issue of writs

4.—(1) All writs on the Crown Side shall be issued out of the Crown Office.

(2) Every writ must be filed in the Crown Office together with the return thereto and a copy of any order made thereon.

[*E.r.* 5]

Issue of motions

5.—(1) Every motion in proceedings on the Crown Side must be issued out of the Crown Office.

(2) The party entering the motion for hearing must lodge in the Crown Office copies of the documents in the proceedings for the use of the Court at least 7 days before the day fixed for the hearing.

ORDER 58

APPEALS FROM MASTERS, CIRCUIT REGISTRARS AND JUDGES

Appeals from certain decisions of masters, etc., to judge in chambers

1.—(1) [(**a**) . . .]. Except as provided by rules 2 and 3, an appeal shall lie to a judge in chambers from any judgment, order or decision of a master, or of a circuit registrar in the exercise of any probate jurisdiction.

(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice to attend before the judge on a day specified in the notice.

(3) Unless the Court otherwise orders, the notice must be issued within 5 days after the judgment, order or decision appealed against was given or made and served not less than 2 clear days before the day fixed for hearing the appeal.

(4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

[*E.r.* 1]

Appeals from certain decisions of the Master (Queen's Bench and Appeals)

2. An appeal shall lie to the Court of Appeal from any judgment, order or decision of the Master (Queen's Bench and Appeals) given or made—

(*a*) on the hearing or determination of any cause, matter, question or issue tried before or referred to him under Order 36, rule 1, or

(*b*) on an assessment of damages under Order 37 or otherwise.

[*E.r.* 2]

Appeals from certain decisions of the Master (Chancery)

3. An appeal shall lie to the Court of Appeal from any judgment, order or decision of the Master (Chancery) given or made on the hearing or determination of any cause, matter, question or issue ordered to be tried before him under Order 36, rule 1.

[*E.r.* 3]

Appeal from a judge in chambers

4. Subject to section 35 of the Act (which restricts appeals), and without prejudice to section 44 of the Act (which provides for an appeal in cases of contempt of court), an appeal shall lie to the Court of Appeal from any judgment, order or decision of a judge in chambers.

[*E.r.* 7]

Appeal from judgment, etc., of judge in interpleader proceedings

5.—(1) Any judgment, order or decision of a judge given or made in summarily determining under Order 17, rule 3(2)(*a*) or (*b*), any question at issue between claimants in interpleader proceedings shall be final and conclusive against the claimants and all persons claiming under them unless leave to appeal to the Court of Appeal is given by the judge or the Court of Appeal.

(2) Where an interpleader issue is tried by a judge (with or without a jury), an appeal shall lie to the Court of Appeal, without the leave of the judge or that Court, from any judgment, order or decision given or made by the judge on the trial.

(3) The time within which notice of appeal under this rule must be served shall be the same as in the case of an appeal from an interlocutory order.

[*E.r.* 8]

(**a**) Words deleted by S.R. 1983 No. 5 with effect from 28.2.83

ORDER 59

APPEALS TO THE COURT OF APPEAL

Application of Order to appeals

1. This Order applies, subject to the provisions of these Rules with respect to particular appeals, to every appeal to the Court of Appeal (including, so far as it is applicable thereto, any appeal to that Court from a master or from any tribunal from which an appeal lies to that Court) not being an appeal for each other provision is made by these Rules or by any other statutory provision.

[*E.r.* 1]

Application of Order to applications for new trial

2. This Order (except so much of rule 3(1) as provides that an appeal shall be by way of rehearing and except rule 11(1)) applies to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

[*E.r.* 2]

GENERAL PROVISIONS AS TO APPEALS

Notice of appeal

3.—(1) An appeal to the Court of Appeal shall be by way of rehearing and must be brought by motion, and the notice of the motion is referred to in this Order as "notice of appeal".

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the Court below; and every such notice must specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court of Appeal to make.

(3) Except with the leave of the Court of Appeal, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal, or to apply for any relief, not specified in the notice of appeal.

(4) A notice of appeal must be served on all parties to the proceedings in the court below who are directly affected by the appeal; and, subject to rule 8, it shall not be necessary to serve the notice on parties not so affected.

(5) No notice of appeal shall be given by a respondent in a case to which rule 6(1) relates.

[*E.r.* 3]

Time for appealing

4.—(1) Subject to the provisions of this rule, every notice of appeal must be served under rule 3(4) within the following period (calculated from the date on which the judgement or order of the court below was filed), that is to say:—

(*a*) in the case of an appeal from an interlocutory order or from a judgment or order given or made under Order 14 or Order 86, 21 days;

[(a) (b) in the case of an appeal from an order or decision made or given in the matter of any proceedings under the Bankruptcy Act (Northern Ireland) 1857 to 1980, Part XX and XXI of the Companies (Northern Ireland) Order 1986 or the Insolvency (Northern Ireland) Order 1989, 28 days.]

(c) in any other case, 6 weeks.

(2) Where a summons to vary or discharge a certificate and the further consideration of an action are heard together, and an order is made on both, notice of appeal in respect of the order made on the summons may be served at any time before the expiration of the period within which notice of appeal could be served in respect of the order made on further consideration.

(3) In the case of an appeal from a decision in respect of which a certificate has been granted under section 12 of the Administration of Justice 1969(b) the period referred to in paragraph (1) shall be calculated from the end of the time during which, in accordance with section 13(5) of that Act, no appeal lies to the Court of Appeal.

[*E.r.* 4]

Setting down appeal

5.—(1) The appellant must, within 7 days after service of the notice of appeal, or within such further time as the Master (Queen's Bench and Appeals) may allow, enter the appeal for hearing by lodging in the Central Office

(a) 2 copies of the notice of appeal, of which one copy must be duly stamped and endorsed with particulars of service:

(b) a copy of the judgment or order of the court below.

(2) Upon the appeal being entered it shall be listed for hearing not earlier than the date named in the notice of appeal, unless an earlier date is fixed at the request and with the written consent of both the appellant and the respondent.

Respondent's notice

6.—(1) A respondent who, having been served with a notice of appeal, desires—

(a) to contend on the appeal that the decision of the court below should be varied, either in any event or in the event of the appeal being allowed in whole or in part, or

(b) to contend that the decision of the court below should be affirmed on grounds other than those relied upon by that court, or

(c) to contend by way of cross-appeal that the decision of the court below was wrong in whole or in part,

must give notice to that effect, specifying the grounds of his contention and, in a case to which paragraph (a) or (c) relates, the precise form of the order which he proposes to ask the Court to make.

(2) Except with the leave of the Court of Appeal, a respondent shall not be entitled on the hearing of the appeal to apply for any relief not specified in a notice under paragraph (1) or to rely, in support of any contention, upon any ground which has not been specified in such a notice or relief upon by the court below.

(a) New sub-paragraph (b) substituted by S.R. 1991 No. 232 with effect from 1.10.91
(b) 1969 c. 58

(3) Any notice given by a respondent under this rule (in this Order referred to as a "respondent's notice") must be served on the appellant, and on all parties to the proceedings in the court below who are directly affected by the contentions of the respondent, and must be served—

(*a*) where the notice of appeal related to an interlocutory order, within 7 days, and

(*b*) in any other case, within 21 days,

after the service of the notice of appeal on the respondent.

(4) A party by whom a respondent's notice is given must, within 2 days after service of the notice, furnish two copies of the notice to the proper officer in the Central Office.

[*E.r.* 6]

Amendment of notice of appeal and respondent's notice

7. A notice of appeal or respondent's notice may be amended by or with the leave of the Court of Appeal, at any time.

[*E.r.* 7]

Directions of the Court as to service

8.—(1) The Court of Appeal may in any case direct that a notice of appeal or respondent's notice be served on any party to the proceedings in the court below on whom it has not been served, or on any person not party to those proceedings.

(2) The Court of Appeal may in any case where it gives a direction under this rule—

(*a*) postpone or adjourn the hearing of the appeal for such period and on such terms as may be just, and

(*b*) give such judgment and make such order on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

[*E.r.* 8]

Documents to be lodged by appellant

9.—(1) Not less than 7 days before the appeal is likely to be listed for hearing the appellant must cause to be lodged in the Central Office the number of copies for which paragraph (2) provides of each of the following documents, namely—

(*a*) the notice of appeal;

(*b*) the respondent's notice;

(*c*) the judgment or order of the court below;

(*d*) the pleadings (including particulars), if any, and, in the case of an appeal in an Admiralty cause or matter, the preliminary acts, if any;

(*e*) the transcript of the official shorthand note, if any, of the judgment or order of the court below or, in the absence of such a note, the judge's note of his reasons for giving the judgment or making the order;

(*f*) such parts of the transcript of the official shorthand note, if any, of the evidence given in the court below as are relevant to any question at issue on the appeal or, in the absence of such a note, such parts of the judge's note of the evidence as are relevant to any such question;

(*g*) any list of exhibits made under Order 35, rule 8, or the schedule of evidence, as the case may be;

(*h*) such affidavits, exhibits, or parts of exhibits, as were in evidence in the court below and as are relevant to any question at issue on the appeal.

(2) The number of copies to be lodged in accordance with paragraph (1) is three unless the Master directs a different number.

[*E.r.* 9]

General powers of the Court

10.—(1) In relation to an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court including, without prejudice to the generality of the foregoing words, the powers of the Court under Order 36 to refer any question or issue of fact for trial before, or inquiry and report by, a master or referee.

(2) The Court of Appeal shall have power to receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken in accordance with Order 39 but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.

(3) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

(4) The powers of the Court of Appeal under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(5) The Court of Appeal may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.

(6) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

(7) Documents impounded by order of the Court of Appeal shall not be delivered out of the custody of that Court except in compliance with an order of that Court:

Provided that where the Attorney General or the Director of Public Prosecutions makes a written request in that behalf, documents so impounded shall be delivered into his custody.

(8) Documents impounded by order of the Court of Appeal, while in the custody of that Court, shall not be inspected except by a person authorised to do so by an order of that Court.

[*E.r.* 10]

Powers of the Court as to new trials

11.—(1) On the hearing of any appeal the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.

(2) The Court of Appeal shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.

(3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (2) affects part only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.

[(**a**)(4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court may, instead of ordering a new trial, substitute for the sum awarded by the jury such sums as appears to the Court to be proper; but except as aforesaid the Court of Appeal shall not have power to increase or reduce the damages awarded by a jury.]

(5) A new trial shall not be ordered by reason of the ruling of any judge that a document is sufficiently stamped or does not require to be stamped.

[*E.r.* 11]

Evidence on appeal

12. Where any question of fact is involved in an appeal, the evidence taken in the court below bearing on the question shall, subject to any direction of the Court of Appeal, be brought before that Court as follows:—

(*a*) in the case of evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed;

(*b*) in the case of evidence given orally, by a copy of so much of the transcript of the official shorthand note as is relevant or by a copy of the judge's note, where he has intimated that in the event of an appeal his note will be sufficient, or by such other means as the Court of Appeal may direct.

[*E.r.* 12]

Stay of enforcement, etc.

13.—(1) Except so far as the court below or the Court of Appeal may otherwise direct—

(*a*) an appeal shall not operate as a stay of enforcement or of proceedings under the decision of the court below;

(*b*) no intermediate act or proceeding shall be invalidated by an appeal.

(2) On an appeal from the High Court, interest for such time as enforcement has been delayed by the appeal shall be allowed unless the Court otherwise orders.

[*E.r.* 13]

(a) New paragraph (4) substituted by S.R. 1992 No. 399 with effect from 1.11.92. The new paragraph does not apply to any appeal set down before that date

ORDER 59

Applications to Court of Appeal

14.—(1) Every application to the Court of Appeal shall be by motion, and the provisions of Order 8 shall apply thereto.

(2) Any application to the Court of Appeal for leave to appeal (other than an application made after the expiration of the time for appealing) must be made ex parte in the first instance; but unless the application is then dismissed or it appears to the Court that undue hardship would be caused by an adjournment, the Court shall adjourn the application and give directions for the service of notice thereof on the party or parties affected.

(3) Where an ex parte application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal ex parte within 7 days after the date of the refusal.

(4) Wherever under these Rules an application may be made either to the court below or to the Court of Appeal, it shall not be made in the first instance to the Court of Appeal, except where there are special circumstances which make it impossible or impracticable to apply to the court below.

[*E.r.* 14]

Extension of time

15. Without prejudice to the power of the Court of Appeal under Order 3, rule 5, to extend the time prescribed by any provision of this Order, the period for serving notice of appeal under rule 4 or for making application ex parte under rule 14(3) may be extended by the court below on application made before the expiration of that period.

[*E.r.* 15]

SPECIAL PROVISIONS AS TO PARTICULAR APPEALS

Appeal relating to validity of a law

16. Every appeal under section 35(5) of the Act shall be brought by giving notice of appeal in accordance with rule 3 and every such appeal shall be deemed to be an appeal from a judgment in an action and the rules of this Order shall apply accordingly.

Appeal against order for revocation of patent

17.—(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal from an order for the revocation of a patient.

(2) The notice of appeal must be served on the Comptroller-General of Patents, Designs and Trade Marks (in this rule referred to as "the Comptroller") as well as on the party or parties required to be served under rule 3.

(3) If, at any time before the appeal comes on for hearing, the respondent decides not to appear on the appeal or not to oppose it, he must forthwith serve notice of his decision on the Comptroller and the appellant, and any such notice served on the Comptroller must be accompanied by a copy of the petition or of the pleadings in the action and the affidavits filed therein.

(4) The Comptroller must, within 14 days after receiving notice of the respondent's decision, serve on the appellant a notice stating whether or not he intends to appear on the appeal.

(5) The Comptroller may appear to be heard in opposition to the appeal—

(*a*) in any case where he has given notice under paragraph (4) of his intention to appeal, and

(*b*) in any other case (including, in particular, a case where the respondent withdraws his opposition to the appeal during the hearing) of the Court of Appeal so directs or allows.

(6) The Court of Appeal may make such orders for the postponement or adjournment of the hearing of the appeal as may appear to the Court necessary for the purpose of giving effect to the foregoing provisions of this rule.

Appeals in cases of contempt of court

18. In the case of an appeal to the Court of Appeal under section 44 of the Act, the notice of appeal must be served on the proper officer of the court from whose order or decision the appeal is brought, as well as on the party or parties required to be served under rule 3.

[(**a**) . . .]

(a) Order 60 omitted by S.R. 2014 No. 220 with effect from 05.09.14

[(a)ORDER 60A

REFERRAL TO THE COURT OF APPEAL FROM THE HIGH COURT UNDER SECTION 103C OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

Interpretation

1. In this Order –

"the Act" means the Nationality, Immigration and Asylum Act 2002(**b**) and a section referred to by number means the section so numbered in the Act;

"appeal" means the appeal to the Asylum and Immigration Tribunal under section 82 or 83 of the Act or under section 40A of the British Nationality Act 1981;

"applicant" means the party to the appeal who applied to the High Court for an order under section 103A; and

expressions used in this Order which are used in the 2002 Act have the same meaning in this Order as in the 2002 Act.

Procedure on referral to the Court of Appeal

2. Where an appeal to the Tribunal is referred to the Court of Appeal under section 103C –

(a) the High Court shall set out in its order the question of law raised by the appeal which is of such importance that the High Court considers it should be decided by the Court of Appeal; and

(b) the proper officer shall –

(i) serve a copy of that order on the applicant, the other party to the appeal and the Tribunal; and

(ii) send to the Court of Appeal a copy of all the relevant documents which were lodged in the Central Office under Order 53A.

3. The Court of Appeal may direct the Tribunal to state a case for its consideration.

4. Where the Court of Appeal directs the Tribunal to state a case under rule 3, the Tribunal shall –

(a) state the case within the time limit specified by the Court of Appeal in its direction; and

(b) serve a copy of the case stated on the parties to the appeal at the same time as it sends the case stated to the Court of Appeal.

5. The referral to the Court of Appeal shall be determined in accordance with directions given by the Court of Appeal.

6. Order 61, rules 7 and 8 shall apply, with appropriate modifications, to referrals to the Court of Appeal under section 103C.]

[(**c**) *Continuing a referral to the Court of Appeal in circumstances in which it would otherwise be treated as abandoned*

7.—(1) This rule applies to an appeal to the Tribunal which is referred to the Court of Appeal under section 103C of the Act which—

(**a**) New Order inserted by S.R. 2005 No. 146 with effect from 18.04.05
(**b**) 2002 c. 41
(**c**) New Rule 7 inserted by S.R. 2007 No. 189 with effect from 16.04.07

(a) would otherwise be treated as abandoned under section 104(4A) of the Act; but

(b) meets the conditions set out in section 104(4B) or section 104(4C) of the Act.

(2) Where section 104(4A) of the Act applies and the appellant wishes to pursue the appeal, the appellant must lodge a notice in the Central Office—

(a) where section 104(4B) of the Act applies, within 28 days of the date on which the appellant received notice of the grant of leave to enter or remain in the United Kingdom for a period exceeding 12 months; or

(b) where section 104(4C) of the Act applies, within 28 days of the date on which the appellant received notice of the grant of leave to enter or remain in the United Kingdom.

(3) Where the appellant does not comply with the time limits specified in paragraph (2), the application will be treated as abandoned in accordance with section 104(4) of the Act.

(4) The appellant must serve the notice lodged under paragraph (2) on the respondent.

(5) Where section 104(4B) of the Act applies, the notice lodged under paragraph (2) must state—

(a) the appellant's full name and date of birth;

(b) the Court of Appeal reference number;

(c) the Home Office reference number, if applicable;

(d) the date on which the appellant was granted leave to enter or remain in the United Kingdom for a period exceeding 12 months; and

(e) that the appellant wishes to pursue the application insofar as it is brought on grounds relating to the Refugee Convention specified in section 84(1)(g) of the Act.

(6) Where section 104(4C) of the Act applies, the notice lodged under paragraph (2) must state—

(a) the appellant's full name and date of birth;

(b) the Court of Appeal reference number;

(c) the Home Office reference number, if applicable;

(d) the date on which the appellant was granted leave to enter or remain in the United Kingdom; and

(e) that the appellant wishes to pursue the application insofar as it is brought on grounds relating to Article 20A of the Race Relations (Northern Ireland) Order 1997 specified in section 84(1)(b) of the Act.

(7) Where an appellant has lodged a notice under paragraph (2) the Court of Appeal will notify the appellant of the date on which it received the notice.

(8) The Court of Appeal will send a copy of the notice issued under paragraph (7) to the other party to the appeal.]

[(a) ORDER 60B

APPEALS TO THE COURT OF APPEAL [(b) ON A POINT OF LAW]

[(b) *Appeals from the Industrial Tribunals and Fair Employment Tribunal*]

1.—(1) Except where the Court of Appeal has given leave to appeal under Order 94 rule 2(3), an appeal to the Court of Appeal from an Industrial Tribunal under Article 22 of the Industrial Tribunals (Northern Ireland) Order 1996(**c**) or the Fair Employment Tribunal under Article 90 of the Fair Employment and Treatment (Northern Ireland) Order 1998(**d**) shall be brought by notice of appeal which must state the questions of law on which the appeal is brought.

(2) Within 6 weeks of the appellant receiving a copy of the tribunal's decision the appellant must serve the notice of appeal on all parties to the proceedings and the tribunal.

Setting down appeal

2.—(1) The appellant must, within 7 days after service of the notice of appeal enter the appeal for hearing by lodging in the Central Office—

(*a*) 2 copies of the notice of appeal;

(*b*) a certified copy of the tribunal's decision;

(*c*) any other documents which may be relevant to the appeal.

(2) Upon the appeal being entered it shall be listed for hearing not earlier than the expiration of 21 days from the date of entry unless an earlier date is fixed at the request and with the written consent of both the appellant and the respondent.

(3) The proper officer shall send a copy of any final order made under this Order to all parties to the proceedings and the tribunal concerned in the decision.]

[(e) *Appeals from the Upper Tribunal*

3.—(1) An application for leave to appeal from the Upper Tribunal under section 13 of the Tribunals Courts and Enforcement Act 2007 must be made within 21 days of the Tribunal refusing leave to appeal.

(2) The application for leave to appeal under paragraph (1) should be lodged in the Central Office and must state the point of law on which the appeal is based and, in accordance with the Appeals from the Upper Tribunal to the Court of Appeal Order 2008, the important point of principle or practice or other compelling reason why leave should be granted, and must be accompanied by—

(*a*) the decision of the Upper Tribunal refusing leave to appeal and any document giving reasons for the decision;

(*b*) the decision of the Upper Tribunal to which the application relates and any document giving reasons for the decision;

(*c*) the decision of the First-Tier Tribunal and any document giving reasons for the decision and the notice of appeal against that decision;

(*d*) any other document relevant to the application.

(**a**) New Order 60B inserted by S.R. 2010 No. 49 with effect from 01.04.10
(**b**) Heading substituted by S.R. 2013 No. 202 with effect from 05.09.13
(**c**) 1996 N.I. 18
(**d**) 1998 N.I. 21
(**e**) Rule 3 inserted by S.R. 2013 No. 202 with effect from 05.09.13

(3) A copy of the documents referred to in paragraph (2) must, at the same time as being lodged in the Central Office, be served on the other parties to the proceedings and on the Upper Tribunal.

(4) The application for leave to appeal must be listed for hearing no earlier than 21 days from the date the application is lodged and the Central Office must notify the parties of the hearing date.

(5) The Court may direct that in the event leave is granted, the appeal hearing must follow on the same date as the leave hearing.

(6) A copy of the final order made under this Order must be sent by the proper officer to the parties and to the Upper Tribunal.]

ORDER 61

APPEALS FROM COURTS ETC., TO THE COURT OF APPEAL BY CASE STATED

Proceedings on case stated

1.—(1) Subject to any statutory provision, the party (hereinafter called "the applicant") at whose instance a case has been stated by a court, tribunal or person on a point of law for the opinion of the Court of Appeal must, within 14 days after receiving it—

(*a*) enter the appeal for hearing by lodging the case stated with a duly stamped requisition for hearing in the Central Office;

(*b*) serve upon every other party to the appeal a copy of the case stated with the date of such entry endorsed thereon.

(2) Where a case may be stated for the opinion of the Court of Appeal under any statutory provision and in so far as it makes no provision as to the procedure for stating and sending the case to the applicant, then—

(*a*) the requisition to state the case must be lodged with the court, tribunal or person within 6 weeks commencing on the day the decision complained of was sent to the applicant; and

(*b*) the case must be settled by the court, tribunal or person and sent to the applicant within a period of 6 weeks commencing on the day the requisition was received.

Appeal books

2. The applicant must within 14 days after entering an appeal for hearing lodge in the Central Office 3 appeal books (unless the Master directs a different number) containing the following documents, namely—

(*a*) the requisition to state a case;

(*b*) the case stated;

(*c*) the legal aid certificate (if any);

(*d*) any other documents which may be relevant to the appeal.

Withdrawal of case stated

3.—(1) The applicant or any other person having carriage of the appeal may at any time before the date fixed for hearing apply to the Court of Appeal by motion to withdraw the appeal.

(2) On the hearing of an application to withdraw an appeal any other party may apply to proceed with the appeal in the place of the applicant.

Application for order to state case

4. An application [(**a**) made pursuant to any statutory provision] to the Court of Appeal or a judge thereof for an order directing a court or tribunal to state a case must be made by motion within a period of 14 days commencing on the date of the refusal or failure of the court or tribunal to state the case.

(a) Words inserted by S.R. 1983 No. 183 with effect from 1.9.83

[*Supplt. No. 48 (September 2009)*]

ORDER 61

Application to High Court to state case

5.—(1) An application under Article 62 of the County Courts (Northern Ireland) Order 1980(**a**), to the High Court to state a case for the opinion of the Court of Appeal upon a point of law arising on an appeal shall be made by lodging a requisition into the Central Office within a period of 24 days commencing on the date on which the decision was given and the requisition shall be served on the other party.

(2) The requisition shall specify the point of law upon which the applicant wishes to have an opinion of the Court of Appeal.

(3) The proper officer shall inform the parties of the result of the application.

Judge to settle case stated

6.—(1) A case stated under Article 62 of the said Order shall, after such reference to the parties as he may think desirable, be settled by the judge who shall transmit the case stated to the applicant through the Central Office.

(2) The applicant on receipt of the case stated shall enter it for hearing in accordance with rule 1.

Signing of case stated

7. A case stated by a tribunal must be signed by the chairman or president of the tribunal and a case stated by any other person must be signed by him or by a person authorized in that behalf to do so.

Copies of orders

8. The proper officer shall send a copy of any final order made under this Order to the court or tribunal concerned in the decision.

[**(b)** . . .]

[**(c)** . . .]

[**(d)** *Application for leave to appeal to the Court of Appeal from the Tribunal established under section 81 of the Nationality, Immigration and Asylum Act 2002*

11.—(1) In this rule and rule 12—

"the Act" means the Nationality, Immigration and Asylum Act 2002(**e**); and

"the Tribunal" means the Tribunal established under section 81 of the Act.

(2) An application for leave to appeal to the Court of Appeal under sections 103B or 103E of the Act shall be made within 14 days after the appellant is served with written notice of the 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 Tribunal's decision to refuse 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 President of the Tribunal.]

(a) S.I. 1980 No. 397 (N.I. 3)
(b) Rule 9 omitted by S.R. 2009 No. 230 with effect from 07.09.09
(c) Rule 10 omitted by S.R. 2009 No. 230 with effect from 07.09.09
(d) New Rule 11 substituted by S.R. 2005 No. 146 with effect from 18.04.05
(e) 2002 c. 41

[(**a**) *Appeal from the Tribunal*

12.—(1) Where leave to appeal to the Court of Appeal under sections 103B or 103E of the Act has been granted by the Tribunal or by the Court of Appeal, the time limit specified in rule 1(2)(a) for lodging the requisition to state a 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 Tribunal or the Court of Appeal must be lodged in the Central Office together with the case stated and the requisition for hearing.]

[(**b**) *Application for leave to appeal to the Court of Appeal from the Special Immigration Appeals Commission*

13.—(1) An application for leave to appeal to the Court of Appeal under section 7 of the Special Immigration Appeals Commission Act 1997(**c**) shall be made within 28 days of the date of the Special Immigration Appeals Commission's decision to refuse leave to appeal.

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

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

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

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

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

Appeal from the Special Immigration Appeals Commission

14.—(1) Where leave to appeal to the Court of Appeal under section 7 of the Special Immigration Appeals Commission Act 1997 has been granted by the Special Immigration Appeals Commission, 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 the appeal for hearing a copy of the order granting leave to appeal by the Commission or by the Court of Appeal must be lodged in the Central Office together with the case stated and the requisition for hearing.]

[(**d**) *Application for leave to appeal to the Court of Appeal from the Tribunal established under section 91 of the Northern Ireland Act 1998*

15.—(1) In this rule and rule 16—

"the Act" means the Northern Ireland Act 1998; and

"the Tribunal" means the Tribunal established under section 91 of the Act.

(2) An application for leave to appeal to the Court of Appeal under section 92 of the Act shall be made within 28 days of the date of the 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 Tribunal's decision to refuse to grant leave to appeal; and

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

(a) New Rule 12 substituted by S.R. 2005 No. 146 with effect from 18.04.05
(b) New Rules 13 and 14 inserted by S.R. 1999 No. 333 with effect from 6.9.99
(c) 1997 c.68
(d) Rules 15 and 16 inserted by S.R. 2000 No. 42 with effect from 27.3.00

(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 Tribunal.

Appeal from the Tribunal

16.—(1) Where leave to appeal to the Court of Appeal under section 92 of the Act has been granted by the 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 the appeal for hearing a copy of the Order granting leave to appeal by the Tribunal or by the Court of Appeal must be lodged in the Central Office together with the case stated and the requisition for hearing.]

[**(a)** *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; 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.]

[**(b)** *Application for suspension of a foreign driving disqualification under the Crime (International Co-operation) Act 2003*

19.—(1) In this rule and rule 20—

"the Department" means the Department of the Environment for Northern Ireland; and

"the 2003 Act" means the Crime (International Co-operation) Act 2003(**c**).

(a) Rules 17 and 18 inserted by S.R. 2000 No. 393 with effect from 08.01.01
(b) New Rules 19-21 inserted by S.R. 2010 No. 49 with effect from 01.04.10
(c) 2003 c. 32

(2) An application to the Court of Appeal under section 62(3) of the 2003 Act to suspend a driving disqualification shall be made by way of notice of motion and shall be accompanied by a copy of the application to state a case lodged with the clerk of petty sessions under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981(**a**).

(3) The applicant shall serve a copy of the application made under paragraph (2) on the clerk of petty sessions for the magistrates' court which heard the appeal against the disqualification under section 59 of the 2003 Act.

(4) The proper officer shall as soon as practicable after the Court of Appeal has made a decision in respect of an application under paragraph (2) notify—

(a) the clerk of petty sessions for the magistrates' court which heard the appeal against the disqualification under section 59 of the 2003 Act; and

(b) each of the parties to the proceedings,

of that decision.

20. An application to the Court of Appeal under section 62(4) of the 2003 Act to suspend a driving disqualification shall be by way of notice of motion and shall be accompanied by—

(a) a copy of the application made under the Act for leave to appeal to the Supreme Court or a copy of the order granting leave to appeal as appropriate; and

(b) an affidavit setting out the grounds on which the applicant seeks to have the driving disqualification suspended.

21. The provisions of Order 8 shall apply to applications brought under rules 19 and 20.]

(a) 1981 No. 1675 (N.I. 26)

[(a) ORDER 61A

THE EXTRADITION ACT 2003 — APPEALS TO THE HIGH COURT

Interpretation

1. In this Part of this Order—

"the Act" means the Extradition Act 2003 and a section or Schedule referred to by number means the section or Schedule so numbered in the Act;

expressions used have the same meanings as in the Act.

Assignment of proceedings

2. The jurisdiction of the High Court under the Act shall be assigned to the Queen's Bench Division.

[(b) *Applications for leave to appeal under the Act*

3.—(1) An application for leave to appeal under the Act shall be brought by ex parte motion entitled in the matter of the Act and specifying the grounds for the application and shall be supported by—

(a) an affidavit verifying the facts relied upon;

(b) a copy of the order to which the application relates; and

(c) if applicable, a copy of the judgment to which the application relates.

(2) In the case of an application for leave to appeal brought under section 26 or 28 of the Act, the ex parte motion shall be endorsed with the date and time of the person's arrest.

(3) The applicant shall lodge the ex parte motion and supporting documents—

(a) in the case of an application for leave to appeal under section 26 or 28 of the Act, within 7 days starting with the date on which the order was made;

(b) in the case of an application for leave to appeal under section 103 of the Act, within 14 days starting with the day on which the Secretary of State informs the person under section 100(1) or (4) of the Act of the order he has made in respect of the person;

(c) in the case of an application for leave to appeal under section 105 of the Act, within 14 days starting with the day on which the order for discharge is made;

(d) in the case of an application for leave to appeal under section 108 of the Act, within 14 days starting with the date on which the Secretary of State informs the person that he has ordered his extradition;

(e) in the case of an application for leave to appeal under section 110 of the Act, within 14 days starting with the day on which the Secretary of State informs the person acting on behalf of a category 2 territory of the order for discharge;

and shall at the same time send a copy to any party affected by the application.

(4) An application for leave to appeal may be determined by a judge in chambers.

(5) The decision on the application for leave to appeal shall be served on the applicant by the proper officer as soon as is practicable.

(a) Order 61A inserted by S.R. 2003 No. 536 with effect from 1.1.04
(b) Rule 3 substituted by S.R. 2015 No. 368 with effect from 7.12.15

(6) Where leave to appeal is refused without a hearing on all or any of the grounds specified in the ex parte motion, the applicant may renew the application for leave to appeal on any refused ground at a hearing.

(7) Notice of a renewed application under paragraph (6) shall be served on any party affected by the application within 5 days of the decision refusing leave wholly or in part, together with—

(a) the ex parte motion and the supporting documents lodged under paragraph (1); and

(b) a copy of the decision.

(8) The applicant shall lodge the notice of renewal application within 5 days of the decision refusing leave to appeal and the notice lodged shall be endorsed with particulars of service on the other parties.

(9) Where leave to appeal is granted on all or any of the grounds in the ex parte motion—

(a) the ex parte motion shall be treated as the notice of appeal insofar as it relates to the grounds on which leave has been granted; and

(b) the applicant shall within 5 days of the decision granting leave serve on all parties to the appeal—

(i) the motion together with a copy of the supporting documents lodged under (1); and

(ii) a copy of the decision.

(10) Where an application for leave to appeal is renewed or where leave to appeal is granted, the respondent may lodge a response not less than 2 clear days before the hearing and shall at the same time serve a copy of the response on the other parties to the proceedings.]

Time limit for beginning to hear appeals under the Act

4.—(1) Subject to paragraph (2), where an appeal is brought under section 26 or 28 of the Act, the High Court must begin to hear an appeal within 40 days of the person's arrest.

(2) The High Court may extend the period of 40 days mentioned in paragraph (1) if it believes it to be in the interests of justice to do so.

(3) Subject to paragraphs (4) and (5), where an appeal is brought under section 103, 105, 108 or 110 of the Act, the High Court must begin to hear an appeal within 76 days of the appellant entering his appeal.

(4) Where an appeal is brought under section 103 of the Act before the Secretary of State has decided whether the person is to be extradited—

(a) the period of 76 days does not start until the day on which the Secretary of State informs the person of his decision; and

(b) the Secretary of State must, as soon as practicable after he informs the person of his decision, inform the High Court—

(i) of his decision; and

(ii) of the day on which he informed the person of his decision.

(5) The High Court may extend the period of 76 days mentioned in paragraph (3) if it believes it to be in the interests of justice to do so.]

[(a) ORDER 62

Costs

PART I

PRELIMINARY

Interpretation

1.—(1) Except where it is otherwise expressly provided, or the context otherwise requires, the following provisions of this rule shall apply for the interpretation of this Order.

(2) ''Certificate'' includes allocatur;

''contentious business'' and ''non-contentious business'' have the same meanings respectively as in the Solicitors (Northern Ireland) Order 1976;

''party'' in relation to a cause or matter includes a party who is treated as being a party to that cause or matter by virtue of Order 4, rule 5;

''patient'' means a person who, by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986, is incapable of managing and administering his property and affairs;

''the standard basis'' and ''the indemnity basis'' have the meanings assigned to them by rule 12(1) and (2) respectively;

''taxed costs'' means costs taxed in accordance with this Order;

''taxing master'' means the Master (Taxing Office).

(3) References to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to any estate or property, whether real or personal, held for the benefit of any person or class of persons; and references to a fund held by a trustee or personal representative include references to any fund to which he is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his possession or not.

(4) References to costs shall be construed as including references to fees, charges, disbursements, expenses and remuneration and, in relation to proceedings (including taxation proceedings), also include references to costs of or incidental to those proceedings.

[*E.r. 1*]

Application

2.—(1) In addition to the civil proceedings to which this Order applies by virtue of Order 1, rule 2(1) and (2), this Order applies to all criminal proceedings in the High Court and in the Court of Appeal.

(2) This Order shall have effect, with such modifications as may be necessary, where by virtue of any statutory provision the costs of any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any statutory provision not being proceedings in the Supreme Court, are taxable in the High Court.

(a) New Order 62 substituted by S.R. 1988 No. 70 with effect from 11.4.88

Note

Where the judgment or the event giving rise to a right to an immediate taxation of costs, was given, made or occurred before 11th April 1988, rule 3(4), 7, 12, 13 and 17 of, and Appendix 2 to this Order shall not apply and in any such case the costs shall be taxed in accordance with rules 3(10), 9, 28 and 34 of, and Appendix 2 to, Order 62 as in force immediately before that date.

(3) This Order shall have effect subject to the provisions of any statutory provision which limits the costs recoverable in proceedings to which that provision applies.

(4) The powers and discretion of the Court under section 59 of the Act (which provides that the costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that the Court shall have full power to determine by whom and to what extent the costs are to be paid) and under the enactments relating to the costs of criminal proceedings to which this Order applies shall be exercised subject to and in accordance with this Order.

[*E.r. 2*]

PART II

ENTITLEMENT TO COSTS

General principles

3.—(1) This rule shall have effect subject only to the following provisions of this Order.

(2) No party to any proceedings shall be entitled to recover any of the costs of those proceedings from any other party to those proceedings except under an order of the Court.

(3) If the court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

(4) The amount of his costs which any party shall be entitled to recover is the amount allowed after taxation on the standard basis where—

(*a*) an order is made that the costs of one party to proceedings be paid by another party to those proceedings, or

(*b*) an order is made for the payment of costs out of any fund (including the legal aid fund), or

(*c*) no order for costs is required

unless it appears to the Court to be appropriate to order costs to be taxed on the indemnity basis.

(5) Subject to rule 8, a term mentioned in the first column of the table below, when used in an order for costs, shall have the effect indicated in the second column of that table.

Term	*Effect*
"Costs"	(*a*) Where this order is made in interlocutory proceedings, the party in whose favour it is made shall be entitled to his costs in respect of those proceedings whatever the outcome of the cause or matter in which the proceedings arise; and (*b*) where this order is made at the conclusion of a cause or matter, the party in whose favour it is made shall be entitled to have his costs taxed forthwith;

''Costs reserved''	(Except in proceedings in the Family Division) the party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to his costs of the proceedings in respect of which this order is made unless the court orders otherwise;
''Costs in any event''	This order has the same effect as an order for ''costs'' made in interlocutory proceedings;
''Costs here and below''	The party in whose favour this order is made shall be entitled not only to his costs in respect of the proceedings in which it is made but also to his costs of the same proceedings in any lower court.
''Costs in the cause'' or ''costs in application''	The party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to his costs of the proceedings in respect of which such an order is made;
''Plaintiff's costs in the cause'' or ''Defendant's costs in the cause''	The plaintiff or defendant, as the case may be, shall be entitled to his costs of the proceedings in respect of which such an order is made if judgment is given in his favour in the cause or matter in which the proceedings arise, but he shall not be liable to pay the costs of any other party in respect of those proceedings if judgment is given in favour of any other party or parties in the cause or matter in question;
''Costs thrown away''	Where proceedings or any part of them have been ineffective or have been subsequently set aside, the party in whose favour this order is made shall be entitled to his costs of those proceedings or that part of the proceedings in respect of which it is made.

[*E.r. 3*]

Cases where no order for costs is to be made

4.—(1) No order shall be made directing one party to pay to the other any costs of or incidental to an appeal or application for leave to appeal under section 6(2) of the Pensions Appeal Tribunals Act 1943.

(2) No order shall be made for costs to be paid by or to any person (other than the registration officer) who is respondent to an appeal to the Court of Appeal from the

decision of a county court on the hearing of an appeal from the registration officer under section 56 of the Representation of the People Act 1983, unless that person appears in support of the decision of the county court.

(3) In a probate action where a defendant has given notice with his defence to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will, no order for costs shall be made against him unless it appears to the Court that there was no reasonable ground for opposing the will.

[*E.r. 4*]

Cases where no order for costs is required

5.—(1) No order for costs is required in the circumstances mentioned in this rule.

(2) Where a summons is taken out to set aside any proceedings on the ground of irregularity and the summons is dismissed, the party who issued the summons shall pay the costs of every other party.

(3) Where a party by notice in writing and without leave discontinues an action or counterclaim or withdraws any particular claim made by him as against any other party, that other party shall be entitled to his costs of the action or counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.

(4) Where a plaintiff by notice in writing in accordance with Order 22, rule 3(1) accepts money paid into court in satisfaction of the cause of action or of all the causes of action in respect of which he claims, or accepts money paid in satisfaction of one or more specified causes of action and gives notice that he abandons the others, he shall be entitled to his costs of the action incurred up to the time of giving notice of acceptance.

(5) Where, in an action for libel or slander against several defendants sued jointly, a plaintiff by notice in writing in accordance with Order 22, rule 3(1) accepts money paid into court by one of the defendants he shall be entitled to his costs of the action against that defendant incurred up to the time of giving notice of acceptance.

(6) A defendant who has counterclaimed shall be entitled to the costs of the counterclaim if—

(*a*) he pays money into Court and his notice of payment in states that he has taken into account and satisfied the cause or causes of action in respect of which he counterclaims, and

(*b*) the plaintiff accepts the money paid in;

but the costs of such counterclaim shall be limited to those incurred up to the time when the defendant received notice of acceptance by the plaintiff of the money paid into court.

[*E.r. 5*]

Cases where costs do not follow the event

6.—(1) The provisions of this rule shall apply in the circumstances mentioned in this rule unless the court orders otherwise.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall be entitled to the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the fund held by him in that capacity or out of the mortgaged property, as the case may be, and the Court may order otherwise only on the ground that he has acted

unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

(3) Where any person claiming to be a creditor—

(*a*) seeks to establish any claim to a debt under any judgment or order in accordance with Order 44, or

(*b*) comes in to prove his title, debt or claim in relation to a company in pursuance of any such notice as is mentioned in Order 102, rule 12,

he shall, if his claim succeeds, be entitled to his costs incurred in establishing it; and, if his claim or any part of it fails, he may be ordered to pay the costs of any person incurred in opposing it.

(4) Where a claimant (other than a person claiming to be a creditor) has established a claim to be entitled under a judgment or order in accordance with Order 44, and has been served with notice of the judgment or order pursuant to rule 2 of that Order, he shall, if he enters an appearance, be entitled as part of his costs of action (if allowed) to costs incurred in establishing his claim; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.

(5) The costs of any amendment made without leave in the writ or any pleadings shall be borne by the party making the amendment.

(6) The costs of any application to extend the time fixed by these rules or by any direction or order thereunder shall be borne by the party making the application.

[(**a**) (7) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within 14 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts and the costs occasioned by and thrown away as a result of his failure to admit the facts shall be borne by him.

(8) If a party—

(*a*) on whom a list of documents is served in pursuance of Order 24, or

(*b*) on whom a notice to admit documents is served under Order 27, rule 5,

give notice of non-admission of any of the documents in accordance with Order 27, rule 4(2) or 5(2), as the case may be, the costs of proving that document and the costs occasioned by and thrown away as a result of his non-admission shall be borne by him.]

(9) Where an application is made in accordance with Order 24, [(**b**) rule 8,] or Order 29, rule 9, for an order under section 31 or 32(1) of the Administration of Justice Act 1970 the person against whom the order is sought shall be entitled to his costs of the application, and of complying with any order made thereon.

[*E.r. 6*]

Special circumstances in which costs shall not or may not be taxed

7.—(1) The provisions of this rule shall apply in the circumstances mentioned in this rule.

(2) Costs which by or under any direction of the Court are to be paid to a receiver appointed by the High Court under section 91(1) of the Act, in respect of his remuneration, disbursements or expenses, shall be allowed in accordance with Order 30, rule 3 and shall not be taxed.

(**a**) New paragraphs (7) and (8) substituted by S.R. 1992 No. 399 with effect from 1.11.92
(**b**) New reference substituted by S.R. 1991 No. 330 with effect from 1.9.91

(3) Where a writ in an action is indorsed in accordance with Order 6, rule 2(*b*), and judgment is entered on failure to enter an appearance or in default of defence for the amount claimed for costs (whether alone or together with any other amount claimed), the plaintiff is not entitled to tax his costs; but if the amount claimed for costs as aforesaid is paid in accordance with the indorsement (or is accepted by the plaintiff as if so paid) the defendant shall be entitled to have those costs taxed.

(4) In awarding costs to any person the Court may order that, instead of his taxed costs, that person shall be entitled—

(*a*) to a proportion (specified in the order) of those costs from or up to a stage of the proceedings so specified; or

(*b*) to a gross sum so specified in lieu of those costs,

but where the person entitled to such a gross sum is a litigant in person, rule 18 shall apply with the necessary modifications to the assessment of the gross sum as it applies to the taxation of the costs of a litigant in person.

(5) Where a claimant is entitled to costs under rule 6(3) the amount of the costs shall be assessed by the Court unless it thinks fit to order taxation and the amount so assessed or taxed shall be added to the debt due to the claimant.

[*E.r. 7*]

[(**a**)(6) Subject to paragraph (7), where a party is entitled to costs under rule 6(7) or (8) the amount of the costs may be assessed by the Court and may be ordered to be paid forthwith.

(7) No order may be made under paragraph (6) in a case where the person against whom the order is made is an assisted person within the meaning of the statutory provisions relating to legal aid.]

Stage of proceedings at which costs to be taxed

8.—(1) Subject to paragraph (2), the costs of any proceedings shall not be taxed until the conclusion of the cause or matter in which the proceedings arise.

(2) If it appears to the Court when making an order for costs that all or any part of the costs ought to be taxed at an earlier stage it may, except in a case to which paragraph (3) applies, order accordingly.

(3) No order may be made under paragraph (2) in a case where the person against whom the order for costs is made is an assisted person within the meaning of the statutory provisions relating to legal aid.

(4) In the case of an appeal, the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal, may be dealt with by the Court hearing the appeal.

(5) In the case of any proceedings transferred or removed to the High Court from any other court, the High Court may (subject to any order of the court ordering the transfer or removal) deal with the costs of the whole proceedings (including the costs before the transfer or removal).

(6) Notwithstanding anything in Part III of this Order, but subject to paragraph (7) below, where the Court makes an order as to the costs of any proceedings before another court under paragraphs (4) or (5), the order—

(*a*) shall specify the amount of the costs to be allowed; or

(*b*) shall direct that the costs be assessed by the court before which the proceedings took place or be taxed by an officer of that court; or

(*c*) may, in the case of an appeal from a county court, direct that the costs be taxed by the Taxing Master.

(**a**) Paragraphs (6) and (7) added by S.R. 1992 No. 394 with effect from 1.11.92

(7) Paragraph (6) shall not apply in relation to the costs of proceedings transferred or removed from a county court.

(8) Where it appears to the Taxing Master on application that there is no likelihood of any further order being made in a cause or matter, he may tax forthwith the costs of any interlocutory proceedings which have taken place.

[*E.r. 8*]

Matters to be taken into account in exercising discretion

9. The Court in exercising its discretion as to costs shall take into account—

(*a*) any offer of contribution brought to its attention in accordance with Order 16, rule 10;

(*Continued on page 7*)

(*b*) any payment of money into court and the amount of such payment;

Misconduct or neglect in the conduct of any proceedings

10.—(1) Where it appears to the Court in any proceedings that anything has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party, the Court may order that the costs of that party in respect of the act or omission, as the case may be, shall not be allowed and that any costs occasioned by it to any other party shall be paid by him to that other party.

(2) Instead of making an order under paragraph (1) the Court may refer the matter to the Taxing Master, in which case the Taxing Master shall deal with the matter under rule 28(1).

[*E.r. 10*]

[**(a)** *Penalty in costs where oral evidence not reasonably necessary*

10A. Without prejudice to rule 10, where it appears to the Court in any proceedings that—

(*a*) any witness has been called to give oral evidence where his evidence could have been put before the Court in some other manner, and

(*b*) his giving oral evidence was not reasonably necessary,

the Court may order that the costs occasioned by calling the witness to give oral evidence shall fall upon the party who caused him so to be called, and for this purpose may make such provision in respect of taxation against other parties or the legal aid fund as it thinks fit.]

Personal liability of solicitor for costs

11.—(1) Subject to the following provisions of this rule, where it appears to the Court that costs have been incurred unreasonably or improperly in any proceedings or have been wasted by failure to conduct proceedings with reasonable competence and expedition, the Court may—

(*a*) order—

(i) the solicitor whom it considers to be responsible (whether personally or through a servant or agent) to repay to his client costs which the client has been ordered to pay to any other party to the proceedings; or

(ii) the solicitor personally to indemnify such other parties against costs payable by them; and

(iii) the costs as between the solicitor and his client to be disallowed; or

(*b*) direct the Taxing Master to enquire into the matter and report to the Court, and upon receiving such a report the Court may make such order under sub-paragraph (*a*) as it thinks fit.

(2) When conducting an enquiry pursuant to a direction under paragraph (1)(*b*) the Taxing Master shall have all the powers and duties of the Court under paragraphs (4), (5), (6) and (8) of this rule.

(3) Instead of proceeding under paragraph (1) of this rule the Court may refer the matter to the Taxing Master, in which case the Taxing Master shall deal with the matter under paragraphs (2) and (3) of rule 28.

(a) Rule 10A added by S.R. 1991 No. 330 with effect from 2.9.91

(4) Subject to paragraph (5), before an order may be made under paragraph (1)(*a*) of this rule the Court shall give the solicitor a reasonable opportunity to appear and show cause why an order should not be made.

(5) The Court shall not be obliged to give the solicitor a reasonable opportunity to appear and show cause where proceedings fail, cannot conveniently proceed or are adjourned without useful progress being made because the solicitor—

(*a*) fails to attend in person or by a proper representative;

(*b*) fails to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account; or

(*c*) otherwise fails to proceed.

(6) The Court may direct the Official Solicitor to attend and take part in any proceedings or inquiry under this rule and the Court shall make such order as to the payment of the Official Solicitor's costs as it thinks fit.

(7) If in any proceedings a party who is represented by a solicitor fails to pay the fees or any part of the fees prescribed by the Orders as to Court fees then, on the application of the Official Solicitor by summons, the Court may order the solicitor personally to pay that amount in the manner so prescribed and to pay the Official Solicitor's costs of the application.

(8) The Court may direct that notice of any proceedings or order against a solicitor under this rule be given to his client in such a manner as may be specified in the direction.

[*E.r. 11*]

PART III

TAXATION AND ASSESSMENT OF COSTS

Basis of Taxation

12.—(1) On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the Taxing Master may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party; and in these rules the term ''the standard basis'' in relation to the taxation of costs shall be construed accordingly.

(2) On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the Taxing Master may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these rules the term ''the indemnity basis'' in relation to the taxation of costs shall be construed accordingly.

(3) Where the Court makes an order for costs without indicating the basis of taxation or an order that costs be taxed on any basis other than the standard basis or the indemnity basis, the costs shall be taxed on the standard basis.

[*E.r. 12*]

Assessment or settlement of costs by master

13. Where the Court orders that costs are to be assessed or settled by a master rules 3(4), 12, 14, 17 and 18 shall apply in relation to such assessment or settlement by a master as they apply in relation to a taxation of costs by the Taxing Master.

[*E.r. 13*]

Costs payable to a trustee or personal representative out of any fund

14.—(1) This rule applies to every taxation of a trustee's or personal representative's costs where—

(*a*) he is or has been a party to any proceedings in that capacity; and

(*b*) he is entitled to be paid his costs out of any fund which he holds in that capacity.

(2) On a taxation to which this rule applies, costs shall be taxed on the indemnity basis, but shall be presumed to have been unreasonably incurred if they were incurred contrary to the duty of the trustee or personal representative as such.

[*E.r.* 14]

Costs payable to a solicitor by his own client

15.—(1) This rule applies to every taxation of a solicitor's bill to his own client except a bill which is to be paid out of the legal aid fund under the Legal Aid Fund Advice and Assistance (Northern Ireland) Order 1981.

(*Continued on page 9*)

(2) On a taxation to which this rule applies costs shall be taxed on the idemnity basis but shall be presumed—

(*a*) to have been reasonably incurred if they were incurred with the express or implied approval of the client, and

(*b*) to have been reasonable in amount if their amount was expressly or impliedly approved by the client, and

(*c*) to have been unreasonably incurred if in the circumstances of the case they are of an unusual nature unless the solicitor satisfies the Taxing Master that prior to their being incurred he informed his client that they might not be allowed on a taxation of costs inter parties. [*E.r.* 15]

Costs payable to solicitor where money claimed by or on behalf of a minor or a patient

16.—(1) This rule applies to any proceedings (including proceedings in the Court of Appeal) in which:

(*a*) money is claimed or recovered by or on behalf of, or adjudged, or ordered, or agreed to be paid to, or for the benefit of, a minor or a patient; or

(*b*) money paid into court is accepted by or on behalf of a minor or patient.

(2) The costs of proceedings to which this rule applies which are payable by any plaintiff to his solicitor shall, unless the Court otherwise orders, be taxed under paragraphs (1) and (2) of rule 15.

(3) On a taxation under paragraph (2), the Taxing Master shall also tax any costs payable to that plaintiff in those proceedings and shall certify—

(*a*) the amount allowed on the taxation of the solicitor's bill to his own client, and

(*b*) the amount allowed on the taxation of any costs payable to that plaintiff in those proceedings, and

(*c*) the amount (if any) by which the amount mentioned in sub-paragraph (*a*) exceeds the amount mentioned in sub-paragraph (*b*), and

(*d*) where necessary, the proportion of the amount of such excess payable by, or out of money belonging to, respectively any claimant who is a minor or patient and any other party.

(4) Paragraphs (2) and (3) shall apply in relation to any proceedings in the Court of Appeal as if for references to the plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings which gave rise to the appeal proceedings.

(5) Nothing in the foregoing provisions of this rule shall prejudice a solicitor's lien for costs.

(6) The foregoing provisions of this rule shall apply in relation to—

(*a*) a counterclaim by or on behalf of a person who is a minor or a patient, and

(*b*) a claim made by or on behalf of a person who is a minor or a patient in an action by any other person for relief under [(**a**) sections 183 to 189 of the Merchant Shipping Act 1995,]

as if for references to a plaintiff there were substituted references to a defendant. [*E.r.* 16]

Provisions for ascertaining costs on a taxation

17.—(1) Subject to the following provisions of this rule, the provisions contained in Appendix 2 to this Order for ascertaining the amount of costs to be allowed on a taxation of costs shall apply to the taxation of all costs with respect to contentious business.

(**a**) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07

(2) Where the amount of a solicitor's remuneration in respect of non-contentious business is regulated (in the absence of agreement to the contrary) by any general orders for the time being in force under the Solicitors (Northern Ireland) Order 1976, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same notwithstanding anything contained in Appendix 2 to this Order.

(3) Notwithstanding paragraph (1). costs shall be allowed in the cases to which Appendix 3 to this Order applies in accordance with the provisions of that Appendix unless the Court otherwise orders.

(4) Save as otherwise provided by any statutory provision passed after the Act and save in cases to which paragraph (3) applies, if damages or other relief awarded could have been obtained in proceedings commenced in the County Court, the plaintiff shall not. except for special cause shown and mentioned in the judgment making the award, recover more costs than would have been recoverable had the same relief been awarded by the County Court.

(5) In cases to which paragraph (7) applies where the full amount of the claim exceeds the amount which could have been claimed in proceedings brought in the county court, the plaintiff shall unless the judge otherwise directs, and without prejudice to any direction under paragraph (4), be entitled to recover one-half of his costs.

(6) For the purposes of paragraph (5) the full amount of the claim shall be deemed to be the amount quantified by the Court for which judgment could have been entered if the Court had not made any deduction in respect of the claimant's own fault,

(7) Where a plaintiff is entitled to costs on a county court scale only, the Taxing Master shall have the same discretion to allow any item of costs as the judge of the county court would have had if the action had been brought in that court.

(8) The provisions of this rule shall not apply where any defendant has successfully opposed the remittai of the proceedings to the county court which was sought or concurred in by the plaintiff.

(9) Where in pursuance of any direction by the Court, draft documents are settled by any counsel appointed by the Court the costs of having those draft documents prepared or subsequently settled by other counsel on behalf of the same parties for whom such draft documents are settled by the counsel appointed by the Court shall not be allowed. [*E.r.* 17]

Litigants in person

18.—(1) Subject to the provisions of this rule, on any taxation of the costs of a litigant in person there may be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on the litigant's behalf.

(2) The amount allowed in respect of any item shall be such sum as the Taxing Master thinks fit but not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the Taxing Master would have been allowed in respect of that item if the litigant has been represented by a solicitor.

(3) Where it appears to the Taxing Master that the litigant has not suffered any pecuniary loss in doing any item of work to which the costs relate, he shall be allowed in respect of the time reasonably spent by him on that item not more than [(**a**) £9·25] an hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his case shall not be entitled to a witness allowance in addition.

(**a**) Figure substituted by S.R. 1996 No. 283 with effect from 1.9.96

(5) Nothing in Order 6, rule 2(*b*), or in rule 17(3) of, or Appendix 3 to, this Order shall apply to the costs of a litigant in person.

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising solicitor.

[*E.r.* 18]

PART IV

POWERS OF TAXING MASTER

Who may tax costs

19.—(1) Subject to paragraph (2), the Taxing Master shall have power to tax—

(*a*) the costs of or arising out of any proceedings to which this Order applies,

(*b*) any other costs the taxation of which is ordered by the Court.

(2) Where by or under any statutory provision any costs are to be taxed by a master of the Supreme Court, only the Taxing Master shall tax those costs.

[*E.r.* 19]

Supplementary powers of the taxing master

20. The Taxing Master may, in the discharge of his functions with respect to the taxation of costs,—

(*a*) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Court so orders;

(*b*) require any party represented jointly with any other party in any proceedings before him to be separately represented;

(*c*) examine any witness in those proceedings; and

(*d*) order the production of any document which may be relevant in connection with those proceedings.

[*E.r.* 20]

Extension of time

21.—(1) The Taxing Master may—

(*a*) extend the period within which a party is required by or under this Order or by the Court to begin proceedings for taxation or to do anything in or in connection with those proceedings on such terms (if any) as he thinks just: or

(*b*) where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.

(2) The Taxing Master may extend any such period as is referred to in paragraph (1) of this rule although the application for extension is not made until after the expiration of that period.

[*E.r.* 21]

Certificates

22.—(1) The Taxing Master—

(*a*) shall, at the conclusion of taxation proceedings before him, issue a certificate for the costs allowed by him;

(*b*) may from time to time in the course of the taxation issue an interim certificate for any part of the costs which have been taxed, or for any part, the amount of which is not in dispute;

(*c*) may amend or cancel an interim certificate issued by him;

(*d*) may correct any clerical mistake in any certificate issued by him or any error arising therein from any accidental slip or omission, and

(*e*) may set aside a certificate issued by him in order to enable him to extend the period provided by rule 33(2).

(2) If the course of the taxation of a solicitor's bill to his own client, it appears to the Taxing Master that in any event the solicitor will be liable in connection with that bill to pay money to the client, he may from time to time issue an interim certificate specifying an amount which in his opinion is payable by the solicitor to his client.

(3) On the filing of a certificate issued under paragraph (2) the Court may order the amount specified in it to be paid forthwith to the client or into court.

[*E.r. 22*]

Power of Taxing Master where party liable to be paid and to pay costs

23. Where a party entitled to be paid costs is also liable to pay costs, the Taxing Master may—

(*a*) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or

(*b*) delay the issue of a certificate for the costs the party is entitled to be paid until he has paid or tendered the amount he is liable to pay.

[*E.r. 23*]

Taxation of bill of costs comprised in an account

24.—(1) Where the Court orders an account to be taken and the account consists in part of a bill of costs, the court may direct the Taxing Master to tax those costs and the Taxing Master shall after taxation of the bill of costs return it, together with his report on it, to the Court.

(2) The Taxing Master taxing a bill of costs in accordance with a direction under paragraph (1) shall have the same powers, and the same fee shall be payable in connection with the taxation, as if an order for taxation of the costs had been made by the Court.

[*E.r. 24*]

Taxing Master to fix certain fees payable to conveyancing counsel

25.—(1) Where the Court refers any matter to the conveyancing counsel of the Court or obtains the assistance of any other person under Order 32, rule 15, the fees payable to counsel or that other person in respect of the work done by him in connection with the reference or as the case may be, in assisting the Court shall be fixed by the Taxing Master.

(2) An appeal from a decision of the Taxing Master under paragraph (1) shall lie to the Court and the decision of the Court thereon shall be final.

[*E.r. 25*]

Powers of Taxing Master on taxation of costs out of a fund

26.—(1) Where any costs are to be paid out of a fund the Taxing Master may give directions as to the parties who are entitled to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.

(2) Where the Court has directed that a bill of costs be taxed for the purpose of being paid out of a fund, the Taxing Master may direct the party whose bill it is to send to any person having an interest in the fund a copy of the bill, or of any part thereof, free of charge together with a letter containing the following information, that is to say—

(*a*) that the bill of costs, a copy of which or of part of which is sent with the letter, has been referred to the Taxing Master for taxation;

(*b*) the address of the office at which the taxation is proceeding;

(*c*) the time appointed by the Taxing Master at which the taxation will be continued; and

(*d*) such other information, if any, as the Taxing Master may direct.

[*E.r. 26*]

Powers of Taxing Master in relation to costs of taxation proceedings

27.—(1) Subject to any statutory provision and this Order, the party whose bill is being taxed shall be entitled to his costs of the taxation proceedings.

(2) Where it appears to the Taxing Master that in the circumstances of the case some other order should be made as to the whole or any part of the costs, the Taxing Master shall have, in relation to the costs of taxation proceedings, the same powers as the Court has in relation to the costs of proceedings.

(3) Subject to paragraph (5), the party liable to pay the costs of the proceedings which gave rise to the taxation proceedings may make a written offer to pay a specific sum in satisfaction of those costs which is expressed to be "without prejudice save as to the costs of taxation" at any time before the expiration of 14 days after the delivery to him of a copy of the bill of costs under rule 30(3) and, where such an offer is made, the fact that it has been made shall not be communicated to the Taxing Master until the question of the costs of the taxation proceedings falls to be decided.

(4) The Taxing Master may take into account any offer made under paragraph (3) which has been brought to his attention.

(5) No offer to pay a specific sum in satisfaction of costs may be made in a case where the person entitled to recover his costs is an assisted person within the meaning of the statutory provisions relating to legal aid.

(6) In this rule any reference to the costs of taxation proceedings shall be construed as including a reference to any fee which is prescribed by the Orders as to court fees for the taxation of a bill of costs.

[*E.r. 27*]

Powers of Taxing Master in relation to misconduct, neglect etc.

28.—(1) Where, whether or not on a reference by the Court under rule 10(2), it appears to the Taxing Master that anything has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party in the taxation proceedings he may exercise the powers conferred on the Court by rule 10(1).

(2) Where, whether or not on a reference by the Court under rule 11(3), it appears to the Taxing Master that—

(*a*) any costs have been incurred unreasonably or improperly in the taxation proceedings, or

(*b*) any costs have been wasted by failure to conduct those proceedings with reasonable competence and expedition, or

(*c*) there has been a failure to procure taxation,

he may, subject to paragraph (3) of this rule, exercise the powers conferred on the Court by rule 11(1)(*a*).

(3) In relation to the exercise by the Taxing Master of the powers of the Court under paragraph (2) of this rule, paragraphs (4) to (8) of rule 11 shall apply as if for references to the Court there were substituted references to the Taxing Master.

(4) Where a party entitled to costs—

(*a*) fails without good reason to commence or conduct proceedings for the taxation of those costs in accordance with this Order or any direction, or

(*b*) delays lodging a bill of costs for taxation,

the Taxing Master may allow the party so entitled less than the amount he would otherwise have allowed on taxation of the bill or may wholly disallow the costs.

[*E.r. 28*]

PART V

PROCEDURE ON TAXATION

Commencement of proceedings

29.—(1) Subject to paragraph (2), where a party is entitled to recover taxed costs or to require any costs to be taxed by the Taxing Master by virtue of—

(*a*) a judgment, direction or order given or made in proceedings in the High Court [(**a**) (other than an order made under Article 71F(2)(*a*) of the Solicitors (Northern Ireland) Order 1976(**b**))] or in the Court of Appeal; or

(*b*) rule 5(3), (4) or (5); or

(*c*) an award made on an arbitration under any statutory provision or pursuant to an arbitration agreement under the Arbitration Act (Northern Ireland) 1937 which has been made a rule of Court; or

(*d*) an order, award or other determination of a tribunal or other body constituted by or under any statutory provision,

he must begin proceedings for the taxation of those costs either within 6 months after the judgment, direction, order, award or other determination was entered, signed or otherwise perfected or, in cases to which sub-paragraph (*b*) applies, within 6 months after service of the notice given to him under Order 21, rule 2 or Order 22, rule 3.

(2) Paragraph (1) shall have effect, in relation to the taxation of costs pursuant to an order under the Solicitors (Ireland) Act 1849 as if for the period of 6 months first mentioned in that paragraph there were substituted a reference to 21 days.

(3) Where a party entitled to costs fails to begin proceedings for taxation within the time limits specified in paragraph (1), any other party to the proceedings may with the leave of the Taxing Master begin taxation proceedings.

(4) Where leave has been granted under paragraph (3), the party to whom it has been granted shall proceed as if he were the person entitled to begin taxation proceedings.

(5) Proceedings for the taxation of costs shall be begun by producing the requisite document at the Supreme Court Taxing Office.

(6) For the purpose of this rule the requisite document shall be ascertained by reference to Appendix 1 to this Order.

(7) A party who begins proceedings for taxation must, at the same time, lodge in the Supreme Court Taxing Office—

(*a*) a copy of the requisite document produced under paragraph (5), and

(*b*) a statement containing the following particulars:—

(**a**) Words inserted by S.R. 1989 No. 498 with effect from 1.2.90

(**b**) S.I. 1976/582 (N.I. 12), as amended by S.I. 1989/1343 (N.I. 14)

(i) the name of every party, and the capacity in which he is a party to the proceedings, his position on the record of the proceedings which gave rise to the taxation proceedings and, if any costs to which taxation proceedings relate are to be paid out of a fund, the nature of his interest in the fund; and

(ii) the address of any party to the proceedings who entered an appearance in person or who at the conclusion of the proceedings which gave rise to the taxation proceedings was acting in person and the name or firm and business address, telephone number and office reference of the solicitor of any party who did not so enter an appearance or was not so acting in person and also (if the solicitor is the agent of another) the name or firm and business address of his principal; and

(*c*) unless the Taxing Master otherwise orders, a bill of costs—

(i) in which the professional charges and the disbursements are set out in separate columns and each column is cast, and

(ii) which is indorsed with the name, or firm and business address of the solicitor whose bill it is and which is signed by that solicitor or if the costs are due to a firm, by a partner of that firm,

(*d*) unless the Taxing Master otherwise orders, the papers and vouchers specified below in the order mentioned—

(i) a bundle comprising all civil legal aid certificates and amendments thereto, notices of discharge or revocation thereof and specific legal aid authorities;

(ii) unless the relevant information is included in the judgment or order or the parties have agreed the times of the hearings, a certificate of times or a copy of the proper officer's certificate;

(iii) a bundle comprising fee notes of counsel and accounts for other disbursements;

(iv) one complete set of pleadings arranged in chronological order, with any interlocutory summonses and lists of documents annexed to it;

(v) cases to counsel to advise with his advice and opinions, and instructions to counsel to settle documents and briefs to counsel with enclosures, arranged in chronological order;

(vi) reports and opinions of medical and other experts arranged in chronological order;

(vii) the solicitor's correspondence and attendance notes; and

(viii) any other relevant papers duly bundled and labelled.

(8) In this rule and in this Part of this Order — ''party entitled to be heard on the taxation'' means—

(*a*) a person who has entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings and who is directly liable under an order for costs made against him, or

(*b*) a person who has begun proceedings for taxation in accordance with this rule, or

(*c*) a person who has given the party taxing and the Taxing Office written notice that he has a financial interest in the outcome of the taxation, or

(*d*) a person in respect of whom a direction has been given under rule 26.

[*E.r. 29*]

Subsequent procedure

30.—(1) Subject to rules 31 and 32, where a party has begun proceedings for taxation in accordance with rule 29, the proper officer shall give to that party and to

any other party entitled to be heard on the taxation not less than 14 days' notice of the day, time and place appointed for the taxation.

(2) Subject to rule 32, where a party has begun proceedings for taxation in accordance with rule 29, the proper officer shall as soon as practicable give notice to any other party whose costs are to be taxed in the proceedings of the period within which his bill of costs (together with all necessary papers and vouchers) are to be sent to the Taxing Master.

(3) A party whose costs are to be taxed (except a solicitor whose costs are to be taxed by virtue of an order made under Article 66 of the Solicitors (Northern Ireland) Order 1976) must within 7 days after beginning the proceedings for taxation or, as the case may be, receiving notice under paragraph (2),—

(*a*) send a copy of his bill of costs to every other party entitled to be heard on the taxation, and

(*b*) notify the proper officer that he has done so.

(4) Where in beginning or purporting to begin any taxation proceedings or at any stage in the course of or in connection with those proceedings, there has been a failure to comply with the requirements of this Order, whether in respect of time or in any other respect, the failure shall be treated as an irregularity and shall not nullify the taxation proceedings or any step taken in those proceedings.

(5) The Taxing Master may, on the ground that there has been such a failure as is mentioned in paragraph (4), and on such terms as he thinks just, set aside either wholly or in part the taxation proceedings or exercise his powers under this Order to make such order (if any) dealing with the taxation proceedings generally as he thinks fit.

(6) Order 3, rule 6 shall not apply to taxation proceedings.

[*E.r. 30*]

Provisional taxation

31.—(1) Where in taxation proceedings duly begun in accordance with rule 29, only the party who commenced the proceedings is entitled to be heard on the taxation, the proper officer shall, unless the Taxing Master otherwise directs, send to that party a notice specifying the amount which the Taxing Master proposes to allow in respect of the bill of costs and requiring him to inform the proper officer within 14 days after receipt of the notice, if he wishes to be heard on the taxation.

(2) If the party referred to in paragraph (1) informs the proper officer within the time limited that he wishes to be heard on the taxation, the proper officer shall fix a day and time for the taxation and give not less than 14 days' notice thereof to that party.

(3) Except on the taxation of a solicitor's bill to his own client or where paragraph (1) applies, where in taxation proceedings begun in accordance with rule 29—

(*a*) the party lodging the bill so requests and the Taxing Master considers it to be appropriate, or

(*b*) the Taxing Master so decides,

the Taxing Master may, instead of proceeding under rule 30(1), proceed under paragraphs (4) to (7) of this rule.

(4) Where the Taxing Master decides to proceed under this and the following paragraphs of this rule, the proper officer shall send to each party entitled to be heard on the taxation (except the party whose bill it is) a notice requiring him to inform the proper officer within 14 days after receipt of the notice if he wishes to be heard on the taxation.

(5) If any party to whom notice has been given under paragraph (4) informs the proper officer within the time limited that he wishes to be heard on the taxation, the proper officer shall fix an appointment for the taxation and give not less than 14 days' notice of the appointment to every party entitled to be heard.

(6) If no party to whom notice has been given under paragraph (4) informs the proper officer within the time limited that he wishes to be heard on the taxation, the proper officer shall, unless the Taxing Master otherwise directs, send to the party lodging a bill a notice specifying the amount which the Taxing Master proposes to allow in respect of the bill and requiring that party to inform the proper officer within 14 days after receipt of the notice if he wishes to be heard on the taxation.

(7) If the party lodging the bill informs the proper officer within the time limited under paragraph (6) that he wishes to be heard on the taxation, the proper officer shall fix an appointment for the taxation and give not less than 14 days' notice of the appointment to that party.

[*E.r.* 31]

Short and urgent taxations

32.—(1) Where a party entitled to require that taxation of any costs of or arising out of proceedings to which this Order applies begins proceedings for the taxation of those costs in accordance with rule 29 then if, when he begins such proceedings, he satisfies the proper officer—

(*a*) that, in view of the amount of any bill of costs to be taxed, the time required for taxation is likely to be short, and

(*b*) that the speedy completion of the taxation is necessary in the interests of any person concerned in the taxation,

the proper officer shall enter the proceedings for taxation in a list kept for the purposes of this rule and shall forthwith give notice of the day and time appointed for the taxation to the party whose costs are to be taxed.

(2) A party whose costs are to be taxed in proceedings entered in the list referred to in paragraph (1) must not less than 4 days before the day appointed for the taxation send a copy of his bill of costs to every other party entitled to be heard on the taxation with a notice of the day and time appointed for the taxation.

[*E.r.* 32]

[(**a**) *Short Form Taxation*

32A.—[(**b**) (1) Where one or more items [(**c**...) are in dispute between the parties the Taxing Master may conduct a taxation in accordance with this rule (hereinafter referred to as "short form taxation").]

(2) This rule shall not apply to any taxation under Schedule 2 to the Legal Aid and Assistance (Northern Ireland) Order 1981.

(3) Rule 29 shall apply to a short form taxation subject to the following modifications of sub-paragraphs 7(*c*) and (*d*);

(*a*) the bill of costs shall be in Form 1 (Application for Short Form Taxation) in Appendix 4 to this Order; and

(*b*) unless the Taxing Master otherwise orders, only those papers and vouchers relevant to the items in dispute shall be lodged in the Supreme Court Taxing Office.

(4) Nothing in Rule 27(3) or, with the exception of paragraphs (4) and (5) of Rule 30, in Rules 30 to 32 shall apply to a short form taxation.

(a) Rule 32A inserted by S.R. 1996 No. 283 with effect from 1.9.96
(b) New paragraph (1) substituted by S.R. 2001 No. 254 with effect from 5.9.01
(c) Words omitted by S.R. 2007 No. 189 with effect from 16.04.07

(5) Where a party has begun proceedings in accordance with this rule, the proper officer shall enter the proceedings in accordance with this rule, the proper officer shall enter the proceedings for taxation in a list kept for the purposes of this rule and shall forthwith give notice of the day and time appointed for the taxation of the party whose costs are to be taxed.

(6) The party whose costs are to be taxed under this rule shall, not less than four days before the day appointed for the taxation, send a copy of Form 1 to every other party entitled to be heard on the taxation with a notice of the day and time appointed for the taxation.]

PART VI

REVIEW OF TAXATION

Application to Taxing Master for review

33.—(1) Any party to any taxation proceedings who is dissatisfied with any decision of the Taxing Master (other than a decision on a provisional taxation) may apply to the Taxing Master to review his decision.

(2) An application under this rule for review of the Taxing Master's decision must be made within 21 days after that decision or within such other period as may be fixed by the Taxing Master.

(3) Every applicant for review under this rule must at the time of making his application deliver to the Taxing Master his objections in writing specifying what is objected to and stating concisely the nature and grounds of the objection in each case, and must deliver a copy of the objections to any other party who was entitled to receive notice of the appointment for the taxation pursuant to rules 30 and 31.

(4) A party to whom a copy of the objections is delivered under this rule may, within 21 days after delivery of the copy to him or such other period as may be fixed by a Taxing Master, deliver to the Taxing Master answers in writing to the objections stating concisely the grounds on which he will oppose the objections, and must at the same time deliver a copy of the answers to the party applying for review and to any other party who was entitled to receive notice of the appointment for the taxation pursuant to rules 30 and 31

[*E.r.* 33]

Review by Taxing Master

34.—(1) A review under rule 33 shall be carried out by the Taxing Master.

(2) On a review under rule 33, the Taxing Master may receive further evidence and may exercise all the powers which he might exercise on an original taxation, including the power to award costs of the proceedings before him; and any costs awarded by him to any party may be taxed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(3) On a hearing of a review under rule 33 a party to whom a copy of objections was delivered under paragraph (3) of that rule. shall be entitled to be heard in respect of all or any of the objections notwithstanding that he did not deliver written answers to the objections under paragraph (4) of that rule.

(4) The Taxing Master who issues his certificate pursuant to rule 22(1)(*a*) or (*b*) after he has considered a review under this rule, if requested to do so by any party to the proceedings before him, shall state in the certificate or otherwise in writing by reference to the objections the reasons for his decision on the review, and any special facts or circumstances relevant to it.

(5) A request under paragraph (4) must be made within 14 days after the review or such other period as may be fixed by the Taxing Master.

[*E.r.* 34]

Review by a judge

35.—(1) Any party who is dissatisfied with the decision of the Taxing Master on a review under rule 33 may apply to a judge for an order to review that decision either in whole or in part, provided that one of the parties to the taxation proceedings has requested the Taxing Master to state the reasons for his decision in accordance with rule 34(4).

(2) An application under this rule may be made at any time within 14 days after the Taxing Master has issued a certificate in accordance with rule 34(4).

(3) An application under this rule shall be made by summons and shall, unless the judge thinks fit to adjourn it into Court, be heard in chambers.

(4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule and no ground of objection shall be raised which was not raised on the review by the Taxing Master but save as aforesaid, on the hearing of any such application the judge may exercise all such powers and discretion as are vested in the Taxing Master in relation to the subject matter of the application.

(5) On an application under this rule the judge may make such order as the circumstances may require and in particular may order the Taxing Master's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the Taxing Master for taxation.

[*E.r.* 35]

APPENDIX 1

Requisite document for purposes of rule 29

1.—(1) Where a party is entitled to require any costs to be taxed by virtue of a judgment or order given or made in any proceedings in the High Court or in the Court of Appeal, the requisite document for the purposes of rule 29 is the judgment or order as the case may be.

(2) Where the entitlement arises by virtue of a direction of the Court given under these rules, the requisite document is that direction.

2. Where a party is entitled by virtue of rule 5(3), (4) or (5) to require any costs to be taxed, the requisite document for the purposes of rule 29 is:—

(*a*) where he is so entitled by virtue of rule 5(3), the notice given to him under Order 21, rule 2;

(*b*) where he is so entitled by virtue of rule 5(4) or (5), a certified copy of the notice given by him under Order 22, rule 3.

3. Where a party is entitled to require taxation by the Taxing Master of any costs directed to be taxed or paid by an order, award or other determination of a tribunal or other body constituted by or under any statutory provision, the requisite document for the purposes of rule 29 is the order, award or other determination, as the case may be.

4.—(1) Where a party is entitled by virtue of rule 6(9) to require any costs to be taxed, the requisite document for the purposes of rule 29 is the order made under section 31 or 32 of the Administration of Justice Act 1970, as the case may be.

(2) The costs of calling an expert witness with regard to any question as to which a court expert is appointed under Order 40, or a scientific adviser is appointed under Order 104, rule 11, shall not be allowed on a taxation of costs on the standard basis, unless the Court at the trial has certified that the calling of the witness was reasonable.

(3) Where—

(*a*) an action or counterclaim for the infringement of a patent, or

(*b*) a petition for revocation of a patent under section 32 of the Patents Act 1949, or

(*c*) an application for revocation of a patent under section 72 of the Patents Act 1977, or

(*d*) a counterclaim for the revocation of a patent under section 61 of the Patents Act 1949, or

(*e*) a counterclaim in proceedings for the infringement of a patent under section 61 of the Patents Act 1977,

proceeds to trial, no costs shall be allowed to the parties serving any particulars of breaches or particulars of objection in respect of any issues raised in those particulars and relating to that patent except insofar as those issues or particulars have been certified by the Court to have been proven or to have been reasonable.

[*E. App. 1*]

APPENDIX 2

PART I

Amount of costs

1.—(1) The amount of costs to be allowed shall (subject to rule 18 and to any order of the Court fixing the costs to be allowed) be in the discretion of the Taxing Master.

(2) In exercising his discretion the Taxing Master shall have regard to all the relevant circumstances, and in particular to:—

(*a*) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;

(*b*) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;

(*c*) the number and importance of the documents (however brief) prepared or perused;

(*d*) the place and circumstances in which the business involved is transacted;

(*e*) the importance of the cause or matter to the client;

(*f*) where money or property is involved, its amount or value;

(*g*) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

(3) The bill of costs shall consist of such of the items specified in Part II as may be appropriate, set out, except for item 4, in chronological order; each such item (other than an item relating only to time spent in travelling or waiting) may include an allowance for general care and conduct having regard to such of the circumstances referred to in paragraph (2) above as may be relevant to that item.

Fees to counsel

2.—(1) Except in the case of taxations under the Legal Aid Advice and Assistance (Northern Ireland) Order 1981 no fee to counsel shall be allowed unless before the Taxing Master issues his certificate a receipt for the fees signed by counsel is produced.

(2) Except in taxations under rules 14 and 15:—

(*a*) no costs shall be allowed in respect of counsel attending before a master in chambers or of more counsel than one attending before a judge in chambers unless the master or judge, as the case may be, has certified the attendance as being proper in the circumstances of the case;

(*b*) a refresher fee, the amount of which shall be in the discretion of the Taxing Master, shall be allowed to counsel either

(i) for each period of 5 hours (or part thereof) after the first, during which a trial or hearing is proceeding, or

(ii) at the discretion of the Taxing Master, in respect of any day after the first day, on which the attendance of counsel at the place of trial was necessary.

Items to be authorised, certified, etc.

3. In an action arising out of an accident on land, the costs of preparing a plan (other than a sketch plan) of the place where the accident happened shall not be allowed unless the Taxing Master is satisfied that it was reasonable to prepare that plan for use at the trial.

PART II

1. *Interlocutory attendances*
   (*a*) (i) Attending the hearing of any summons or other application at Court or appointment in chambers or elsewhere.
   (ii) Care and conduct.
   (*b*) Travelling and waiting.

2. *Consultations with counsel*
   (*a*) (i) Attending counsel in consultation.
   (ii) Care and conduct.
   (*b*) Travelling and waiting.

3. *Attendance at trial or hearing*
   (*a*) (i) Attending the trial or hearing of a cause or matter, or an appeal or to hear a deferred judgment.
   (ii) Care and waiting.
   (*b*) Travelling and waiting.

4. *Preparation*

PART A

The doing of any work which was reasonably done arising out of or incidental to the proceedings, including:—

(i) The Client: taking instructions to sue, defend, counterclaim, appeal or oppose etc, attending upon and corresponding with client; taking and preparing proofs of evidence;

(ii) Witnesses: interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at Court, including issue of subpoena;

(iii) Expert Evidence: obtaining and considering reports or advice from experts and plans, photographs and models: where appropriate arranging their attendance at Court, including issue of subpoena;

(iv) Inspections: inspecting any property or place material to the proceedings;

(v) Searches and Enquiries: making searches at offices of public records and elsewhere for relevant documents: searches in the Companies' Registry and similar matters;

(vi) Special Damages: obtaining details of special damages and making or obtaining any relevant calculations;

(vii) Other Parties: attending upon and corresponding with other parties or their solicitors;

(viii) Discovery: perusing, considering or collating documents for affidavit or list of documents: attending to inspect or produce for inspection any documents required to be produced or inspected by order of the Court or by virtue of Order 24;

(ix) Documents: preparation and consideration of pleadings and affidavits, cases and instructions to and advice from counsel, any law involved and any other relevant documents including collating and service;

(x) Negotiations: work done in connection with negotiations with a view to settlement;

(xi) Agency: correspondence with and attendances upon agents and work done by them;

(xii) Interest: where relevant, the calculation of interest;

(xiii) Notices: preparation and service of miscellaneous notices, including notices to witnesses to attend court.

PART B

The general care and conduct of the proceedings.

PART C

Travelling and waiting time in connection with the above matters.

NOTE: the sums sought under each sub-paragraph (i) to (xiii) of Part A should be shown separately against each item followed by the total of all items under Part A; the sums charged under Part B and C should each be shown separately, and the total of the items under Parts A, B and C should then follow.

5. *Taxation*

(*a*) Taxation of Costs

(i) preparing the bill (where allowable) and preparing for and attending the taxation;

(ii) Care and conduct;

(iii) Travelling and waiting;

(*b*) Review

(i) preparing and delivering objections to the decision of the Taxing Master on taxation or answers to objections, and considering opponent's answers or objections, as the case may be; attending hearing of review;

(ii) Care and conduct;

(iii) Travelling and waiting.

[*E. App.* 2]

APPENDIX 3

FIXED COSTS

PART I

Costs on recovery of a liquidated sum without trial

1. The scale of costs following paragraph 2 of this Part of this Appendix shall apply in relation to the following cases if the writ therein was issued on or after 1 June 1982 and was endorsed in accordance with Order 6, rule 2(*b*), with a claim for a debt or liquidated demand only of £600·00 or upwards, that is to say—

(*a*) cases in which the defendant pays the amount claimed or a sum of £600·00 or upwards within the time and in the manner required by the endorsement of the writ;

(*b*) cases in which the plaintiff obtains judgment in default of appearance under Order 13, rule 1, or under that rule by virtue of Order 83, rule 4, or judgment in default of defence under Order 19, rule 2, being in any case judgment for a sum of £600·00 or upwards;

(*c*) cases in which the plaintiff obtains judgment under Order 14, for a sum of £600·00 or upwards, either unconditionally or unless that sum is paid into court or to the plaintiff's solicitors.

2. There shall be added to the basic costs set out in the said scale—

(i) if the amount recovered is less than £3,000·00, the fee payable on an Ordinary Civil Bill process in the county court for that amount, and

(ii) in any other case, the fee paid on the issue of the writ and where applicable, on the final judgment.

SCALE OF COSTS

[(**a**) A. BASIC COSTS

	Amount to be allowed in cases under following sub-paragraphs of paragraph 1 of this Appendix		
	(a) £ p	*(b)* £ p	*(c)* £ p
If the amount recovered is not less than £600 but less than £2,000—			
(i) where the writ was served by post	61·25	80·75	142·00
(ii) where the writ was served on the defendant personally	69·00	87·00	149·00
not less than £2,000 but less than £3,000—			
(i) where the writ was served by post	69·00	89·25	149·00
(ii) where the writ was served on the defendant personally	75·75	94·50	156·00
not less than £3,000	89·25	129·00	184·00]

B. *Additional Costs*

	Amount to be allowed where amount recovered is—	
	(i) not less than £600·00 but less than £3,000·00	*(ii) not less than £3,000·00*
	£ p	£ p
(1) Where there is more than one defendant, in respect of each additional defendant served	[(**b**) 9·50	12·25
(2) Where substituted service is ordered and effected, in respect of each defendant served	22·25	47·75
(3) Where service outside the jurisdiction is ordered and effected, in the case of service—		
(*a*) in England and Wales, Scotland, the Isle of Man or the Channel Islands	34·50	61·25
(*b*) in any other place out of the jurisdiction	40·50	69·00
(4) In the case of judgment in default of defence or judgment under Order 14, where notice of appearance is not given on the day on which		

(**a**) New Table substituted by S.R. 1996 No. 283 with effect from 1.9.96.
(**b**) New figures substituted by S.R. 1996 No. 283 with effect from 1.9.96

appearance is entered, and the plaintiff makes an affidavit of service for the purpose of a judgment in default of appearance (the allowance to include the service)	16·25	18·25
(5) In the case of judgment under Order 14 where an affidavit of service of the summons is required	16·25	18·25
(6) In the case of judgment under Order 14 for each case adjournment of the summons	12·25	22·25]

3. Nothing in the preceding provisions of this Part shall apply in relation to a writ of summons issued before 1st June 1982, unless judgment in default of appearance or default of defence or under Order 14 is obtained after that date.

PART II

Costs on judgment without trial for possession of land

1.—(1) Where the writ is endorsed with a claim for the possession of land the plaintiff obtains judgment—

(a) under Order 13 rule 4 or 5, in default of appearance, or

(b) under Order 19 rule 5 or 6, in default of defence, or

(c) under Order 14,

for possession of the land and costs, then subject to sub-paragraph (2), there shall be allowed the costs prescribed by paragraph 2 of this Part of this Appendix.

(2) Where the plaintiff is also entitled under the judgment to damages to be assessed, or where the plaintiff claims any relief of the nature specified in Order 88 rule 1, this part of this Appendix shall not apply.

2. The costs to be allowed under this Part of this Appendix shall be the costs which would be allowed under Part I (together with the fee paid on the writ) if judgment had been obtained in the same circumstances, that is to say, in default of appearance or defence or under Order 14 but the writ has been endorsed with a claim for a debt or liquidated demand only of £600.00 or upwards and judgment for not less than £4,000.00 has been obtained.

PART III

Miscellaneous

1. Where the plaintiff or defendant signs judgment for costs under rule 10, there shall be allowed—

Costs of the judgment .....[(**a**) £8.50]

2. Where a certificate of judgment or decree is registered in the High Court in the Register for United Kingdom Judgments under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982, there shall be allowed—

Costs of registration..... [(**a**) £35.00]

3. Where proceedings are taken pursuant to Order 111, there shall be marked on the judgment summons in respect of the costs thereof ..... [(**a**) £13.00

[*E.App.* 3]

(**a**) New figures substituted by S.R. 1996 No. 283 with effect from 1.9.96

[(a) APPENDIX 4

FORM NO.1

APPLICATION FOR SHORT FORM TAXATION

(Order 62, Rule 32A)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND 20.. No.

TAXING OFFICE

BETWEEN:

.... Plaintiff

AND

.... Defendant

PART A: BACKGROUND

[Here give brief particulars of the nature of the case in which the Order for Taxation was obtained [(**b**)*, including a list of agreed items]]*

PART B: DISPUTED ITEMS

AMOUNT	VAT	TAXED OFF
£	£	£

[for completion by Master if Appropriate]

ITEMS IN DISPUTE

(each item of disbursement in dispute should be listed separately and individually numbered)

1.	£	£
2.	£	£

Costs of Taxation

(i) Preparation of Bill and ancillary papers; attending taxation, vouching and completing taxation;

(i) ... hours @ £....[1] per hour ..... £...

(ii) Uplift for care and conduct @ 50% .....£.....£

Dated this ..... day of ..... 20....

..... Signed

Solicitors for the Plaintiffs/Defendants[2]

Address ....

(**a**) New Form 1 substituted by S.R. 2001 No. 254 with effect from 05.09.01

(**b**) Words inserted by S.R. 2007 No. 189 with effect from 16.04.07

. . . . . .

. . . . . .

Telephone No. . . . . .

PART C: FOR OFFICE USE ONLY

SUMMARY OF TAXATION OF DISPUTED ITEMS

	CLAIMED	VAT	TAXED OFF
Less taxed off			
Add VAT on item as allowed			
Add costs of Taxation			
Add VAT thereon			
Add STAMP DUTY on taxed item			
TOTAL COSTS TAXED AND ALLOWED			

(1) Insert as appropriate
(2) Delete as appropriate

GENERAL AND ADMINISTRATIVE PROVISIONS

ORDER 63

[No Order made]

ORDER 64

SITTINGS, VACATIONS AND OFFICE HOURS

Sittings of Supreme Court

1. The sittings of the Court of Appeal and of the High Court shall be three in every year, that is to say—

(*a*) the Michaelmas sittings which shall begin on 5th September and end on 21st December, subject to a recess from the Monday which falls on or nearest to 31st October to the following Friday, both days included, [(**a**) or on such other five days as the Lord Chief Justice may direct];

(*b*) the Hilary sittings which shall begin on 6th January and end on the Friday before Good Friday; and

(*c*) the Trinity sittings which shall begin on the second Monday after Easter Sunday and end on 30th June.

[*E.r.* 1]

[(**b**) *Vacation*

2.—(1) One or more judges of the High Court or Court of Appeal shall sit in vacation on such days as the Lord Chief Justice may from time to time direct, to hear such causes or matters as require to be immediately or promptly heard.

(2) A judge who sits in accordance with paragraph (1) shall be known as the "Vacation Judge".]

[(**c**) . . .]

Hearing of applications, etc. in vacation

4.—(1) All such applications as require to be immediately or promptly heard shall be heard in vacation by the Vacation Judge, a court of two or more judges or the Court of Appeal, as may be necessary.

(2) Any party to a cause or matter may at any time apply by summons to a judge for an order that the cause or matter shall be tried or heard during vacation, and if the judge is satisfied that there is urgent need for the trial or hearing to take place in vacation he may make an order accordingly and fix a date for the trial or hearing.

[*E.r.* 4]

Supreme Court Offices: days on which open and office hours

5.—(1) The offices of the Supreme Court shall be open on every day of the year except—

(**a**) New words inserted by S.R. 2008 No. 22 with effect from 25.02.08
(**b**) Rule 2 substituted by S.R. 2006 No. 305 with effect from 31.07.06
(**c**) Rule revoked by S.R. 2006 No. 305 with effect from 31.07.06

ORDER 64

(*a*) Saturdays and Sundays,

(*b*) Good Friday and the day after Easter Monday.

(*c*) Christmas Eve or—

(i) if that day is a Saturday, then 23rd December,

(ii) if that day is a Sunday or Tuesday, then 27th December,

(*d*) Christmas Day, and, if that day is a Friday or Saturday, then 28th December,

(*e*) Bank Holidays in Northern Ireland under the Banking and Financial Dealings Act 1971(**a**); and

(*f*) such other days as the [(**b**) Department of Justice], with the concurrence of the Lord Chief Justice, may direct.

(2) The hours during which any office of the Court of Judicature shall be open to the public shall be such as the [(**b**) Department of Justice], with the concurrence of the Lord Chief Justice, may from time to time direct.

[*E.r.* 7]

(**a**) 1971 c. 80
(**b**) Words substituted by S.R. 2010 No. 381 with effect from 20.12.10

ORDER 65

SERVICE OF DOCUMENTS

When personal service required

1.—(1) Any document which by virtue of these Rules is required to be served on any person need not be served personally unless the document is one which by an express provision of these Rules or by order of the Court is required to be so served.

(2) Paragraph (1) shall not affect the power of the Court under any provision of these Rules to dispense with the requirement for personal service.

[*E.r.* 1]

Personal service: how effected

2. Personal service of a document is effected by leaving a copy of the document with the person to be served.

[*E.r.* 2]

Service on body corporate

3.—(1) Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any statutory provision, be effected by serving it in accordance with rule 2 on the mayor, chairman or president of the body, or the town clerk, clerk, secretary, treasurer or other similar officer thereof.

(2) Where a writ is served on a body corporate in accordance with Order 10 rule 1(2), that rule shall have effect as if for the reference to the usual or last known address of the defendant there were substituted a reference to the registered or principal office of the body corporate.

[*E.r.* 3]

Substituted service

4.—(1) If, in the case of any document which by virtue of any provision of these Rules is required to be served personally or is a document to which Order 10 rule 1 applies, it appears to the Court that it is impracticable for any reason to serve that document in the manner prescribed, the Court may make an order for substituted service of that document.

(2) An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.

(3) Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

[*E.r.* 4]

Ordinary service: how effected

5.—(1) Service of any document, not being a document which by virtue of any provisions of these Rules is required to be served personally, [(**a**) or] a document to which Order 10 rule 1, applies may be effected—

(*a*) by leaving the document at the proper address of the person to be served, or

(*b*) by post, or

[(**b**)(*c*) by FAX in accordance with paragraph (2A)] [(**c**), or;]

[(**d**)(*d*) through a document exchange in accordance with paragraph (2B).]

(**a**) Word substituted by S.R. 1981 No. 224 with effect from 1.9.81
(**b**) New sub-paragraph (c) substituted by S.R. 1992 No. 399 with effect from 1.11.92
(**c**) Word added by S.R. 1994 No. 286 with effect from 1.10.94
(**d**) New sub-paragraph (d) added by S.R. 1994 No. 286 with effect from 1.10.94

(2) For the purposes of this rule, and of section 7 of the Interpretation Act 1978(a), in its application to this rule, the proper address of any person on whom a document is to be served in accordance with this rule shall be the address for service of that person, but if at the time when service is effected that person had no address for service his proper address for the purposes aforesaid shall be—

(*a*) in any case, the business address of the solicitor (if any) who is acting for him in the proceedings in connection with which service of the document in question is to be effected, or

(*b*) in the case of an individual, his usual or last known address, or

(*c*) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction, or

(*d*) in the case of a body corporate, the registered or principal office of the body.

[(b)(2A)—(1) Service by FAX may be effected where—

(*a*) the party serving the document acts by a solicitor,

(*b*) the party on whom the document is served acts by a solicitor and service is effected by transmission to the business address of such a solicitor,

(*c*) the solicitor acting for the party on whom the document is served has indicated in writing to the solicitor serving the document that he is willing to accept service by FAX at a specified FAX number and the document is transmitted to that number; and for this purpose the inscription of a FAX number on the writing paper of a solicitor shall be deemed to indicate that such solicitor is willing to accept service by FAX at that number in accordance with this paragraph unless he states otherwise in writing; and

(*d*) as soon as practicable after service by FAX the solicitor acting for the party serving the document dispatches a copy of it to the solicitor acting for the other party by any of the other methods prescribed for service by paragraph (1), and if he fails to do so, the document shall be deemed never to have been served by FAX.

(2) Where the FAX is transmitted on a business day before 4.00 p.m. it shall, unless the contrary is shown, be deemed to be served on that day, and, in any other case, on the business day next following.

(3) In this rule "business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday as defined in Order 3, rule 2(6).]

[(c)(2B) Where—

(*a*) the proper address for service includes a numbered box at a document exchange, or

(*b*) there is inscribed on the writing paper of the party on whom the document is served (where such party acts in person) or on the writing paper of his solicitor (where such party acts by a solicitor) a document exchange box number, and such a party or his solicitor (as the case may be) has not indicated in writing to the party serving the document that he is unwilling to accept service through a document exchange,

service of the document may be effected by leaving the document addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that exchange; and any document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.]

(a) 1978 c. 30
(b) Paragraph (2A) inserted by S.R. 1992 No. 399 with effect from 01.11.92
(c) New paragraph (2B) inserted by S.R. 1994 No. 286 with effect from 01.10.94

(3) Nothing in this rule shall be taken as prohibiting the personal service of any document or as affecting any statutory provision which provides for the manner in which documents may be served on bodies corporate. [(**a**); and "document exchange" means any document exchange for the time being approved by the [(**b**) Department of Justice.]]

[*E.r.* 5]

Service on Minister, etc., in proceedings which are not by or against the Crown

6. Where for the purpose of or in connection with any proceedings in the Court of Judicature, not being civil proceedings by or against the Crown within the meaning of Part II of the Crown Proceedings Act 1947(**c**), any document is required by any statutory provision or these Rules to be served on the Minister or Head of a government department which is an authorised department for the purposes of that Act, or on such a department or on the Attorney General, section 18 of the said Act, of 1947 and Order 77 rule 4, shall apply in relation to the service of the document as they apply in relation to the service of documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown.

[*E.r.* 6]

Effects of service after certain hours

7. Any document (other than a writ of summons or other originating process) service of which is effected under rule 2 or under rule 5(1)(a) after twelve noon on a Saturday or after four in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Saturday or on the day following that other weekday, as the case may be.

[*E.r.* 7]

Affidavit of service

8. Except as provided in Order 10 rule 1(3)(b) and Order 81 rule 3(2)(b) an affidavit of service of any document must state by whom the document was served, the day of the week and date on which it was served, where it was served and how.

[*E.r.* 8]

No service required in certain cases

9. Where by virtue of these Rules any document is required to be served on any person but is not required to be served personally or in accordance with Order 10 rule 1(2) and at the time when service is-to be effected that person is in default as to entry of appearance or has no address for service the document need not be served on that person unless the Court otherwise directs or any of these Rules otherwise provides.

[*E.r.* 9]

(**a**) Words inserted by S.R. 1994 No. 286 with effect from 01.10.94
(**b**) Words substituted by S.R. 2010 No. 381 with effect from 20.12.10
(**c**) 1947 c. 44

ORDER 66

PAPER, PRINTING NOTICES, COPIES AND INSPECTION OF DOCUMENTS

Quality and size of paper

1.—(1) Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Supreme Court must be on paper of durable quality, approximately 297mm long, by 210mm wide or A4ISO having a margin, not less than 38mm wide, to be left blank on the left side of the face of the paper and on the right side of the reverse.

(2) In these Rules the expressions "A3", "A4" and "A5" followed by the letters "ISO" mean respectively the size of paper so referred to in the specifications of the International Standards Organisation.

[*E.r.* 1]

Regulations as to printing, etc.

2.—(1) Except where these Rules otherwise provide, every document prepared by a party for use in the Supreme Court must be produced by one of the following means, that is to say, printing, writing (which must be clear and legible) and typewriting otherwise than by means of a carbon, and may be produced partly by one of those means and partly by another or others of them.

(2) For the purposes of these rules a document shall be deemed to be printed if it is produced by type lithography or stencil duplicating.

(3) Any type used in producing a document for use as aforesaid must be such as to give a clear and legible impression and must be not smaller than 11 point type for printing or elite type for type lithography, stencil duplicating or typewriting.

(4) Any document produced by a photographic or similar process giving a positive and permanent representation free from blemishes shall, to the extent that it contains a facsimile of any printed, written or typewritten matter, be treated for the purposes of these rules as if it were printed, written or typewritten, as the case may be.

(5) Any notice required by these Rules may not be given orally except with the leave of the Court.

[*E.r.* 2]

Copies of documents for other party

3.—(1) Where a document is prepared by a party for use in the Supreme Court is printed the party by whom it was prepared must, on receiving a written request from any other party entitled to a copy of that document and on payment of the proper charges, supply him with such number of copies thereof, not exceeding ten, as may be specified in the request.

(2) Where a document prepared by a party for use in the Supreme Court is written or typewritten, the party by whom it was prepared must supply any other party entitled to a copy of it, not being a party on whom it has been served, with one copy of it and. where the document in question is an affidavit, of any document exhibited to it. The copy must be ready for delivery within 48 hours after a written request for it, together with an undertaking to pay the proper charges, is received and must be supplied thereafter on payment of those charges.

[*E.r.* 3]

Requirements as to copies

4.—(1) Before a copy of a document is supplied to a party under these Rules it must be indorsed with the name and address of the party or solicitor by whom it was supplied.

(2) The party by whom a copy is supplied under rule 3, or, if he sues or appears by a solicitor, his solicitor, shall be answerable for the copy being a true copy of the original or of an office copy, as the case may be.

[*E.r.* 4]

Right to inspect, etc., certain documents filed in Court Offices

5.—(1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Central Office, [(**a**) the Chancery Office or the Bankruptcy and Companies Office]—

(*a*) the copy of any writ of summons or other originating process,

(*b*) any judgment or order given or made in court or the copy of any such judgment or order, and

(*c*) with the leave of the Court, which may be granted on an application made ex parte, any other document.

[(**b**) . . .]

(3) Nothing in the foregoing provisions shall be taken as preventing any party to a cause or matter searching for, inspecting and taking or bespeaking a copy of any affidavit or other document filed in that cause or matter or filed before the commencement of that cause of matter but made with a view to its commencement.

[*E.O.* 63 *r.* 4]

(4) For the purpose of this rule, a decree made in chambers in a limitation action as defined in Order 75, rule 1(2), shall be deemed to have been made in Court.

[*E.O.* 75 *r.* 46(4)]

[(**c**) (5) No document—

(*a*) relating to an application under Order 71, rule 47(1) for a mediation settlement enforcement order;

(*b*) annexed to a mediation settlement enforcement order made under Order 71, rule 47(6);

(*c*) relating to an application under Order 71, rule 49(1) or otherwise for disclosure or inspection of mediation evidence; or

(*d*) annexed to an order for disclosure or inspection made under Order 71, rule 49 or otherwise,

may be inspected without the leave of the Court.]

(**a**) Words inserted by S.R. 1982 No. 217 with effect from 1.9.82
(**b**) Paragraph (2) deleted by S.R. 1982 No. 217 with effect from 1.9.82
(**c**) New paragraph inserted by S.R. 2011 No. 62 with effect from 25.03.11

ORDER 67

CHANGE OF SOLICITOR

Notice of change of solicitor

1.—(1) A party to any cause or matter who sues or defends by a solicitor may change his solicitor without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are served in accordance with this rule, the former solicitor shall, subject to rules 4 and 5, be considered the solicitor of the party until the final conclusion of the cause or matter, whether in the High Court or the Court of Appeal.

(2) Notice of a change of solicitor must be filed in the appropriate office.

(3) The party giving the notice must serve on every other party to the cause or matter (not being a party in default as to entry of appearance) and on the former solicitor a copy of the notice indorsed with a memorandum stating that the notice has been duly filed in the appropriate office (naming it).

(4) The party giving the notice may perform the duties prescribed by this rule in person or by his new solicitor.

[*E.r.* 1]

Notice of appointment of solicitor

2. Where a party, after having sued or defended in person, appoints a solicitor to act in the cause or matter on his behalf, the change may be made without an order for that purpose and rule 1(2), (3) and (4) shall, with the necessary modifications, apply in relation to a notice of appointment of a solicitor as they apply in relation to a notice of change of solicitor.

[*E.r.* 3]

Notice of intention to act in person

3. Where a party, after having sued or defended by a solicitor, intends and is entitled to act in person, the change may be made without an order for that purpose and rule 1 shall, with the necessary modifications, apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of solicitor except that the notice of intention to act in person must contain an address for service of the party giving it.

[*E.r.* 4]

Removal of solicitor from record at instance of another party

4.—(1) Where—

(*a*) a solicitor who has acted for a party in a cause or matter has died or become bankrupt or cannot be found or has failed to take out a practising certificate or has been struck off the roll of solicitors or has been suspended from practising or has for any other reason ceased to practise, and

(*b*) the party has not given notice of change of solicitor or notice of intention to act in person in accordance with the foregoing provisions of this Order,

any other party to the cause or matter may apply to the Court, or if an appeal to the Court of Appeal is pending in the cause or matter, to the

Court of Appeal, for an order declaring that the solicitor has ceased to be the solicitor acting for the first-mentioned party in the cause or matter, and the Court or Court of Appeal, as the case may be, may make an order accordingly.

(2) An application for an order under this rule must be made by summons or, in the case of an application to the Court of Appeal, by motion, and the summons or notice of motion must, unless the Court or Court of Appeal, as the case may be, otherwise directs, be served on the party to whose solicitor the application relates.

The application must be supported by an affidavit stating the grounds of the application.

(3) Where an order is made under this rule the party on whose application it was made must—

(*a*) serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order, and

(*b*) procure the order to be entered in the appropriate office, and

(*c*) leave at that office a copy of the order and a certificate signed by him or his solicitor that the order has been duly served as aforesaid.

(4) An order made under this rule shall not affect the rights of the solicitor and the party for whom he acted as between themselves.

[*E.r.* 5]

Withdrawal of solicitor who has ceased to act for party

5.—(1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with rule 1, or notice of intention to act in person in accordance with rule 3, the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the Court or Court of Appeal, as the case may be, may make an order accordingly, but unless and until the solicitor—

(*a*) serves on every party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order, and

(*b*) procures the order to be entered in the appropriate office, and

(*c*) leaves at that office a copy of the order and a certificate signed by him that the order has been duly served as aforesaid,

he shall, subject to the foregoing provisions of this Order, be considered the solicitor of the party till the final conclusion of the cause or matter, whether in the High Court or Court of Appeal.

(2) An application for an order under this rule must be made by summons or, in the case of an application to the Court of Appeal, by motion, and the summons or notice of motion must, unless the Court or the Court of Appeal, as the case may be, otherwise directs, be served on the party for whom the solicitor acted.

The application must be supported by an affidavit stating the grounds of the application.

(3) An order made under this rule shall not affect the rights of the solicitor and the party for whom he acted as between themselves.

(4) Notwithstanding anything in paragraph (1), where the certificate of an assisted person within the meaning of the Legal Aid (General) Regulations (Northern Ireland) 1965(**a**) is revoked or discharged, the solicitor who acted for the assisted person shall cease to be the solicitor acting in the cause of matter as soon as his retainer is determined under regulation 13(2) of the said Regulations; and if the assisted person whose certificate has been revoked or discharged desires to proceed with the cause or matter without legal aid and appoints that solicitor or another solicitor to act on his behalf, the provisions of rule 2 shall apply as if that party had previously sued or defended in person.

[*E.r.* 6]

Address for service of party whose solicitor is removed, etc.

6. Where—

(*a*) an order is made under rule 4, or

(*b*) an order is made under rule 5, and the applicant for that order has complied with rule 5(1), or

(*c*) the certificate of an assisted person within the meaning of the Legal Aid (General) Regulations (Northern Ireland) 1965 is revoked or discharged,

then, unless and until the party to whose solicitor or to whom, as the case may be, the order or certificate relates either appoints another solicitor and complies with rule 2 or, being entitled to act in person, gives notice of his intention so to do and complies with rule 3, his last known address or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on him of any document not required to be served personally, be deemed to be his address for service.

[*E.r.* 7]

(**a**) S.R. & O. (N.I.) 1965 No. 217

ORDER 68

[No Order made]

PROVISIONS AS TO FOREIGN PROCEEDINGS

[(a) ORDER 69

SERVICE OF FOREIGN PROCESS

Definitions

1. In this Order—

"a convention country" means a foreign country in relation to which there subsists a civil procedure convention providing for service in that country of process of the High Court, and includes a country which is a party to the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at the Hague on 15th November 1965;

"process" includes a citation;

"process server" means the process server appointed under rule 4 or his authorised agent;

"Master" means the Master (Queen's Bench and Appeals).

[*E.r.* 1]

Applications

2. This Order applies to the service on a person in Northern Ireland of any process in connection with civil or commercial proceedings in a foreign court or tribunal where the Master receives a written request for service—

(*a*) from Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs, with a recommendation by him that service should be effected, or

(*b*) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country.

[*E.r.* 2]

Service of process

3.—(1) The request shall be accompanied by a translation thereof in English, two copies of the process and, unless the foreign court or tribunal certifies that the person to be served understands the language of the process, two copies of a translation thereof.

(2) Subject to paragraphs (3) and (5) and to any statutory provision providing for the manner of service of documents on corporate bodies, the process shall be served by the process server's leaving a copy of the process and a copy of the translation or certificate, as the case may be, with the person to be served.

(3) The provisions of Order 10, rule 1(2)(*a*) and (*b*) shall apply to the service of foreign process as they apply to the service of writs, except that service may be proved by an affidavit or by a certificate or report in such form as the Master may direct.

(4) The process server shall send to the Master a copy of the process and an affidavit, certificate or report proving due service of process or stating the reason why service could not be effected, as the case may be, and shall, if the Court so directs, specify the costs incurred in effecting or attempting to effect service.

(5) Order 65, rule 4 (substituted service), shall apply to the service of foreign process as it applies to the service of writs, except that the Master may make an order for substituted service of foreign process on the basis of the process server's affidavit, certificate or report, without an application being made to him in that behalf.

(a) New Order 69 substituted by S.R. 1982 No. 217 with effect from 1.9.82

(6) The Master shall send a certificate, together with a copy of the process, to the consular or other authority or the Secretary of State, as the case may be, stating—

(i) when and how service was effected or the reason why service could not be effected, as the case may be;

(ii) where appropriate, the amount certified by the Master (Taxing Office) to be the costs of effecting or attempting to effect service.

(7) The certificate under paragraph (6) shall be sealed with the seal of the Supreme Court.

[*E.r.* 3]

Appointment of process server

4. The Lord Chancellor may appoint a process server for the purposes of this Order.]

[*E.r.* 4]

ORDER 70

OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.

Interpretation and exercise of jurisdiction

1.—(1) In this Order "the Act of 1975" means the Evidence (Proceedings in Other Jurisdictions) Act 1975(**a**);

"The Crown Solicitor" means the Crown Solicitor for Northern Ireland;

"The Master" means the Master (Queen's Bench and Appeals);

"The Secretary of State" means Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs.

(2) The power of the High Court to make an Order under section 2 of the Act of 1975 may be exercised by the Master.

[*E.r.* 1]

Application for order

2.—(1) Subject to paragraph (3) and rule 3, an application for an order under the Act of 1975 must be made ex parte and must be supported by affidavit.

(2) There shall be exhibited to the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.

(3) Where on an application under section 1 of the Act of 1975 as applied by section 92 of the Patents Act 1977(**b**) an order is made for the examination of witnesses, the Court may allow an officer of the European Patent Office to attend the examination and examine the witnesses or request the Court or the examiner before whom the examination takes place to put specified questions to them.

[*E.r.* 2]

Application by Crown Solicitor in certain cases

3. Where a request—

(*a*) is received by the Secretary of State and sent by him to the Master with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in Northern Ireland or any party to the matter pending or contemplated before the foreign court or tribunal, or

(*b*) is received by the Master in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in Northern Ireland for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such party;

the Master shall send the document to the Crown Solicitor and the Crown Solicitor may, with the consent of the Treasury, make an application for an order under the Act of 1975, and take such other steps as may be necessary, to give effect to the request.

[*E.r.* 3]

(**a**) 1975 c. 34
(**b**) 1977 c. 37

Person to take and manner of taking examination

4. Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before such other qualified person as to the Court seems fit.

[*E.r.* 4]

Dealing with deposition

5. Unless any order made in pursuance of this Order for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Master and the Master shall—

(*a*) give a certificate sealed with the seal of the Supreme Court for use out of the jurisdiction identifying the documents annexed thereto, that is to say, the request, the order of the Court for examination and the deposition taken in pursuance of the order; and

(*b*) send the certificate with the documents annexed thereto to the Secretary of State, or, where the request was sent to the Master by some other person in accordance with a Civil Procedure Convention, to that other person, for transmission to that court or tribunal.

[*E.r.* 5]

Claim to privilege

6.—(1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 3(1)(*b*) of the Act of 1975 is not supported or conceded as mentioned in sub-section (2) of that section.

(2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so the Court may do so, on the ex parte application of the person who obtained the order under section 2.

(3) If such evidence is taken—

(*a*) it must be contained in a document separate from the remainder of the deposition of the witness;

(*b*) the examiner shall send to the Master with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;

(*c*) on receipt of the statement the Master shall, notwithstanding anything in rule 5, retain the document containing the part of the witness's evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;

(*d*) if the claim is rejected by the foreign court or tribunal, the Master shall send to that court or tribunal the document containing that part of the witness's evidence to which the claim relates, but if the claim is upheld he shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 2 of the court or tribunal's determination.

[*E.r.* 6]

ORDER 71

[(a) Reciprocal Enforcement of Judgments, Enforcement of European Community Judgments, European Order For Payment Procedure and Mediation Directive]

[(b) 1. Reciprocal Enforcement: The Administration of Justice Act 1920 and the Foreign Judgements (Reciprocal Enforcement) Act 1933]

Powers under relevant Acts exercisable by judge or master

1. The powers conferred on the High Court by Part II of the Administration of Justice Act 1920(**c**) (in this part of this Order referred to as the "Act of 1920") or Part I of the Foreign Judgements (Reciprocal Enforcement) Act 1933(**d**) (in this part of this Order referred to as the "Act of 1933") may be exercised by a judge in chambers and a master.

[*E.r.* 1]

Application for registration

2.—(1) An application—

(*a*) under section 9 of the Act of 1920, in respect of a judgement obtained in a superior court in any part of Her Majesty's dominions or other territory to which Part III of that Act applies, or

(*b*) under section 2 of the Act of 1933, in respect of a judgment to which Part I of that Act applies,

to have the judgment registered in the High Court may be made ex-parte, but the Court hearing the application may direct a summons to be issued:

(2) If the Court directs a summons to be issued, the summons shall be an originating summons.

(3) No appearance neeed be entered to an originating summons under this rule.

[*E.r.* 2]

Evidence in support of application

3.—(1) An application for registration must be supported by an affidavit—

(*a*) exhibiting the judgment of a verified or certified or otherwise duly authenticated copy thereof and, where the judgment is not in the English language, a translation thereof in that language certified by a notary public or authenticated by affidavit;

(*b*) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent;

(*c*) stating to the best the information or belief of the deponent—

(i) that the judgment creditor is entitled to enforce the judgement;

(ii) as the case may require, either at the date of the application the judgment has not been satisfied, or the amount in respect of which it remains unsatisfied;

(iii) where the application is made under the Act of 1920, that the judgment does not fall within any of the cases in which a judgment may not be ordered to be registered under section 9 of that Act;

(**a**) Heading substituted by S.R. 2011 No. 62 with effect from 25.03.11
(**b**) Title amended by S.R. 1984 No. 110 with effect from 1.1.87
(**c**) 1920 c. 81
(**d**) 1933 c. 13

(iv) where the application is made under the Act of 1933, that at the date of the application the judgement can be enforced by execution in the country of the original court and that, if it were registered, the registration would not be, or be liable to be, set aside under section 4 of that Act;

(*d*) specifying, where the application is made under the Act of 1933, the amount of interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of the registration;

(*e*) verifying that the judgment [(**a**) is not a judgment] to which section 5 of the Protection of Trading Interests Act 1980(**b**) applies.

(2) Where a judgment sought to be registered under the Act of 1933 is in respect of different matters, and some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the afffidavit must state the provision in respect of which it is sought to register the judgment.

(3) In the case of an application under the Act of 1933, the affidavit must be accompanied by such other evidence with respect to the enforceability of the judgment by execution in the country of the original court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the Order in Council extending that Act to that country.

[*E.r.* 3]

Security for costs

4. Save as otherwise provided by any relevant Order in Council, the court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

[*E.r.* 4]

Order for registration

5.—(1) Except where the order giving leave to register a judgment is made on summons, no such order need be served on the judgment debtor.

(2) Every such order shall state the period within which an application may be made to set aside the registration and shall contain a notification that the judgment will not be enforced until after the expiration of that period.

(3) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or subsequently extended) within such an application to have the registration set aside may be made.

[*E.r.* 5]

Register of judgments

6. There shall be kept in the Central Office under the direction of the Master (Queen's Bench and Appeals) a register of the judgments ordered to be registered under the Act of 1920 and a register of the judgments ordered to be registered under the Act of 1933.

[*E.r.* 6]

(**a**) Words inserted by S.R. 1981 No. 224 with effect from 1.9.81
(b) 1980 c. 11

Notice of registration

7.—(1) Notice of the registration of a judgment must be served on the judgment debtor by delivering it to him personally or by sending it to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8, shall apply in relation to such a notice as they apply in relation to notice of a writ.

(3) The notice of registration must state—

(*a*) full particulars of the judgment registered and the order for registration,

(*b*) the name and address of the judgment creditor or of his solicitor or agent on whom, and at which, any summons issued by the judgment debtor may be served,

(*c*) the right of the judgment debtor to apply to have the registration set aside, and

(*d*) the period within which an application to set aside the registration may be made.

[*E.r.* 7]

Application to set aside registration

8.—(1) An application to set aside the registration of a judgment must be made by summons supported by affidavit.

(2) The Court hearing such application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in an action may be ordered to be tried.

(3) Where the Court hearing an application to set aside the registration of a judgment registered under the Act of 1920 is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under section 9 of that Act or that it is not just or convenient that the judgment should be enforced in Northern Ireland or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

[*E.r.* 9]

Determination of certain questions

9. If, in any case under the Act of 1933, any question arises whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, that question shall be determined in accordance with the provisions in that behalf contained in the Order in Council extending Part I of that Act to that country.

[*E.r.* 11]

Rules to have effect subject to Orders in Council

10. The foregoing rules shall, in relation to any judgment registered or sought to be registered under the Act of 1933, have effect subject to any such provisions contained in the Order in Council extending Part I of that Act to the country of the original court as are declared by the Order to be necessary for giving effect to the agreement made between Her Majesty and that country in relation to matters with respect to which there is power to make those rules.

[*E.r.* 12]

ORDER 71

Certified copy of High Court judgment

11.—(1) An application under section 10 of the Act of 1920 or section 10 of the Act of 1933 for a certified copy of a judgment entered in the High Court must be made ex parte on affidavit to a Master.

(2) An affidavit by which an application under section 10 of the Act of 1920 is made must give particulars of the judgment, show that the judgment debtor is resident in some (stating which) part of Her Majesty's dominions or other territory to which Part II of that Act extends and state the name, trade or business and the usual or last known place of abode of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.

(3) An affidavit by which an application under section 10 of the Act of 1933 is made must—

(*a*) give particulars of the proceedings in which the judgment was obtained;

(*b*) have annexed to it a copy of the writ originating summons or other process by which the proceedings were begun, the evidence of service thereof on, or appearance by, the defendant, copies of the pleadings, if any, and a statement of the grounds on which the judgment was based;

(*c*) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;

(*d*) show that the judgment is not subject to any stay of enforcement;

(*e*) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been entered; and

(*f*) state the rate at which the judgment carries interest.

(4) The certified copy of the judgment shall be an office copy sealed with the seal of the Supreme Court and indorsed, with a certificate signed by a Master certifying that the copy is a true copy of a judgment obtained in the High Court in Northern Ireland and that it is issued in accordance with section 10 of the Act of 1920 or section 10 of the Act of 1933, as the case may be.

(5) Where an application is made under section 10 of the Act of 1933 there shall also be issued a certificate (signed by a Master and sealed with the seal of the Supreme Court) having annexed to it a copy of the writ originating summons or other process by which the proceedings were begun, and stating—

(*a*) the manner in which the writ or such summons or other process was served on the defendant or that the defendant appeared thereto;

(*b*) what objections, if any, were made to the jurisdiction;

(*c*) what pleadings, if any, were served;

(*d*) the grounds on which the judgment was based;

(*e*) that the time for appealing has expired or, as the case may be, the date on which it will expire;

(*f*) whether notice of appeal against the judgment has been entered, and

(*g*) such other particulars as it may be necessary to give to the court in the foreign country in which it is sought to obtain enforcement of the judgment,

and a certificate (signed and sealed as aforesaid) stating the rate at which the judgment carries interest.

[*E.r.* 13]

[(a) . . .]

[*E.r.* 14]

[(b) II. ENFORCEMENT OF EUROPEAN COMMUNITY JUDGMENTS]

Interpretation

13. In this Part of this Order, ''the Order in Council'' means the European Communities (Enforcement of Community Judgments) Order 1972(c), and expressions used in the Order in Council shall, unless the context otherwise requires, have the same meanings as in that Order.

[*E.r.* 15]

Functions under Order in Council exercisable by judge or master

14. The functions assigned to the High Court by the Order in Council may be exercised by a judge in chambers or a master.

[*E.r.* 16]

Application for registration of Community judgments, etc.

15. An application for the registration in the High Court of a Community judgment or Euratom inspection order may be made ex parte.

[*E.r.* 17]

Evidence in support of application

16.—(1) An application for registration must be supported by affidavit exhibiting—

(a) Rule 12 deleted by S.R. 1984 No. 110 with effect from 1.1.87
(b) Title amended by S.R. 1984 No. 110 with effect from 1.1.87
(c) S.I. 1982/1590 (1972 III, p. 4643)

(*a*) the Community judgment and the order for its enforcement or, as the case may be, the Euratom inspection order or, in either case, a duly authenticated copy thereof, and

(*b*) where the Community judgment or Euratom inspection order is not in the English language, a translation into English certified by a notary public or authenticated by affidavit.

(2) Where the application is for registration of a Community judgment under which a sum of money is payable, the affidavit shall also state—

(*a*) the name and occupation and the usual or last known place of abode or business of the judgment debtor, so far as known to the deponent; and

(*b*) to the best of the deponent's information and belief that at the date of the application the European Court has not suspended enforcement of the judgment and that the judgment is unsatisfied or, as the case may be, the amount in respect of which it remains unsatisfied.

[*E.r.* 18]

Register of judgments and orders

17. There shall be kept in the Central Office a register of the Community judgments and Euratom inspection orders registered under the Order in council.

[*E.r.* 19]

Notice of registration

18.—(1) Upon registering a Community judgment or Euratom inspection order, the proper officer of the Court shall forwith send notice of the registration to every person against whom the judgment was given or the order was made.

(2) The notice of registration shall have annexed to it a copy of the registered Community judgment and the order for its enforcement or, as the case may be, a copy of the Euratom inspection order, and shall state the name and address of the person on whose application the judgment or order was registered or of his solicitor or agent on whom process may be served.

(3) Where the notice relates to a Community judgment under which a sum of money is payable, it shall also state that the judgment debtor may apply within 28 days of the date of the notice, or thereafter with the leave of the Court, for the variation or cancellation of the registration on the grounds that the judgment has been partly or wholly satisfied at the date of registration.

[*E.r.* 20]

Application to vary or cancel registration

19. An application for the variation or cancellation of the registration of a Community judgment on the ground that the judgment had been wholly or partly satisfied at the date of registration shall be made by summons supported by affidavit.

[*E.r.* 22]

Application for registration of suspension order

20. An application for the registration in the High Court of an order of the European Court that enforcement of a registered Community judgment be suspended may be made ex parte by lodging a copy of the order in the Central Office.

[*E.r.* 23]

Application for enforcement of Euratom inspection order

21. An application for an order under Article 6 of the Order in Council for the purpose of ensuring that effect is given to a Euratom inspection order may, in case of

urgency, be made ex parte on affidavit but, except as aforesaid, shall be made by motion or summons.

[*E.r.* 24]

[(a) III. RECIPROCAL ENFORCEMENT: THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982

Interpretation

22.—(1) In this Part of this Order—

''the Act of 1982'' means the Civil Jurisdiction and Judgments Act 1982;

''Convention territory'' means the territory or territories of any Contracting State, as defined by section 1(3) of the Act of 1982, to which [(b) the Brussels Convention or the Lugano Convention] as defined in section 1(1) of the Act of 1982 apply;

''judgment'' is to be construed in accordance with the definition of ''judgment'' in section 50 of the Act of 1982;

''money provision'' means a provision for the payment of one or more sums of money;

''non-money provision'' means a provision for any relief or remedy not requiring payment of a sum of money;

''protective measures'' means the protective measures referred to in Article 39 of Schedule 1 [(c) or Article 39 of Schedule 3C] to the Act of 1982.

(2) For the purposes of this Part of this Order domicile is to be determined in accordance with the provisions of sections 41 to 46 of the Act of 1982.

[*E.r.* 25]

Assignment of business and exercise of powers

23. Any application to the High Court under the Act of 1982 shall be assigned to the Queen's Bench Division and the powers conferred on the Court by that Act shall be exercised in accordance with the provisions of Order 32, rule 11.

[*E.r.* 26]

Application for registration

24. An application for registration of a judgment under section 4 of the Act of 1982 shall be made ex parte.

[*E.r.* 27]

Evidence in support of application

25.—(1) An application for registration under section 4 of the Act of 1982 must be supported by an affidavit—

(*a*) exhibiting—

(i) the judgment or a verified or certified or otherwise duly authenticated copy thereof together with such other document or documents as may be requisite to show that, according to the law of the State in which it has been given, the judgment is enforceable and has been served;

(ii) in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document;

(iii) where it is the case, a document showing that the party making the application is in receipt of legal aid in the State in which the judgment was given;

(a) New Part III added by S.R. 1984 No. 110 with effect from 1.1.87
(b) Words substituted by S.R. 1993 No. 143 with effect from 19.4.93
(c) Words inserted by S.R. 1993 No. 143 with effect from 19.4.93

(iv) where the judgment or document is not in the English language, a translation thereof into English certified by a notary public or a person qualified for the purpose in one of the Contracting States or authenticated by affidavit;

(*b*) stating—

(i) whether the judgment provides for the payment of a sum or sums of money;

(ii) whether interest is recoverable on the subject or part thereof in accordance with the law of the State in which the judgment was given, and if such be the case, the rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue;

(*c*) giving an address within the jurisdiction of the Court for service of process on the party making the application and stating, so far as is known to the deponent, the name and the usual or last known address or place of business of the person against whom judgment was given;

(*d*) stating to the best of the information or belief of the deponent—

(i) the grounds on which the right to enforce the judgment is vested in the party making the application;

(ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or the part or amount in respect of which it remains unsatisfied.

(2) Where the party making the application does not produce the documents referred to in paragraphs (1)(*a*)(ii) and (iii) of this rule, the Court may—

(*a*) fix time within which the documents are to be produced; or

(*b*) accept equivalent documents; or

(*c*) dispense with production of the documents.

[*E.r.* 28]

Security for costs

26. Notwithstanding the provisions of Order 23 a party making an application for registration under section 4 of the Act of 1982 shall not be required solely on the ground that he is not domiciled or resident within the jurisdiction, to give security for costs of the application.

[*E.r.* 29]

Order for registration

27.—(1) An order giving leave to register a judgment under section 4 of the Act of 1982 shall state the period within which an appeal may be made against the order for registration and shall contain a notification that no application to enforce the judgment shall be made until after the expiration of that period.

(2) The notification referred to in paragraph (1) shall not prevent any application for protective measures pending final determination of any issue relating to enforcement of the judgment.

[*E.r.* 30]

Register of judgments registered under s. 4 of the Act of 1982

28. There shall be kept in the Central Office under the direction of the Master (Queen's Bench and Appeals) a register of the judgments ordered to be registered under section 4 of the Act of 1982.

[*E.r.* 31]

Notice of registration

29.—(1) Notice of the registration of a judgment must be served on the person against whom judgment was given by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the Court may direct.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11 rules 5, 6 and 8, shall apply in relation to such a notice as they apply in relation to a writ.

(3) The notice of registration must state—

(*a*) full particulars of the judgment registered and the order for registration,

(*b*) the name of the party making the application and his address for service within the jurisdiction,

(*c*) the right of the person against whom judgment was given to appeal against the order for registration, and

(*d*) the period within which an appeal against the order for registration may be made.

[*E.r.* 32]

Appeals

30.—(1) An appeal under Article 37 or Article 40 of Schedule 1 [(**a**) or under Article 37 or Article 40 of Schedule 3C] to the Act of 1982 must be made by summons to a judge.

(2) A summons in an appeal to which this rule applies must be served—

(*a*) in the case of an appeal under the said Article 37 of Schedule 1 [(**a**) or under the said Article 37 of Schedule 3C], within one month of service of notice of registration of the judgment, or two months of service of such notice where that notice was served on a party not domiciled within the jurisdiction;

(*b*) in the case of an appeal under the said Article 40 of Schedule 1 [(**a**) or under the said Article 40 of Schedule 3C], within one month of the determination of the application under rule 24.

(3) If the party against whom judgment was given is not domiciled in a Convention territory and an application is made within two months of service of notice of registration, the Court may extend the period within which an appeal may be made against the order for registration.

[*E.r.* 33]

Application for recognition

31.—(1) Registration of the judgment under these rules shall serve for the purposes of the second paragraph of Article 26 of Schedule 1 [(**a**) or Article 26 of Schedule 3C] to the Act of 1982 as a decision that the judgment is recognised.

(2) Where it is sought to apply for recognition of a judgment, the foregoing rules of this Order shall apply to such application as they apply to an application for registration under section 4 of the Act, with the exception that the applicant shall not be required to produce a document or documents which establish that according to the law of the State in which it has been given the judgment is enforceable and has been served, or the document referred to in rule 25(1)(a)(iii).

[*E.r.* 35]

Enforcement of High Court Judgments in other Contracting States

32.—(1) An application under section 12 of the Act of 1982 for a certified copy of a judgment entered in the High Court must be ex parte on affidavit to the Court.

(2) An affidavit by which an application under section 12 of the Act of 1982 is made must—

(**a**) Words inserted by S.R. 1993 No. 143 with effect from 19.04.93

(*a*) give particulars of the proceedings in which the judgment was obtained;

(*b*) have annexed to it a copy of the writ, originating summons or other process by which the proceedings were begun, the evidence of service thereof on the defendant copies of the pleadings, if any, and a statement of the grounds on which the judgment was based together, where appropriate, with any document under which the applicant is entitled to legal aid or assistance by way of representation for the purposes of the proceedings;

(*c*) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;

(*d*) show that the judgment has been served in accordance with Order 65 rule 5 and is not subject to any stay of enforcement;

(*e*) state that the time for appealing has expired, or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been given; and

(*f*) state—

(i) whether the judgment provides for the payment of a sum or sums of money;

(ii) whether interest is recoverable on the judgment or part thereof and if such be the case, the rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue.

(3) The certified copy of the judgment shall be an office copy sealed with the seal of the Court of Judicature and there shall be issued with the copy of the judgment a certificate in Form 63, signed by one of the persons referred to in Order 1 rule 3(2) and sealed with the seal of the Court of Judicature,, having annexed to it a copy of the writ, originating summons or other process by which the proceedings were begun.

[*E.r.* 36]

Enforcement of United Kingdom judgments in other parts of the United Kingdom: money provisions

33.—(1) An application for registration in the High Court of a certificate in respect of any money provisions contained in a judgment given in another part of the United Kingdom to which section 18 of the Act of 1982 applies may be made by producing at the Central Office, within six months from the date of its issue, a certificate in the appropriate form prescribed under that Act together with a copy thereof certified by the applicant's solicitor to be a true copy.

(2) A certificate under paragraph (1) must be filed in the Central Office and the certified copy thereof, sealed by an officer of the office in which the certificate is filed, shall be returned to the applicant's solicitor.

(3) A certificate in respect of any money provisions contained in a judgment of the High Court to which section 18 of the Act of 1982 applies may be obtained by producing the form of certificate prescribed in form 64 at the office in which the judgment is entered, together with an affidavit made by the party entitled to enforce the judgment—

(*a*) giving particulars of the judgment, stating the sum or aggregate of the sums (including any costs or expenses) payable and unsatisfied under the money provisions contained in the judgment, the rate of interest, if any, payable thereon and the date or time from which any such interest began to accrue;

(*b*) verifying that the time for appealing against the judgment has expired, or that any appeal brought has been finally disposed of and that enforcement of the judgment is not stayed or suspended; and

(*c*) stating to the best of the information or belief of the deponent the usual or last known address of the party entitled to enforce the judgment and of the party against whom the judgment is enforceable.

[*E.r.* 37]

Enforcement of United Kingdom judgments in other parts of the United Kingdom non-money provisions

34.—(1) An application for registration in the High Court of a judgment which contains non-money provisions, being a judgment given in another part of the United Kingdom to which section 18 of the Act of 1982 applies, may be made ex parte, but the court hearing the application may direct the issue of a summons to which paragraphs (2) and (3) of rule 2 shall apply.

(2) An application under paragraph (1) must be accompanied by a certified copy of the judgment issued under Schedule 7 to the Act of 1982 and a certificate which complies with the requirements of paragraphs 3 and 4 of that Schedule issued not more than six months before the date of application.

(3) Rules 27 and 29 of this Order shall apply to judgments registered under Schedule 7 to the Act of 1982 as they apply to judgments registered under section 4 of that Act.

(4) Paragraphs (1) and (2) of rule 8 shall apply to applications to set aside registration of a judgment under Schedule 7 to the Act of 1982 as they apply to judgments registered under the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933.

(5) A certified copy of a judgment of the High Court to which section 18 of the Act of 1982 applies and which contains any non-money provision may be obtained by an ex parte application on affidavit to the Court.

(6) The requirements in paragraph (3) of rule 33 shall apply with the necessary modifications to an affidavit made in application under paragraph (5) of this rule.

(7) A certified copy of a judgment shall be an office copy sealed with the seal of the Court of Judicature to which shall be annexed a certificate in Form 65.

[*E.r.* 38]

Register of United Kingdom judgments

35. There shall be kept in the Central Office under the direction of the Master (Queen's Bench and Appeals) a register of the certificates in respect of judgments and of the judgments ordered to be registered in the Central Office under Schedule 6, as the case may be, Schedule 7 to the Act.

[*E.r.* 39]

[(a) IIIA RECIPRICOL ENFORCEMENT OF JUDGMENTS: THE JUDGMENTS REGULATION

Application and interpretation

35A.—(1) In this Part of this Order, unless the context otherwise requires—

(a) "the Judgments Regulation" means Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), as amended from time to time and as applied pursuant to the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

(**a**) Part IIIA inserted by S.R. 2015 No. 235 with effect from 19.05.15

(b) an article referred to by number means an article of the Judgments Regulation;

(c) "application under the Judgments Regulation" includes:

(i) an application under article 36(2) for a decision that there are no grounds for refusal of recognition;

(ii) an application under article 45(1) for refusal of recognition;

(iii) an application under article 46 for refusal of enforcement;

(iv) an application for the adaptation of a judgment or a challenge to the adaptation of a judgment pursuant to article 54;

(d) "article 53 certificate" means a certificate issued pursuant to article 53 in the form annexed to the Judgments Regulation in Annex I;

(e) "Enforcement of Judgments Office" means the office maintained by the Department of Justice under Article 7 of the Judgments Enforcement (Northern Ireland) Order 1981; and

(f) "judgment" has the meaning given by article 2 of the Judgments Regulation.

(2) For the purposes of this Part of this Order, domicile shall be determined in accordance with paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001.

Assignment of business and exercise of powers

35B. The jurisdiction of the High Court under the Judgments Regulation shall be assigned to the Queen's Bench Division and the powers conferred on the Court by the Regulation may be dealt with by a judge in chambers or by a master.

Applications under the Judgments Regulation

35C.—(1) An application under the Judgments Regulation shall be brought by originating summons in Form 7 unless made in pending proceedings, in which case it shall be made by summons in the proceedings.

(2) A summons under this rule shall be supported by an affidavit—

(a) exhibiting—

(i) the judgment or a verified or certified or otherwise authenticated copy of it;

(ii) any other documents relied upon;

(iii) where the judgment or document is not in English, a translation thereof into English certified by a notary public or a person qualified for the purpose in one of the Member States or authenticated by witness statement or affidavit;

(b) stating to the best of the information or belief of the deponent—

(i) the grounds on which the right to make the application is vested in the applicant;

(ii) as the case may require, either that, at the date of the application, the judgment has not been satisfied or the part or amount in respect of which it remains unsatisfied.

(3) Unless the Court orders otherwise, the applicant must, as soon as is practicable, serve a copy of any order made in an application under the Judgments Regulation, or in any appeal from a decision made in an application under the Judgments Regulation, on—

(a) all other parties to the proceedings and any other person affected by the proceedings; and

(b) where enforcement of the judgment is pending—

(i) by the Enforcement of Judgments Office, that Office; or

(ii) in any other court in Northern Ireland, that court.

Appeals

35D.—(1) Subject to paragraphs (2) to (4), Part II of Order 55 shall apply with necessary modifications to an appeal from a decision made in an application under the Judgments Regulation.

(2) An appeal must be made by summons to a judge.

(3) A summons in an appeal must be served within one month of service of the order under rule 35C(3) or two months of service of such order where that order was served on a party not domiciled in the jurisdiction.

(4) If the party against whom judgment was given is not domiciled in a Member State and an application is made within two months of service of the order under rule 35C(3), the Court may extend the period within which an appeal may be made.

Enforcement of High Court judgments in other Member States

35E.—(1) A person entitled to enforce a judgment entered in the High Court who wishes to enforce the judgment in another Member State shall apply ex parte to the Court for—

(a) a certified copy of the judgment; and

(b) an article 53 certificate in respect of the judgment.

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

(a) give particulars of the proceedings in which the judgment was obtained;

(b) have annexed to it a copy of the writ, originating summons or other process by which the proceedings were begun, the evidence of service thereof on the defendant, a copy of the pleadings, if any, and a statement of the grounds on which the judgment was based together, where appropriate, with any document under which the applicant is entitled to legal aid or assistance by way of representation for the purposes of the proceedings;

(c) state whether the defendant did or did not object to the jurisdiction, and if so, on what grounds;

(d) show that the judgment has been served in accordance with Order 65, rule 5 and is not subject to any stay of enforcement;

(e) state that the time for appealing has expired, or, as the case may be, the date on which it will expire and, in either case, whether notice of appeal against the judgment has been given; and

(f) state—

(i) whether the judgment provides for the payment of a sum of money;

(ii) whether interest is recoverable on the judgment or part thereof and if so, the rate of interest, the date from which interest is recoverable and the date on which interest ceases to accrue;

and shall be accompanied by a draft of the article 53 certificate being sought.

(3) The certified copy of the judgment shall be an office copy sealed with the seal of the Court and signed by the master and there shall be issued with the copy of the judgment a certified copy of any order which has varied any of the terms of the original order.

Authentic instruments and court settlements

35F. This Part of this Order shall apply to an authentic instrument to which article 58 applies and a court settlement to which article 59 applies as it applies to a judgment, subject to any necessary modifications.

ORDER 71

References under the Civil Jurisdiction and Judgments Order 2001

35G. This Part of this Order shall apply, with necessary modifications, to references to the Court under paragraph 2A(5) of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001.]

[(a) IV. EUROPEAN ORDER FOR PAYMENT PROCEDURE

Application and interpretation

36.—(1) This Part of this Order applies to applications for European orders for payment and other related proceedings under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

(2) In this Part—

(a) "EOP Regulation" means Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure(b);

(a) Part IV inserted by S.R. 2009 No. 230 with effect from 07.09.09
(b) OJ No. L 399, 30.12.2006, p.1

(b) "court of origin" has the meaning given by Article 5(4) of the EOP Regulation;

(c) "EOP" means a European order for payment;

(d) "EOP application" means an application for an EOP;

(e) "Form A" means the Application for a European Order for Payment Form A, annexed to the EOP Regulation at Annex I;

(f) "European order for payment" means an order for payment made by a court under Article 12(1) of the EOP Regulation;

(g) "Member State" has the meaning given by Article 2(3) of the EOP Regulation;

(h) "Member State of origin" has the meaning given by Article 5(1) of the EOP Regulation;

(i) "statement of opposition" means a statement of opposition filed in accordance with Article 16 of the EOP Regulation.

Translations

37. Except where the EOP Regulation makes different provision about the certification or verification of translations required by this Part, such translation must be accompanied by a statement by the person making it that it is a correct translation. The statement must include that person's name, address and qualifications for making the translation.

Assignment of business and exercise of powers

38. Any applications to the High Court under the EOP Regulation shall be assigned to the Queen's Bench Division and the powers conferred on the Court by that Regulation may be dealt with by a judge in chambers or by a master.

Application for a European Order for Payment

39.—(1) An EOP application in Form A shall be made ex parte.

(2) Form A must be—

(a) completed in English or accompanied by a translation into English; and

(b) lodged in person or by post.

(3) Documents other than Form A that are lodged or sent to the Court in EOP proceedings, including statements of opposition, may be lodged, in addition to by post or in person, by—

(a) fax; or

(b) other electronic means where the facilities are available.

Withdrawal of EOP application

40.—(1) At any stage before a statement of opposition is lodged, the claimant may notify the Court that the claimant no longer wishes to proceed with the claim.

(2) Where the claimant notifies the Court in accordance with paragraph (1)—

(a) the Court shall notify the defendant that the application has been withdrawn; and

(b) no order as to costs will be made.

Transfer of proceedings where an EOP application has been opposed

41.—(1) Where the defendant lodges a statement of opposition to an EOP in accordance with Article 16 of the EOP Regulation and the claimant has not opposed the transfer of the matter—

(a) the proceedings shall continue as if they had begun by way of writ under these Rules;

(b) the defendant's statement of opposition shall be treated as a memorandum of appearance under Order 12; and

(c) these Rules shall apply with necessary modifications and subject to this rule and rule 42.

(2) The Court must notify the claimant in accordance with Article 17(3) of the EOP Regulation within 21 days after the statement of opposition was lodged.

(3) When the Court notifies the claimant under paragraph 2, it must also

(a) notify the claimant—

(i) that the EOP application in Form A is now treated as a writ; and

(ii) of the time within which the defendant must issue a defence under rule 42; and

(b) notify the defendant—

(i) that the application has been transferred under Article 17 of the EOP Regulation;

(ii) that the EOP application in Form A is now treated as a writ; and

(iii) of the time within which a defence is required under rule 42.

Defence

42. The defendant must lodge a defence before the expiration of 30 days after the date of the notice issued by the Court under rule 41(2)(b).

Review in exceptional cases

43.—(1) An application under Article 20 of the EOP Regulation must be made by originating summons and supported by an affidavit verifying the facts on which the application is based.

(2) The originating summons shall be in Form 7 and no appearance need be entered to it.

Register of European Orders for Payment

44. There shall be kept in the Central Office under the direction of the Master (Queen's Bench and Appeals) a register of EOPs made by the Court.]

[(**a**) V. MEDIATION DIRECTIVE

Application and interpretation

45.—(1) This Part of this Order applies to mediated cross-border disputes that are subject to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters(**b**).

(2) In this Part—

(**a**) New Rules 45-50 inserted by S.R. 2011 No. 62 with effect from 25.03.11
(**b**) OJ No. L136, 24.05.2008

(a) "Mediation Directive" means Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters;

(b) "cross-border dispute" has the meaning given by article 2 of the Mediation Directive;

(c) "mediation" has the meaning given by article 3(a) of the Mediation Directive;

(d) "mediation administrator" means a person involved in the administration of the mediation process;

(e) "mediation evidence" means evidence arising out of or in connection with a mediation process;

(f) "mediation settlement" means the content of a written agreement resulting from mediation of a relevant dispute;

(g) "mediation settlement agreement" means a written agreement resulting from mediation of a relevant dispute;

(h) "mediation settlement enforcement order" means an order made under rule 47(6);

(i) "mediator" has the meaning given by article 3(b) of the Mediation Directive; and

(j) "relevant dispute" means a cross-border dispute that is subject to the Mediation Directive.

Assignment of business and exercise of powers

46. Any applications to the High Court under the Mediation Directive shall be assigned to the Queen's Bench Division and the powers conferred on the Court by that Directive may be dealt with by a judge in chambers or by a master.

Mediation settlement enforcement orders

47.—(1) Where the parties, or one of them with the explicit consent of the others, wish to apply for a mediation settlement to be made enforceable, the parties or party may apply by way of originating summons.

(2) An originating summons under this rule may be issued without naming a defendant and no appearance need be entered.

(3) An application shall be made ex parte and supported by an affidavit exhibiting the mediation settlement agreement.

(4) Except to the extent that paragraph (8) applies, the parties shall lodge any evidence of explicit consent to the application under paragraph (1) when the parties lodge the application.

(5) A copy of the summons, mediation settlement agreement and, if applicable, evidence of explicit consent shall be served on all parties to the mediation settlement agreement who are not also parties to the application.

(6) Subject to paragraph (7), where an application is made under paragraph (1), the Court will make an order making the mediation settlement enforceable.

(7) The Court will not make an order under paragraph (6) unless the Court has evidence that each of the parties to the mediation settlement agreement has given explicit consent to the application for the order.

(8) Where a party to the mediation settlement agreement—

(a) has agreed in the mediation settlement agreement that a mediation settlement enforcement order should be made in respect of that mediation settlement;

(b) is a party to the application under paragraph (1); or

(c) has written to the Court consenting to the application for the mediation settlement enforcement order,

that party is deemed to have given explicit consent to the application for the mediation settlement enforcement order.

(9) An application under paragraph (1) will be dealt with without a hearing, unless the Court otherwise directs.

(10) Where the application is supported by evidence of explicit consent to the application by a party to the mediation settlement agreement, the evidence shall be in English or accompanied by a translation into English.

(11) Where a party to the mediation settlement agreement writes to the Court consenting to the making of the mediation settlement enforcement order, the correspondence shall be in English or accompanied by a translation into English.

(12) Where the parties to pending proceedings agree to apply for a mediation settlement enforcement order, they shall inform the Court immediately.

Mediation settlement enforcement orders: foreign currency

48. Where a person applies to enforce a mediation settlement enforcement order which is expressed in a foreign currency, the application shall contain a certificate of the sterling equivalent of the sum remaining due under the order at the close of business on the day before the date of the application.

Mediation evidence: disclosure or inspection

49.—(1) Where a person seeks disclosure or inspection of mediation evidence that is in the control of a mediator or mediation administrator, that person shall apply by way of originating summons.

(2) Where an application is made under paragraph (1), the mediator or mediation administrator who has control of the mediation evidence shall be named as a respondent to the application and shall be served with a copy of the summons.

(3) Evidence in support of the application under paragraph (1) shall include evidence that—

(a) all parties to the mediation agree to the disclosure or inspection of the mediation evidence;

(b) disclosure or inspection of the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or

(c) disclosure or inspection of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.

(4) Where this rule applies, Orders 24, 38 and 39 shall apply to the extent they are consistent with this rule.

Mediation evidence: witnesses and depositions

50.—(1) This rule applies where a party wishes to obtain mediation evidence from a mediator or mediation administrator by—

(a) a witness summons;

(b) cross-examination with permission of the court under Order 38, rule 2(3) or rule 19;

(c) an order under Order 39, rule 1 (power to order depositions to be taken);

(d) an order under Order 39, rule 3 (order for the issue of a letter of request); or

(e) an order under Order 39, rule 4 (enforcing attendance of witness at examination).

(2) When applying for a witness summons, permission under Order 38, rule 2(3) or rule 19, or an order under Order 39, rule 1, 3 or 4, the party shall provide the Court with evidence that—

(a) all parties to the mediation agree to the obtaining of the mediation evidence;

(b) obtaining the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or

(c) the disclosure or inspection of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.

(3) When considering a request for a witness summons, permission under Order 38, rule 2(3) or rule 19, or an order under Order 39, rule 1, 3 or 4, the Court may invite any person, whether or not a party, to make representations.

(4) Where this rule applies, Orders 24, 38 and 39 shall apply to the extent they are consistent with this rule.]

[(a) ORDER 72

COMMERCIAL ACTIONS

Application and interpretation

1.—(1) [(b) Subject to rule 10, this Order] applies to commercial actions in the Queen's Bench Division, and the other provisions of these Rules apply to those actions subject to the provisions of this Order.

(2) In this Order "commercial actions" shall include any cause relating to business or commercial transactions and, without prejudice to the generality of the foregoing words, any cause relating to contracts for works of building or engineering construction, contracts of engagement of architects, engineers or quantity surveyors, the sale of goods, insurance, banking, the export or import of merchandise, shipping and other mercantile matters, agency, bailment, carriage of goods and such other causes as the Commercial Judge may think fit to enter in the Commercial List.

Commercial List and Commercial Judge

2.—(1) There shall be a list which shall be called "The Commercial List", and the Commercial List shall consist of such commercial actions as the Commercial Judge shall direct to be entered in that list, having regard to the amounts involved or the issues concerned in those actions.

(2) The Lord Chief Justice shall nominate one of the Judges of the High Court to be the Commercial Judge.

(3) The Commercial Judge shall be in charge of the arrangements for the listing and disposal of all actions listed in the Commercial List and of all interlocutory applications therein. One of the officers serving in the Court of Judicature shall act as Registrar of the Commercial List, and shall be concerned with the carrying out of such arrangements.

Commencement of proceedings in a commercial action

3.—(1) On the commencement of proceedings in a commercial action the plaintiff's solicitor [(c) shall] request the Registrar in charge of the Commercial List to have the action entered in the Commercial List.

(2) Any party to a commercial action may at any stage of the proceedings request the Registrar to have the action entered in the Commercial List.

(3) The Registrar shall refer any such request to the Commercial Judge for his decision.

(4) The Commercial Judge may if he thinks fit remove any action from the Commercial List.

Pleadings to be furnished to Registrar

4. A copy of every pleading, including notices for particulars and replies thereto, and of interrogatories and replies thereto and lists of documents, served by any party to an action in the Commercial List, shall be furnished to the Registrar not later than two days after service thereof upon the other party or parties to the action.

Interlocutory application

5. Unless the Commercial Judge shall otherwise direct, either generally or in a specific case, all interlocutory applications in actions in the Commercial List shall be made to him.

(a) Order inserted by S.R. 1992 No. 313 with effect from 01.09.92
(b) Words substituted by S.R. 2009 No. 230 with effect from 07.09.09
(c) Words substituted by S.R. 2006 No. 486 with effect from 08.01.07

ORDER 72

Directions as to conduct of action

6.—(1) As soon as practicable after the close of pleadings in an action in the Commercial List the Registrar shall refer it to the Commercial Judge for directions as to the conduct of the action. The Commercial Judge may give such directions without hearing the parties, or may receive written proposals for directions, or may hear the parties, as he may think fit.

(2) Any party may at any stage of the action apply to the Commercial Judge for directions as to the conduct-of the action, and the Commercial Judge may receive written proposals or hear the parties, as he may think fit.

Dates for the hearing of actions

7. Dates for the hearing of actions in the Commercial List shall be fixed in advance by the Registrar in consultation with the Commercial Judge. The Commercial Judge may if he thinks fit hear the parties or receive written proposals before fixing or altering a date for hearing. Any party may apply at any stage for a date for hearing to be fixed, whether or not the pleadings have been closed.

Hearings by judges other than the Commercial Judge

8.—(1) Any interlocutory application in an action in the Commercial List may be heard by any judge or by any master if the Commercial Judge requests him to hear it.

(2) Any action in the Commercial List may be heard by any judge if the Commercial Judge requests him to hear it.

(3) At the request of the Lord Chief Justice any judge may at any time exercise the powers of the Commercial Judge.]

[(a) *Disclosure of expert evidence*

9.—(1) Where a party to a commercial action proposes to adduce expert evidence at the trial he shall disclose it to the other party or parties at the time and in the manner that the Commercial Judge shall direct.

(2) When a party discloses any evidence to the other party in accordance with paragraph (1), he shall furnish a copy thereof to the Registrar as soon as possible and not later than two days after such disclosure.

(3) Where any party fails to comply with any of the directions as to disclosure given by the Commercial Judge, the Court may stay the action or strike out that party's defence, as the case may be, or make such other order as to the Court may seem meet.

(4) Subject to any directions which may be given by the Commercial Judge, any party disclosing expert evidence under this rule shall do so by furnishing any relevant expert's report or reports together with any documents emanating from the maker thereof which are intended by him to accompany or supplement any such report. All such reports or other documents shall be signed and dated by the maker thereof and shall specify his professional qualifications. A photocopy of any such report or document shall be sufficient for this purpose.

(5) On the ex parte application of any party bound to disclose any expert evidence under this Order the Court may give him leave—

(a) to adduce at the trial the evidence contained in any report without disclosing the report; or

(b) to omit or amend any part of any evidence when disclosing the report.

(a) Rule 9 inserted by S.R. 1995 No. 462 with effect from 09.01.96

(6) Unless the Court otherwise orders, where a party who has disclosed expert evidence as aforesaid calls as a witness at the trial the expert who furnished the evidence to him—

(*a*) that party may not without the consent of the other parties or the leave of the Court lead evidence from that witness the substance of which is not included in the evidence served, except in relation to new matters which have arisen in the course of the trial;

(*b*) the Court may, on such terms as it thinks fit, direct that the evidence disclosed, or part thereof, shall stand as the evidence in chief of the witness or part of such evidence;

(*c*) whether or not the expert evidence disclosed or any part thereof is referred to during the evidence in chief of the witness, any party may put that expert evidence or any part thereof in cross-examination of that witness.

(7) For the purposes of this rule "expert evidence" means the evidence contained in any report or other accompanying or supplemental document as specified in paragraph (4) and includes any ancillary technical evidence.]

[(**a**) *Proceedings in the Chancery Division*

10. A judge dealing with any aspect of an action pending in the Chancery Division, who deems the action similar in character to an action which might have been entered in the Commercial List of the Queen's Bench Division, shall have all the powers of the Commercial Judge in respect of that action.]

(**a**) Rule 10 inserted by S.R. 2009 No. 230 with effect from 07.09.09

[(a) ORDER 73

APPLICATIONS RELATING TO ARBITRATION

Introduction

This Order is divided into three Parts. Part I is concerned with applications to the Court relating to arbitration to which Part I of the Arbitration Act 1996 applies. Part II restates with some necessary adjustments provisions of the existing Order which are to be preserved. Part III is concerned with applications for enforcement under the earlier Arbitration Acts and under the 1996 Act.

The application of the Order to particular proceedings may be determined by reference to the following table. Column 1 shows the date on which arbitral proceedings (if any) were commenced. Column 2 shows the date of the application to the Court. Column 3 shows the appropriate Part of the Order for the application.

Column 1 *Date of arbitral proceedings*	Column 2 *Date of application to the Court*	Column 3 *Appropriate Part of Order 73*
not commenced	before 31st January 1997	Part II
before 31st January 1997	before 31st January 1997	Part II
not commenced	on or after 31st January 1997	Part I
before 31st January 1997	on or after 31st January 1997	Part II
on or after 31st January 1997	on or after 31st January 1997	Part I
on or after 31st January 1997	before 31st January 1997	Part II

The other provisions of these Rules apply to applications relating to arbitration subject to the provisions of this Order and only to the extent that they do not conflict with it.

See, for example, the following provisions of these Rules for the following matters—

Order 10 — service of originating process
Order 12 — entry of appearance
Order 29 — injunctions
Order 32 — proceedings in chambers
Order 41 — affidavits
Order 65 — service of documents.

(a) Order 73 substituted by S.R. 1997 No. 70 with effect from 17.03.97

ORDER 73

PART I

The overriding objective

1. This part of this Order is founded on the general principles in section 1 of the Arbitration Act and shall be construed accordingly.

Meaning of arbitration application

2.—(1) Subject to paragraph (2), "arbitration application" means the following—

(a) an application to the Court under the Arbitration Act;

(b) proceedings to determine—

(i) whether there is a valid arbitration agreement;

(ii) whether an arbitral tribunal is properly constituted;

(iii) what matters have been submitted to arbitration in accordance with an arbitration agreement;

(c) proceedings to declare than an award made by an arbitral tribunal is not binding on a party;

(d) any other application affecting arbitration proceedings (whether instituted or anticipated) or to construe or affecting an arbitration agreement,

and includes the originating process by which an arbitration application is begun.

(2) In this Part of this Order, an arbitration application does not include proceedings to enforce an award—

(a) to which Part III of this Order applies; or

(b) by an action on the award.

Interpretation

3. In this Part—

"applicant" means the party making an arbitration application and references to respondent shall be construed accordingly;

"the Arbitration Act" means the Arbitration Act 1996 and any expressions used in this Order and in Part I of the Arbitration Act have the same meanings in this Order as they have in that Part of the Arbitration Act.

Form and content of arbitration application

4.—(1) An arbitration application must be in Form No. 8A in Appendix A.

(2) Every arbitration application must—

(a) include a concise statement of—

(i) the remedy or relief claimed, and

(ii) (where appropriate) the questions on which the applicant seeks the determination or direction of the Court;

(b) give details of any arbitration award that is challenged by the applicant, showing the grounds for any such challenge;

(c) where the applicant claims an order for costs, identify the respondent against whom the claim is made;

(d) (where appropriate) specify the section of the Arbitration Act under which the application is brought; and

(e) show that any statutory requirements have been satisfied including those set out, by way of example, in the Table below.

Application made	*Statutory requirements*
section 9 (stay of legal proceedings)	see section 9(3)
section 12 (extensions of time for beginning arbitral proceedings)	see section 12(2)
section 18 (failure of appointment procedure)	see section 18(2)
section 21 (umpires)	see section 21(5)
section 24 (removal of arbitrators)	see section 24(2)
section 32 (preliminary point of jurisdiction)	see section 32(3)
section 42 (enforcement of peremptory orders)	see section 42(3)
section 44 (powers in support of arbitral proceedings)	see section 44(4), (5)
section 45 (preliminary point of law)	see section 45(3)
section 50 (extension of time for making award)	see section 50(2)
section 56 (power to withhold award)	see section 56(4)
sections 67, 68 (challenging the award)	see section 70(2), (3)
section 69 (appeal on point of law)	see sections 69(2), (4), 70(2), (3)
section 77 (service of documents)	see section 77(3)

(3) The arbitration application must also state—

(a) whether it is made ex parte or on notice and, if made on notice, must give the names and addresses of the persons to whom notice is to be given, stating their role in the arbitration and whether they are made respondents to the application;

(b) whether (having regard to rule 15) the application will be heard in open Court or in chambers; and

(c) the date and time when the application will be heard or that such date has not yet been fixed.

(4) Every arbitration application which is used as an originating process shall be indorsed with the applicant's address for service in accordance with Order 6, rule 4.

Assignment of arbitration proceedings among Divisions of High Court

5. An arbitration application or appeal to the High Court under the Arbitration Act, other than an application under section 9 or 10 of that Act or Part II of the Arbitration Act 1950 made in proceedings assigned to the Chancery Division, shall be assigned to the Queen's Bench Division.

Stay of legal proceedings

6.—(1) An application under section 9 of the Arbitration Act to stay legal proceedings shall be served—

(a) in accordance with Order 65, rule 5, on the party bringing the relevant legal proceedings and on any other party to those proceedings who has given an address for service; and

(b) on any party to those legal proceedings who has not given an address for service, by sending to him (whether or not he is within the jurisdiction) at his last known address or at a place where it is likely to come to his attention, a copy of the application for his information.

(2) Where a question arises as to whether an arbitration agreement has been concluded or as to whether the dispute which is the subject matter of the proceedings falls within the terms of such an agreement, the Court may determine that question or give directions for its determination, in which case it may order the proceedings to be stayed pending the determination of that question.

Service of arbitration application

7.—(1) Subject to paragraphs (2) and (4) below and to rules 6(1) and 8, an arbitration application shall be served in accordance with Order 10.

(2) Where the Court is satisfied on an *ex parte* application that—

(a) arbitral proceedings are taking place, or an arbitration award has been made, within the jurisdiction; and

(b) an arbitration application is being made in connection with those arbitral proceedings or being brought to challenge the award or to appeal on a question of law arising out of the award; and

(c) the respondent to the arbitration application (not being an individual residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction)—

(i) is or was represented in the arbitral proceedings by a solicitor or other agent within the jurisdiction or any other EEA state who was authorised to receive service of any notice or other document served for the purposes of those proceedings; and

(ii) has not (at the time when the arbitration application is made) determined the authority of that solicitor or agent,

the Court may order service of the arbitration application to be effected on the solicitor or agent instead of the respondent.

(3) An order made under paragraph (2) must limit a time within which the respondent must enter an appearance and a copy of the order and of the arbitration application must be sent by post to the respondent at his address out of the jurisdiction.

(4) Where an arbitration application has been issued, any subsequent arbitration application made by the respondent and arising out of the same arbitration or arbitration agreement may be served on the applicant in accordance with Order 65, rule 5 (ordinary service: how effected) and similarly any subsequent arbitration application by any party may be served at the address for service given in the first arbitration application or in the memorandum of appearance.

(5) For the purposes of service, an arbitration application is valid in the first instance—

(a) where service is to be effected out of the jurisdiction, for such period as the Court may fix;

(b) in any other case, for one month, beginning with the date of its issue.

Service out of the jurisdiction

8.—(1) Service out of the jurisdiction of an arbitration application is permissible with the leave of the Court if the arbitration application falls into one of the categories mentioned in the following table and satisfies the conditions specified.

Nature of application	*Conditions to be satisfied*
1. The applicant seeks to challenge, or to appeal to the Court on a question of law arising out of, an arbitration award.	Award must have been made in Northern Ireland. Section 53 of the Arbitration Act shall apply for determining the place where award is treated as made.
2. The application is for an order under section 44 of the Arbitration Act (Court powers exercisable in support of arbitral proceedings). Where the application is for interim relief in support of arbitral proceedings which are taking (or will take) place outside Northern Ireland, the Court may give leave for service out of the jurisdiction notwithstanding that no other relief is sought.	None.
3. The applicant seeks some other remedy or relief, or requires a question to be determined by the Court, affecting an arbitration (whether pending or anticipated), an arbitration agreement or an arbitration award.	The seat of the arbitration is or will be in Northern Ireland or the conditions in section 2(4) of the Arbitration Act are satisfied.

(2) An application for the grant of leave under this rule must be supported by an affidavit—

(a) stating the grounds on which the application is made; and

(b) showing in what place or country the person to be served is, or probably may be found,

and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.

(3) Order 11, rules 5 to 8 shall apply to the service of an arbitration application under this rule as they apply to the service of a writ.

(4) Service out of the jurisdiction of any order made on an arbitration application is permissible with the leave of the Court.

Affidavit in support of arbitration application

9.—(1) The applicant shall file an affidavit in support of the arbitration application which sets out the evidence on which he intends to rely and a copy of every affidavit so filed must be served with the arbitration application.

(2) Where an arbitration application is made with the written agreement of all the other parties to the arbitral proceedings or with the permission of the arbitral tribunal, the affidavit in support must—

(a) give details of the agreement or, as the case may be, permission; and

(b) exhibit copies of any document which evidences that agreement or permission.

Requirements as to notice

10.—(1) Where the Arbitration Act requires that an application to the Court is to be made upon notice to other parties notice shall be given by making those parties

respondents to the application and serving on them the arbitration application and any affidavit in support.

(2) Where an arbitration application is made under section 24, 28 or 56 of the Arbitration Act, the arbitrators or, in the case of an application under section 24, the arbitrator concerned shall be made respondents to the application and notice shall be given by serving on them the arbitration application and any affidavit in support.

(3) In cases where paragraph (2) does not apply, an applicant shall be taken as having complied with any requirement to give notice to the arbitrator if he sends a copy of the arbitration application to the arbitrator for his information at his last known address with a copy of any affidavit in support.

(4) This rule does not apply to applications under section 9 of the Arbitration Act to stay legal proceedings.

Memorandum of appearance by respondent

11.—(1) Service of an arbitration application may be acknowledged by completing a memorandum of appearance in Form No. 12A in Appendix A in accordance with Order 12 (as that Order applies by virtue of rule 9 of that Order).

(2) A respondent who—

(a) fails to enter an appearance within the time limited for so doing; or

(b) having indicated on his memorandum of appearance that he does not intend to contest the arbitration application, then wishes to do so, shall not be entitled to contest the application without the leave of the Court.

(3) The Court will not give notice of the date on which an arbitration application will be heard to a respondent who has failed to enter an appearance.

(4) The failure of a respondent to give notice of intention to contest the arbitration application or to enter an appearance shall not affect the applicant's duty to satisfy the Court that the order applied for should be made.

(5) This rule does not apply to—

(a) applications under section 9 of the Arbitration Act to stay legal proceedings; or

(b) subsequent arbitration applications.

Entry of Appearance by arbitrator

12.—(1) An arbitrator who is sent a copy of an arbitration application for his information may make—

(a) a request *ex parte* in writing to be made a respondent; or

(b) representations to the Court under this rule,

and, where an arbitrator is ordered to be made a respondent, he shall enter an appearance within 14 days of the making of that order.

(2) An arbitrator who wishes to make representations to the Court under this rule may file an affidavit or make representations in writing to the Court.

(3) The arbitrator shall as soon as is practicable send a copy of any document filed or made under paragraph (2) to all the parties to the arbitration application.

(4) Nothing in this rule shall require the Court to admit a document filed or made under paragraph (2) and the weight to be given to any such document shall be a matter for the Court.

Automatic directions

13.—(1) Unless the Court otherwise directs, the following directions shall take effect automatically.

(2) A respondent who wishes to put evidence before the Court in response to any affidavit filed in support of an arbitration application shall serve his affidavit on the applicant before the expiration of 21 days after the time limited for entering an appearance or, in a case where a respondent is not required to enter an appearance, within 21 days after service of the arbitration application.

(3) An applicant who wishes to put evidence before the Court in response to an affidavit lodged under paragraph (2) shall serve his affidavit on the respondent within 7 days after service of the respondent's affidavit.

(4) Where a date has not been fixed for the hearing of the arbitration application, the applicant shall, and the respondent may, not later than 14 days after the expiration of the time limit specified in paragraph (2), apply to the Court for such a date to be fixed.

(5) Agreed indexed and paginated bundles of all the evidence and other documents to be used at the hearing shall be prepared by the applicant (with the co-operation of the respondent).

(6) Not later than 5 clear days before the hearing date estimates for the length of the hearing shall be lodged with the Court together with a complete set of the documents to be used.

(7) Not later than 2 days before the hearing date the applicant shall lodge with the Court—

(a) a chronology of the relevant events cross-referenced to the bundle of documents;

(b) (where necessary) a list of the persons involved;

(c) a skeleton argument which lists succinctly—

(i) the issues which arise for decision,

(ii) the grounds of relief (or opposing relief) to be relied upon,

(iii) the submissions of fact to be made with the references to the evidence, and

(iv) the submissions of law with references to the relevant authorities,

and shall send a copy to the respondent.

(8) Not later than the day before the hearing date the respondent shall lodge with the Court a skeleton argument which lists succinctly—

(a) the issues which arise for decision,

(b) the grounds of relief (or opposing relief) to be relied upon,

(c) the submissions of fact to be made with the references to the evidence, and

(d) the submissions of law with references to the relevant authorities,

and shall send a copy to the applicant.

Directions by the Court

14.—(1) The Court may give such directions as to the conduct of the arbitration application as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(2) Where the Court considers that there is or may be a dispute as to fact and that the just, expeditious and economical disposal of the application can best be secured by hearing the application on oral evidence or mainly on oral evidence, it may, if it thinks fit, order that no further evidence shall be filed and that the application shall be heard on oral evidence or partly on oral evidence and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(3) The Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any directions which it could give in proceedings begun by writ.

(4) If the applicant makes default in complying with these rules or with any order or direction of the Court as to the conduct of the application, or if the Court is satisfied that the applicant is not prosecuting the application with due despatch, the Court may order the application to be dismissed or may make such other order as may be just.

(5) If the respondent fails to comply with these rules or with any order or direction given by the Court in relation to the evidence to be relied on, or the submissions to be made by that respondent, the Court may, if it thinks fit, hear and determine the application without having regard to that evidence or those submissions.

Hearing of applications: open Court or in chambers

15.—(1) The Court may order that any arbitration application be heard either in open court or in chambers.

(2) Subject to any order made under paragraph (1) and to paragraph (3), all arbitration applications shall be heard in chambers.

(3) Subject to any order made under paragraph (1), the determination of a preliminary point of law under section 45 of the Arbitration Act or an appeal under section 69 on a question of law arising out of an award shall be heard in open Court.

(4) Paragraph (3) shall not apply to—

(a) the preliminary question whether the Court is satisfied of the matters set out in section 45(2)(b); or

(b) an application for leave to appeal under section 69(2)(*b*).

Securing the attendance of witnesses

16.—(1) A party to arbitral proceedings being conducted in Northern Ireland who wishes to rely on section 43 of the Arbitration Act to secure the attendance of a witness may apply for a writ of subpoena ad testificandum or of subpoena duces tecum to the Central Office.

(2) A writ of subpoena shall not be issued until the applicant lodges an affidavit which shows that the application is made with the permission of the tribunal or the agreement of the other parties.

Security for costs

17. Subject to section 70(6) of the Arbitration Act, the Court may order any applicant (including an applicant who has been granted leave to appeal) to provide security for costs of any arbitration application.

Powers exercisable in support of arbitral proceedings

18.—(1) Where the case is one of urgency, an application for an order under section 44 of the Arbitration Act (Court powers exercisable in support of arbitral proceedings) may be made *ex parte* on affidavit (before the issue of an arbitration application) and the affidavit shall (in addition to dealing with the matters required to be dealt with by rule 9) state the reasons—

(a) why the application is made *ex parte*; and

(b) (where the application is made without the permission of the arbitral tribunal or the agreement of the other parties to the arbitral proceedings) why it was not practicable to obtain that permission or agreement, and

(c) why the deponent believes that the condition in section 44(5) is satisfied.

(2) Where the case is not one of urgency, an application for an order under section 44 of the Arbitration Act shall be made on notice and the affidavit in support shall (in addition to dealing with the matters required to be dealt with by rule 9 and paragraph (1)(c) above) state that the application is made with the permission of the tribunal or the written agreement of the other parties to the arbitral proceedings.

(3) Where an application for an order under section 44 of the Arbitration Act is made before the issue of an arbitration application, any order made by the Court may be granted on terms providing for the issue of an application and such other terms, if any, as the Court thinks fit.

Applications under sections 32 and 45 of the Arbitration Act

19.—(1) This rule applies to the following arbitration applications—

(a) applications for the determination of a question as to the substantive jurisdiction of the arbitral tribunal under section 32 of the Arbitration Act; and

(b) applications for the determination of a preliminary point of law under section 45 of the Arbitration Act.

(2) Where an application is made without the agreement in writing of all the other parties to the arbitral proceedings but with the permission of the arbitral tribunal, the affidavits filed by the parties shall set out any evidence relied on by the parties in support of their contention that the Court should, or should not, consider the application.

(3) As soon as practicable after the affidavits are lodged, the Court shall decide whether or not it should consider the application and, unless the Court otherwise directs, shall so decide without a hearing.

Applications for leave to appeal

20.—(1) Where the applicant seeks leave to appeal to the Court on a question of law arising out of an arbitration award, the arbitration application shall identify the question of law and state the grounds on which the applicant alleges that leave should be granted.

(2) The affidavit in support of the application shall set out any evidence relied on by the applicant for the purpose of satisfying the Court of the matters mentioned in section 69(3) of the Arbitration Act and for satisfying the Court that leave should be granted.

(3) The affidavit lodged by the respondent to the application shall—

(a) state the grounds on which the respondent opposes the grant of leave;

(b) set out any evidence relied on by him relating to the matters mentioned in section 69(3) of the Arbitration Act; and

(c) specify whether the respondent wishes to contend that the award should be upheld for reasons not expressed (or not fully expressed) in the award and, if so, state those reasons.

(4) As soon as practicable after the lodging of the affidavits, the Court shall determine the application for leave in accordance with section 69(5) of the Arbitration Act.

(5) Where leave is granted, a date shall be fixed for the hearing of the appeal.

Extension of time: applications under section 12

21. An application for an order under section 12 of the Arbitration Act may include as an alternative an application for a declaration that such an order is not needed.

ORDER 73

Time limit for challenges to or appeals from awards

22.—(1) An applicant shall not be taken as having complied with the time limit of 28 days referred to in section 70(3) of the Arbitration Act unless the arbitration application has been issued, and all the affidavits in support have been sworn and filed, by the expiry of that time limit.

(2) An applicant who wishes—

(a) to challenge an award under section 67 or 68 of the Arbitration Act; or

(b) to appeal under section 69 on a question of law arising out of an award,

may, where the time limit of 28 days has not yet expired, apply *ex parte* on affidavit for an order extending that time limit.

(3) In any case where an applicant seeks to challenge an award under section 67 or 68 of the Arbitration Act or to appeal under section 69 after the time limit of 28 days has already expired, the following provisions shall apply:

(a) the applicant must state in his arbitration application the grounds why an order extending time should be made and his affidavit in support shall set out the evidence on which he relies;

(b) a respondent who wishes to oppose the making of an order extending time shall file an affidavit within 7 days after service of the applicant's affidavit, and

(c) the Court shall decide whether or not to extend time without a hearing unless it appears to the Court that a hearing is required,

and, where the Court makes an order extending the time limit, the respondent shall file his affidavit in response to the arbitration application 21 days after the making of the order.

PART II

Application of this Part

23.—(1) This Part of this Order applies to any application to the Court to which the old law applies and, in this rule, "the old law" means the enactments specified in section 107 of the Arbitration Act 1996 as they stood before their amendment or repeal by that Act.

(2) This Part of this Order does not apply to proceedings to enforce an award—

(a) to which Part III of this Order applies; or

(b) by an action on the award.

(3) Reference should be made to the other provisions of these rules (except Parts I and III of this Order) for the procedure for any application not expressly provided for in this Part.

Matters for a judge in court

24.—(1) Every application to the Court—

(a) to remit an award under section 15 of the Arbitration Act (Northern Ireland) 1937, or

(b) to remove an arbitrator or umpire under section 7(1) of that Act, or

(c) to set aside an award under section 7(2) thereof,

must be made by originating motion.

(2) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction may be made by originating motion but the foregoing provision shall not be taken as

affecting the Court's power to refuse to make such a declaration in proceedings begun by motion.

Matters for a judge in chambers or master

25.—(1) Subject to the provisions of this Order and the provisions of this rule the jurisdiction of the High Court under the Arbitration Act (Northern Ireland) 1937 and the Arbitration Act 1950 may be exercised by a judge in chambers or a master.

(2) Any application to which this rule applies shall, where an application is pending, be made by summons in the action and in any other case by an originating summons for which no appearance need be entered.

Time-limits and other special provisions as to applications under the Arbitration Act (Northern Ireland) 1937

26.—(1) An application to the Court—

(a) to remit an award under section 15 of the Arbitration Act (Northern Ireland) 1937, or

(b) to set aside an award under section 7(2) of that Act, must be made,

and the notice of motion must be served, within 6 weeks after the award has been made and published to the parties.

(2) A special case stated under section 22 of the Arbitration Act (Northern Ireland) 1937 shall be heard by a judge. The decision thereon shall be deemed to be a judgment of the Court and the provisions of Order 56 shall apply thereto.

(3) In the case of every application to which this rule applies, the notice of originating motion must state the grounds of the application and, where the application is founded on evidence by affidavit, or is made with the consent of the arbitrator or umpire or of the other parties, a copy of every affidavit intended to be used, or as the case may be, of every consent given in writing, must be served with the notice of motion.

Service out of the jurisdiction of summons, notice etc.

27.—(1) Service out of the jurisdiction—

(a) of an originating summons for the appointment of an arbitrator or umpire, or

(b) of notice of an originating motion to remove an arbitrator or umpire or to remit or set aside an award, or

(c) of any order made on such a summons or motion as aforesaid

is permissible with the leave of the court provided that the arbitration to which the summons, motion or order relates is governed by the law of Northern Ireland or has been, is being, or is held within the jurisdiction.

(2) Service out of the jurisdiction of an originating summons for leave to enforce an award is permissible with the leave of the Court whether or not the award is governed by the law of Northern Ireland.

(3) An application for the grant of leave under this rule must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.

(4) Order 11, rules 5, 6 and 8, shall apply in relation to any such summons, notice or order as is referred to in paragraph (1) as they apply in relation to notice of a writ.

PART III

Application of this Part

28. This Part of this Order applies to all enforcement proceedings (other than by an action on the award) regardless of when they are commenced and when the arbitral proceedings took place.

Enforcement of awards

29.—(1) This rule applies to applications to enforce awards which are brought in the High Court.

(2) An application for leave under—

(a) section 66 of the Arbitration Act 1996;

(b) section 101 of the Arbitration Act 1996;

(c) section 16 of the Arbitration Act (Northern Ireland) 1937; or

(d) section 3(1)(c) of the Arbitration Act 1975;

to enforce an award in the same manner as a judgment or order may be made *ex parte* in Form No. 8A in Appendix A.

(3) The Court hearing an application under paragraph (2) may direct that the application is to be served on such parties to the arbitration as it may specify and service of the application out of the jurisdiction is permissible with the leave of the Court irrespective of where the award is, or is treated as, made.

(4) Where a direction is given under paragraph (3), rules 11 and 13 to 17 shall apply with the necessary modifications as they apply to applications under Part I of this Order.

(5) Where the applicant applies to enforce an agreed award within the meaning of section 51(2) of the Arbitration Act 1996, the application must state that the award is an agreed award and any order made by the Court shall also contain such a statement.

(6) An application for leave must be supported by affidavit—

(a) exhibiting

(i) where the application is made under section 66 of the Arbitration Act 1996 or under section 16 of the Arbitration Act (Northern Ireland) 1937, the arbitration agreement and the original award or, in either case, a copy thereof;

(ii) where the application is under section 101 of the Arbitration Act 1996, the documents required to be produced by section 102 of that Act;

(iii) where the application is under section 3(1)(c) of the Arbitration Act 1975, the documents required to be produced by section 4 of that Act;

(b) stating the name and the usual or last known place of residence or business of the applicant and of the person against whom it is sought to enforce the award respectively;

(c) stating as the case may require, either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

(7) An order giving leave must be drawn up by or on behalf of the applicant and must be served on the respondent by delivering a copy to him personally or by sending a copy to him at his usual or last known place of residence or business or in such other manner as the Court may direct.

(8) Service of the order out of the jurisdiction is permissible without leave, and Order 11, rules 5 to 8, shall apply in relation to such an order as they apply in relation to a writ.

(9) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix, the respondent may apply to set aside the order and the award shall not be enforced until after the expiration of that period or, if the respondent applies within that period to set aside the order, until after the application is finally disposed of.

(10) The copy of the order served on the respondent shall state the effect of paragraph (9).

(11) In relation to a body corporate this rule shall have effect as if for any reference to the place of residence or business of the applicant or the respondent there were substituted a reference to the registered or principal address of the body corporate.

(12) Nothing in this rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate.

Interest on awards

30.—(1) Where an applicant seeks to enforce an award of interest, the whole or any part of which relates to a period after the date of the award, he shall file a certificate giving the following particulars—

(a) whether simple or compound interest was awarded;

(b) the date from which interest was awarded;

(c) whether rests were provided for, specifying them;

(d) the rate of interest awarded, and

(e) a calculation showing the total amount claimed up to the date of the certificate and any sum which will become due thereafter on a *per diem basis*.

(2) The certificate under paragraph (1) must be filed whenever the amount of interest has to be quantified for the purpose of obtaining a judgement or order under section 66 of the Arbitration Act 1996 (enforcement of the award) or for the purpose of enforcing such a judgment or order by one of the means mentioned in Order 45, rule 2.

Registration in High Court of foreign awards

31. Where an award is made in proceedings on an arbitration in any part of Her Majesty's dominions or other territory to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 extends, being a part to which Part II of the Administration of Justice Act 1920 extended immediately before the said Part I was extended thereto, then, if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place, Order 71 shall apply in relation to the award as it applies in relation to a judgment given by that court, subject, however, to the following modifications:—

(a) for references to the country of the original court there shall be substituted references to the place where the award was made; and

(b) the affidavit required by rule 3 of the said Order must state (in addition to the other matters required by that rule) that to the best of the information or belief of the deponent the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

[*Supplt. No. 27 (March 1997)*]

ORDER 73

Registration of awards under the Arbitration (International Investment Disputes) Act 1966

32.—(1) In this rule and in any provision of these rules as applied by this rule—

"the Act of 1966" means the Arbitration (International Investment Disputes) Act 1966;

"award" means an award rendered pursuant to the Convention;

"the Convention" means the Convention referred to in section 1(1) of the Act of 1966;

"judgment creditor" and "judgment debtor" means respectively the person seeking recognition or enforcement of an award and the other party to the award.

(2) Subject to the provisions of this rule, the following provisions of Order 71, namely, rules 1, 3(1) (except sub-paragraphs (c)(iv) and (d) thereof) and 7 (except paragraph (3)(c) and (d) thereof), shall apply with the necessary modifications in relation to an award as they apply in relation to a judgment to which Part II of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies.

(3) An application to have an award registered in the High Court under section 1 of the Act of 1966 shall be made by originating summons which shall be in Form 7 in Appendix A.

(4) The affidavit required by Order 71, rule 3, in support of an application for registration shall—

(a) in lieu of exhibiting the judgment of a copy thereof, exhibit a copy of the award certified pursuant to the Convention; and

(b) in addition to stating the matters mentioned in paragraph 3(1)(c)(i) and (ii) of the said rule 3, state whether at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) pursuant to the Convention and whether any, and if so what, application has been made pursuant to the Convention, which, if granted, might result in a stay of the enforcement of the award.

(5) There shall be kept in the Central Office a register of the awards ordered to be registered under the Act of 1966.

(6) Where it appears to the Court on granting leave to register an award or an application made by the judgment debtor after an award has been registered—

(a) that the enforcement of the award has been stayed (whether provisionally or otherwise) pursuant to the Convention, or

(b) that an application has been made pursuant to the Convention, which, if granted, might result in a stay of the enforcement of the award,

the Court shall, or in the case referred to in sub-paragraph (b) may, stay enforcement of the award for such time as it considers appropriate in the circumstances.

(7) An application by the judgment debtor under paragraph (6) shall be made by summons and supported by affidavit.]

[(a) . . .]

(a) Order 74 revoked by S.R. 1996 No. 321 with effect from 4.11.96

ORDER 75

COMMERCIAL ADMIRALITY PROCEEDINGS

Application and interpretation

1.—(1) This Order applies to Admiralty causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.

(2) In this Order—

"action in rem" means an Admiralty action in rem;

"caveat against arrest" means a caveat entered in the caveat book under rule 6;

"caveat against release and payment" means a caveat entered in the caveat book under rule 14;

"caveat book" means the book [(**a**) or other record] kept in the Central Office in which caveats issued under this Order are entered;

"limitation action" means an action by shipowners or other persons under [(**b**) the Merchant Shipping Act 1995(**c**)] for the limitation of the amount of their liability in connection with a ship or other property;

"marshal" means the Admiralty marshal and includes the Deputy Marshal;

"Registrar" means the Registrar (Queen's Bench and Appeals);

"ship" includes any description of vessel used in navigation.

[*E.r.* 1]

Certain actions to be assigned to Admiralty

2.—(1) Without prejudice to Order 1 or to any other statutory provision providing for the assignment of causes and matters to the Queen's Bench Division—

(*a*) every action to enforce a claim for damage, loss of life or personal injury arising out of—

(i) a collision between ships, or

(ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships, or

(iii) non-compliance, on the part of one or more of two or more ships with the [(**d**) safety regulations].

(*b*) every limitation action, and

(*c*) every action to enforce a claim under [(**d**) section 153 of the Merchant Shipping Act 1995] or [(**d**) section 175 of the Merchant Shipping Act 1995]

shall be assigned to that Division.

(2) [(**e**) In this rule "safety regulations" means regulations under section 85 of the Merchant Shipping Act 1995.]

[*E.r.* 2]

(**a**) Words inserted by S.R. 1995 No. 462 with effect from 09.01.96
(**b**) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07
(**c**) 1995 c. 21
(**d**) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07
(**e**) Paragraph substituted by S.R. 2007 No. 189 with effect from 16.07.07

ORDER 75

[(a) *Proceedings against, or concerning, the International Oil Pollution Compensation Fund 1992 and the International Oil Pollution Compensation Supplementary Fund 2003*

2A.—(1) In this rule—

a section referred to by number means the section so numbered in the Merchant Shipping Act 1995;

"the Fund" means the International Oil Pollution Compensation Fund 1992; and

"the Supplementary Fund" means the International Oil Pollution Compensation Supplementary Fund 2003.

(2) All proceedings against the Fund under section 175, or the Supplementary Fund under section 176A, shall be commenced in the Central Office.

(3) For the purposes of section 177, any party to proceedings brought against an owner or guarantor in respect of liability under section 153 may give notice to the Fund of such proceedings by serving a notice in writing on the Fund together with a copy of the writ and copies of the pleadings (if any) served in the action.

(4) The Court shall, on the application made ex parte by the Fund or by the Supplementary Fund, grant it leave to intervene in any proceedings to which the preceding paragraph applies, whether notice of such proceedings has been served on it or not, and paragraphs (3) and (4) of rule 17 shall apply to such an application.

(5) Where judgment is given against the Fund in any proceedings under section 175, or against the Supplementary Fund in any proceedings under section 176A, the Registrar shall cause a stamped copy of the judgment to be sent to it.

(6) The Registrar shall be notified—

(a) by the Fund of the matters set out in section 176(3)(b); or

(b) by the Supplementary Fund of the matters set out in section 176B(2)(b),

by a notice in writing, sent by post to, or delivered at, the Central Office.]

Issue of writ and entry of appearance

3.—(1) An action in rem must be begun by writ, and the writ must be in Form 1 in Appendix B.

(2) Order 6 rule 6, shall apply in relation to a writ by which an Admiralty action is begun, and order 12 shall apply in relation to such an action.

[*E.r.* 3]

Service of writ out of jurisdiction

4.—(1) Subject to the following provisions of this rule, service out of the jurisdiction of a writ, or notice of a writ, containing any such claim as is mentioned in [(b) rule 2(1)(a) or (b)] is permissible with the leave of the Court, if, but only if—

(*a*) the defendant has his habitual place of business within Northern Ireland, or within the limits of a port of Northern Ireland, or

(*b*) the cause of action arose within inland waters of Northern Ireland or within the limits of a port of Northern Ireland, or

(*c*) an action arising out of the same incident or series of incidents is proceeding in the High Court or has been heard and determined in the High Court, or

(*d*) the defendant has submitted or agreed to submit to the jurisdiction of the High Court.

In this paragraph "inland waters" and "port" have the same meanings as in paragraph 4(1) of the First Schedule to the Administration of Justice Act 1956(c).

(a) Rule substituted by S.R. 2007 No. 189 with effect from 16.04.07
(b) Words substituted by S.R. 1984 No. 110 with effect from 1.1.87
(c) 1956 c. 46

[(**a**)(1A) Service out of the jurisdiction of a writ or notice thereof in an act containing any such claim as is mentioned in rule 2(1)(c) is permissible with the leave of the Court.]

(2) Order 11 rule 3 and rule 4(1), (2) and (4) shall apply in relation to an application for a grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(3) [(**b**) Paragraphs (1) and (1A)] shall not apply to an action in rem.

(4) The proviso to rule 6(1) of Order 6 and Order 11, rule 1(2), shall not apply to a writ by which any Admiralty action is begun or to notice of any such writ.

[*E.r.* 4]

Warrant of arrest

5.—(1) After a writ has been issued in an action in rem a warrant in Form No. 2 in Appendix B for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or of the defendant, as the case may be.

(2) A party applying for the issue out of the Central Office of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.

(3) A warrant of arrest shall not be issued until the party applying for it has filed a praecipe in Form No.3 in Appendix B requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraphs (6), (7), (8) and (10) so, however, that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(4) Except with the leave of the Court or where notice has been given under paragraph (11) a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a state having a consulate in Northern Ireland, being an action for possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(6) Every affidavit must state—

(*a*) the name, address and occupation of the applicant for the warrant,

(*b*) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied; and

(*c*) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.

(7) Every affidavit in an action in rem brought against a ship by virtue of paragraph 3(4) of the First Schedule to the Administration of Justice Act 1956 must state—

(*a*) whether the ship against which the action is brought is the ship in connection with which. the claim in the action arose;

(*b*) that in the belief of the deponent the person who would, apart from paragraph 4 of the First Schedule to that Act, be liable on the claim in an action in personam was when the cause of action arose, the owner or charterer, or in

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(**a**) New paragraph (1A) substituted by S.R. 1984 No. 110 with effect from 01.01.87
(**b**) Words substituted by S.R. 1984 No. 110 with effect from 01.01.87

possession or control, of the ship in connection with which the claim arose and was also, at the time of the issue of the writ, the beneficial owner of all the shares in the ship against which the action is brought; and

(*c*) the grounds of the deponent's belief.

(8) Every affidavit in an action in rem for possession of a ship or for wages must state the nationality of the ship against which the action is brought and that the notice (if any) required by paragraph (4) has been sent [(**a**) and in the case of a claim in respect of a liability incurred under [(**b**) sections 153 to 154 of the Merchant Shipping Act 1995], the facts relied on as establishing that the Court is not prevented from entertaining the action by reason of [(**b**) section 166(2) and (3)] of that Act.]

A copy of such notice must be exhibited to the affidavit.

(9) An affidavit in such an action as is referred to in paragraph (5) must have annexed thereto a certified copy of the bottomry bond, or of the translation thereof.

(10) Where, by any convention or treaty, the United Kingdom has undertaken to minimise the possibility of arrest of ships of another State, no application shall be made for the issue of a warrant of arrest in an action in rem against a ship owned by that State until notice in Form No.14 in Appendix B has been served on a consular officer at the consular office of that State in London or the port at which it is intended to cause the ship to be arrested.

In a case to which this paragraph applies the affidavit required by paragraph (3) shall state that the notice required by this paragraph has been served and a copy of the notice shall be exhibited to the affidavit.

[*E.r.* 5]

Caveat against arrest

6.—(1) A person who desires to prevent the arrest of any property must file in the Central Office a praecipe, in Form No.4 in Appendix B, signed by him or his solicitor undertaking—

(*a*) to enter an appearance in any action that may be begun against the property described in the praecipe, and

(*b*) within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the praecipe or to pay the amount so specified into court;

and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.

(2) The fact that there is a caveat arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

[*E.r.* 6]

Remedy where property protected by caveat is arrested

7. Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

[*E.r.* 7]

(**a**) Words added by S.R. 1984 No. 110 with effect from 1.1.87
(**b**) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07

Service of writ in action in rem

8.—(1) Subject to paragraph (2), a writ by which an action in rem is begun must be served on the property against which the action is brought except—

(*a*) where that property is freight, in which case it must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried, or

(*b*) where that property has been sold and the proceeds of sale paid into court, in which case it must be served on the Registrar.

(2) A writ need not be served on the property mentioned in paragraph (1) of the Registrar if the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(4) or (5).

(3) Where by virtue of this rule a writ is required to be served on any property, the plaintiff may request service of the writ to be effected by the marshal if, but only if, a warrant of arrest has been issued for service against the property or the property is under arrest, and in that case the plaintiff must file in the Central Office a praecipe in Form No. 5 in Appendix B and lodge—

(*a*) the writ and copy thereof, and

(*b*) an undertaking to pay on demand all expenses incurred by the marshal or his substitute in respect of the service of the writ,

and thereupon the marshal or his substitute shall serve the writ on the property described in the praecipe.

(4) Where the plaintiff in an action in rem, or his solicitor, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the writ forthwith on the person at whose instance the caveat was entered.

(5) Where a writ by which an action in rem is begun is amended under Order 20, rule 1, after service thereof, Order 20, rule 1(2), shall not apply and, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on any defendant who has entered an appearance in the action or, if no defendant has entered an appearance therein, on the property mentioned in paragraph (1) or the Registrar.

[*E.r.* 8]

Committal of solicitor failing to comply with undertaking

9. Where the solicitor of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his solicitor to enter an appearance in the action, give bail or pay money into court in lieu of bail, he shall be liable to committal.

[*E.r.* 9]

Execution, etc., of warrant of arrest

10.—(1) A warrant of arrest is valid for 12 months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the marshal or his substitute.

(3) A warrant of arrest shall not be executed until an undertaking to pay on demand the fees of the marshal and all expenses incurred by him or on his behalf in respect of the arrest of the property and the care and custody of it while under arrest has been lodged in the marshal's office.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodged a written request to that effect with the marshal.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(6) Subject to paragraph (5), a warrant of arrest must be served on the property against which it is issued.

(7) Within 7 days after the service of a warrant of arrest, the warrant must be filed in the Central Office.

[*E.r.* 10]

Service on ships, etc.: how effected

11.—(1) Subject to paragraph (2), service of a warrant of arrest or writ in an action in rem against a ship, freight or cargo shall be effected by—

(*a*) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and

(*b*) on removing the warrant or writ, leaving a copy of it affixed (in the case of the warrants) in its place or (in the case of the writ) on a sheltered, conspicuous part of the ship.

(2) Service of a warrant of arrest or writ in an action in rem against freight or cargo or both shall, if the cargo has been landed or transhipped, be effected—

(*a*) by placing the warrant or writ for a short time on the cargo and, on removing the warrant or writ, leaving a copy of it on the cargo, or

(*b*) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

[*E.r.* 11]

Applications with respect to property under arrest

12.—(1) The marshall may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall, give notice of the application to any or all of the parties to every action against the property.

(2) The marshall shall send a copy of any order made under paragraph (1) to all parties to every action against the property to which the order relates.

[*E.r.* 12]

Release of property under arrest

13.—(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall only be released under the authority of an instrument of release (in this rule referred to as a ''release''), in Form No. 6 in Appendix B, issued out of the Central Office.

(2) A party at whose instance any property was arrested may, before an appearance is entered in the action, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to paragraphs (3) and (5), be issued with respect to that property.

(3) Unless the Court otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders, or, subject to paragraph (3), if all the other parties to the action in which the warrant of arrest was issued consent.

(5) Before a release is issued the party entitled to its issue must—

(*a*) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his solicitor requiring the caveat to be withdrawn, and

(*b*) file a praecipe in Form No. 7 in Appendix B requesting issue of a release.

(6) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the marshal, either—

(*a*) pay the fees of the marshal already incurred and lodge in the marshal's office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release, or

(*b*) lodge in the marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(7) The Court, on the application of any party who objects to directions given to him by the marshal under paragraph (6), may vary or revoke the directions.

[*E.r.* 13]

Caveat against release and payment

14.—(1) A person who desires to prevent the release of any property under arrest in an action in rem and the payment out of Court of any money in court representing the proceeds of sale of that property must file in the Central Office a praecipe in Form No. 8 in Appendix B, and on the filing of the praecipe a caveat against the issue of a release with respect to that property and the payment out of court of that money shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

[*E.r.* 14]

Duration of caveats

15.—(1) Every caveat entered in the caveat book is valid for 6 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in Form No. 9 in Appendix B.

(2) The period of validity of a caveat may not be extended but this provision shall not be taken as preventing the entry of successive caveats.

[*E.r.* 15]

Bail

16.—(1) Bail on behalf of a party to an action in rem must be given by bond in Form No. 10 in Appendix B; and the sureties to the bond must enter into the bond before a commissioner to administer oaths, not being a commissioner who, or whose partner, is acting as solicitor or agent for the party on whose behalf the bail is to be given, or before the Registrar.

(2) Subject to paragraph (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the commissioner or Registrar before whom the bail bond was entered into; and after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the affidavits (if any) made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

[*E.r.* 16]

Interveners

17.—(1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

(2) An application for the grant of leave under this rule must be made ex parte by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.

(3) A person to whom leave is granted to intervene in an action must enter an appearance therein in the Central Office within the period specified in the order granting leave; Order 12, rules 1 to 4, shall, with the necessary modifications, apply in relation to the entry of appearance by an intervener as if he were a defendant named in the writ.

(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be so specified.

[*E.r.* 17]

Preliminary acts

18.—(1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, unless the Court otherwise orders, the plaintiff must, within 2 months after issue of the writ, and the defendant must, within 2 months after entering an appearance in the action, and before any pleading is served, lodge in the Central Office a document (in these rules referred to as a preliminary act) containing a statement of the following particulars:—

(i) the names of the ships which came into collision and their ports of registry;

(ii) the date and time of the collision;

(iii) the place of the collision;

(iv) the direction and force of the wind;

(v) the state of the weather;

(vi) the state, direction and force of the tidal or other current;

(vii) the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;

(viii) the lights (if any) carried by the ship;

(ix) (*a*) the distance and bearing of the other ship if and when her echo was first observed by radar;
(*b*) the distance, bearing and approximate heading of the other ship when first seen;

(x) what light or combination of lights (if any) of the other ship was first seen;

(xi) what other lights or combinations of lights (if any) of the other ship were subsequently seen before the collision, and when;

(xii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (vii) up to the time of the collision, and when, and what measures (if any), other than alterations of course and speed, were taken to avoid the collision, and when;

(xiii) the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;

(xiv) what sound signals (if any) were given, and when;

(xv) what sound signals (if any) were heard from the other ship, and when.

(2) Every preliminary act shall be sealed by the proper officer and shall be filed in a closed envelope (stamped with an official stamp showing the date of filing) and, unless the Court otherwise orders, no envelope shall be opened until the pleadings are closed and a consent signed by each of the parties or his solicitor to the opening of the preliminary acts is filed with the proper officer.

(3) Where the Court orders the preliminary acts to be opened, the Court may further order the action to be tried without pleadings but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within 7 days after the opening of the preliminary acts.

(4) Where the Court orders the action to be tried without pleadings, it may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which he charges any other party with negligence in connection with the collision and to serve a copy thereof on that other party.

(5) Order 18, rule 1, shall not apply to an action in which preliminary acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff must serve a statement of claim on each defendant within 14 days after the latest date on which the preliminary act of any party to the action is filed.

[*E.r.* 18]

Failure to lodge preliminary act: proceedings against party in default

19.—(1) Where in such an action as is referred to in rule 18(1) the plaintiff fails to lodge a prelminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by summons for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) Where in such an action, being an action in personam, a defendant fails to lodge a preliminary act within the prescribed period, Order 19, rules 2 and 3, shall apply as if the defendant's failure to lodge the preliminary act within that period were a failure by him to serve a defence on the plaintiff within the period fixed by or under these rules for service thereof, and the plaintiff, if he has lodged a preliminary act may, subject to Order 77, rule 9, accordingly enter judgment against that defendant in accordance with the said rule 2 or the said rule 3, as the circumstances of the case require.

(3) Where in such an action, being an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an act, may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of a motion under paragraph (3) the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case, it shall order the plaintiff's preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded.

The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(5) Where the plaintiff in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such an order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.

(7) In this rule reference to the prescribed period shall be construed as references to the period within which by virtue of rule 18(1) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

[*E.r.* 19]

Special provisions as to pleadings in collision, etc. actions

20.—(1) Notwithstanding anything in Order 18, rule 3, the plaintiff in any such action as is referred to in rule 2(1)(*a*) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.

(2) If in such an action there is a counterclaim and no defence to counterclaim by the plaintiff, then, notwithstanding Order 18, rule 14(3), but without prejudice to the other provisions of that rule, there is an implied joinder of issue on the counterclaim, and the joinder of issue operates as a denial of every material allegation of fact made in the counterclaim.

[*E.r.* 20]

Judgment by default

21.—(1) Where a writ is served under rule 8(4) on a party at whose instance a caveat against arrest was issued, then if—

(*a*) the sum claimed in the action begun by the writ does not exceed the amount specified in the undertaking given by that party or his solicitor to procure the entry of the caveat, and

(*b*) that party or his solicitor does not within 14 days after service of the writ fulfil the undertaking given by him as aforesaid,

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action in rem fails to enter an appearance within the time limited for appearing, then, on the expiration of 14 days after service of the writ and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

Where the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(4) or was served on the Registrar under rule 8 of this Order, an affidavit proving due service of the writ need not be filed under this paragraph, but the writ indorsed as mentioned in the said rule 1(4) or indorsed by the Registrar with a statement that he accepts service of the writ must be lodged with the affidavit veryifying the facts on which the action is based.

(4) Where a defendant to an action in rem fails to serve a defence on the plaintiff, then, after the expiration of the period fixed by or under these Rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit veryifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (6), after the expiration of the period fixed by or under these Rules for service of the defence to counterclaim and upon filing

an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(6) No application may be made under paragraph (5) against the plaintiff in any such action as is referred to in rule 2(1)(*a*).

(7) An application to the Court under this rule must be made by motion and if, on the hearing of the motion, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be put into court or may make such other order as it thinks just.

(8) In default actions in rem evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(9) The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.

(10) Order 13 and Order 19 (except rule 1) shall not apply to actions in rem.
[*E.r.* 21]

Order for sale of ship: determination of priority of claims

22.—(1) Where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may—

(*a*) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under paragraph (2)(*a*), or

(*b*) in any other case, after obtaining judgment,

apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order—

(*a*) that the order of priority of the claims against the proceeds of sale of the ship shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into court;

(*b*) that any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to end the period specified in the order;

(*c*) that within 7 days after the date of payment into court of the proceeds of sale the marshal shall send for publication in Lloyd's List and Shipping Gazette and such other newspaper, if any, as the Court may direct, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2)(*c*) must state—

(*a*) that the ship (naming her) has been sold by order of the High Court in an action in rem, identifying the action;

(*b*) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court;

(*c*) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and

(*d*) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.

(4) The marshal must lodge in the Central Office a copy of each newspaper in which the notice referred to in paragraph (2)(*c*) appeared.

(5) The expenses incurred by the marshal in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in paragraph (2)(*a*) must be made by motion, and a copy of the notice of motion must, at least 3 days before the day fixed for the hearing thereof, be served on each party who has begun an action in rem against the ship or the proceeds of sale thereof.

(7) In this rule "the Court" means the judge in person.

[*E.r.* 22]

Appraisement and sale of property

23.—(1) A commission for the appraisement and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a praecipe in Form No. 11 in Appendix B.

(2) Such a commission must, unless the Court otherwise orders, be executed by the marshal and must be in Form No. 12 in Appendix B.

(3) A commission for appraisement and sale shall not be executed until an undertaking in writing satisfactory to the marshal to pay the fees and expenses of the marshal on demand has been lodged in the marshal's office.

(4) The marshal shall pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into court the account relating to the sale (with vouchers in support) for taxation.

(5) On the taxation of the marshal's account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of the Registrar made on the taxation to which objection is taken may be reviewed in the same manner and by the same persons as any decision made in taxation proceedings under Order 62, and rules 35 to 37 of that Order shall apply accordingly with the necessary modifications.

[*E.r.* 23]

Undertakings as to expenses, etc.

23A.—(1) Every undertaking under rule 8(3), 10(3), 13(7) or 23(3) shall be given in writing to the satisfaction of the marshal.

(2) Where a party is required by rule 8(3), 10(3), 13(7) or 23(3) to give to the marshal an undertaking to pay any fees or expenses, the marshal may accept instead of an undertaking the deposit with him of such sum as he considers reasonable to meet those fees and expenses.

(3) The Court may on the application of any party who is dissatisfied with a direction or determination of the marshal under rule 13(7) of this rule, vary or revoke the direction or determination.

[*E.r.* 23A]

Payment into and out of court

24.—(1) Order 22 (except rules 3, 4, 5 and 11) shall apply in relation to an Admiralty action as it applies to an action for a debt or damages.

(2) Subject to paragraphs (3) and (4) money paid into court shall not be paid out except in pursuance of an order of the judge in person.

(3) The Registrar may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled thereto in the following cases, that is to say—

(*a*) where a claim hs been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in court in accordance with that decision;

(*b*) where property has been sold and the proceeds of sale thereof paid into court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of the persons;

(*c*) where in any other case there is no dispute between the parties.

(4) Where in an Admiralty action money has been paid into court pursuant to an order made under Order 29, rule 12, the Registrar may make an order under paragraph (3) of that rule for the money to be paid out to the person entitled thereto.

[*E.r.* 24]

Summons for directions

25.—(1) The time and place and mode of trial of an Admiralty action shall be settled by the judge on the hearing of a summons and such summons shall be served on the plaintiff within one month after the pleadings in the action are deemed to be closed, and in case the plaintiff shall not serve such summons within the time aforesaid, then any other party in the action may serve such summons, and on the hearing of such summons any party may apply for discovery including interrogatories, commissions for and examination of witnesses. Such summons shall not be necessary if a consent be filed in the registry whereby the parties agree on the time, place and mode of trial.

(2) Unless a judge in person otherwise directs, the summons shall be heard by a judge in person.

(3) An order made on the summons shall determine whether the trial is to be without assessors or with one or more assessors.

[*E.r.* 25]

Fixing date for trial, etc.

26.—(1) The Court may at any stage of an action, either on an application made by summons by any party or by order made by virtue of rule 34, fix a date for the trial and vacate or alter any such date.

(2) Not later than 7 days after a date for the trial of the action has been fixed, the action must be set down for trial—

(*a*) where the date was fixed on an application made under paragraph (1), by the applicant;

(*b*) where the date was fixed by order made by virtue of rule 34, by the plaintiff.

Where the applicant or plaintiff does not, within the period fixed by this paragraph, set the action down for trial, any other party may set it down or an application may be made to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or make such other order as it thinks just.

(3) Not less than 7 days before the date fixed for the trial, or such other period before that date as may be specified in general directions given by the Lord Chief Justice the party by whom the action was set down for trial must, unless the Court otherwise orders, file in the registry—

(*a*) if trial with one or more assessors has been ordered, a praecipe for his or their attendance, and

(*b*) three copies or, in the case of a trial with one or more assessors, four copies (if with one assessor) and five copies (if with two) of any pleadings, preliminary acts, notices given under rule 18(3) and statements filed under rule 18(4).

(4) If an action which has been set down for trial is settled or withdrawn it shall be the duty of all the parties to notify the Central Office of the fact without delay and take such steps as may be necessary to vacate the date fixed for the trial.

(5) Order 21, rule 2(4), Order 33, rule 4, and Order 34 (except rule 9) shall not apply to Admiralty actions.

[*E.r.* 26]

Stay of proceedings in collision, etc. actions until security given

27. Where an action in rem, being an action to enforce any such claim as is referred to in rule 2(1)(*a*), is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then—

(*a*) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest, but

(*b*) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first mentioned action until security is given to satisfy any judgment given in favour of that party.

[*E.r.* 27]

Inspection of ship, etc.

28. Without prejudice to its powers under Order 29, rules 2 and 4, and Order 35, rule 5, the Court may, on the application of any party, make an

order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

[*E.r.* 28]

Examination of witnesses and other persons

29.—(1) The court may make an order authorising the examination of a witness or person on oath before a judge sitting in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.

(2) The power conferred by paragraph (1) shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect—

(*a*) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;

(*b*) any representative, being counsel or solicitor, of either of the parties shall have authority to administer the oath to the witness;

(*c*) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the solicitor for the party whose witness was examined, and that solicitor must file it in the registry;

(*d*) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the counsel or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript.

(4) In actions in which preliminary acts fall to be filed under rule 18, an order shall not be made under paragraph (1) authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

(5) The Lord Chief Justice may appoint such number of barristers or solicitors as he thinks fit to act as examiners of the Court in connection with Admiralty causes and matters, and may revoke any such appointment.

[*E.r.* 30]

Trial as an Admiralty short cause

30.—(1) Where any defendant has entered an appearance in an Admiralty action, the plaintiff or that defendant may, within 7 days after the entry of the appearance, apply by summons, returnable before the Registrar, for an order that the action be tried as an Admiralty short cause.

(2) The summons shall be served on every other party to the action not less than 7 days before the hearing.

(3) On the hearing of the application the Registrar may, if he decides to make an order under paragraph (1)—

(*a*) exercise any power which could be exercised under Order 18, rule 21 or Order 75, rule 18(4), on an application for the trial of the action without pleadings or further pleadings,

(*b*) abridge the period within which a person is required or authorised by these rules to do any act in the proceedings and fix the period within which any notice under Order 38, rule 19, must be served,

(*c*) in the case of such an action as is referred to in rule 18(1), fix the time within which, notwithstanding the provisions of that rule, preliminary acts are to be lodged,

(*d*) require the parties to the action to make mutual discovery of documents notwithstanding that the action is ordered to be tried without pleadings,

(*e*) if the parties so agree, order that the evidence in support of their respective cases may be given in whole or in part by the production of documents or entries in books,

(*f*) give such directions as could be given on a summons for directions in the action; and

(*g*) fix a date for the trial of the action.

(4) The party taking out a summons under this rule shall include in it an application for such orders or directions as he desires the Registrar to make or give in the exercise of powers set out in paragraph (3), and any party on whom the summons is served shall, within 3 days after service of the summons on him, give notice to every other party of any other order or direction he desires the Registry to make or give as aforesaid and lodge a copy of such notice in the registry.

(5) An application for an order under Order 18, rule 21, that an Admiralty action be tried without pleadings or further pleadings shall be made by way of an application for an order under paragraph (i) and not otherwise.

(6) Where an order is made under paragraph (1), the writ or originating summons by which the action was begun shall be marked in the top left-hand corner "Admiralty Short Cause".

(7) Any application subsequent to a summons under paragraph (1) and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made under the summons by 2 clear days' notice to the other party stating the grounds of the application.

[*E.r.* 31]

Further provisions with respect to evidence

31.—(1) Notwithstanding anything in Order 38, rule 6, rules 1 and 2 of that Order shall not apply to a reference to the Registrar.

(2) Unless the Court otherwise directs, Order 38, rule 19(1), shall not apply in relation to any statement which is admissible in evidence by virtue of section 1 or 2 of the Civil Evidence Act (Northern Ireland) 1971(**a**) and which an applicant for judgment in default under rule 19 or 21 desires to give in evidence at the hearing of the motion by which the application for judgment is made.

(3) In any Admiralty action in which a summons for directions is required by virtue of rule 37(7) to be taken out, any notice under Order 38, rule 19, must, if given by the party who takes out that summons, be served with that summons and, if given

(**a**) 1971 c. 36 (N.I.)

by any other party, be served within 21 days after service of the summons for directions on him.

(4) In any proceedings on a reference to the Registrar any notice under Order 38, rule 19, must be served not less than 6 weeks before the day appointed for the hearing of the reference.

(5) On the day on which any party serves on any other party a notice under Order 38, rule 19, or a counter-notice under Order 38, rule 23, he must lodge two copies of the notice or counter-notice in the Central Office.

(6) Unless the Court otherwise directs, an affidavit for the purposes of rule 19(4), 21 or 37(2) may, except in so far as it relates to the service of a writ, contain statements of information or belief with the sources and grounds thereof.

[*E.r.* 32]

Proceedings for apportionment of salvage

32.—(1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be assigned to the Queen's Bench Division and be begun by originating motion.

(2) The notice of such motion, together with the affidavits in support thereof, must be filed in the Central Office 7 days at least before the hearing of the motion, unless the Court gives leave to the contrary, and a copy of the notice and of the affidavits must be served on all the other parties to the proceedings before the originals are filed.

(3) On the hearing of the motion the judge may exercise any of the jurisdiction conferred by [(**a**) section 229 of the Merchant Shipping Act 1995].

[*E.r.* 33]

Filing and service of notice of motion

33.—(1) Notice of a motion in any action, together with the affidavits (if any) in support thereof, must be filed in the Central Office 3 days at least before the hearing of the motion unless the Court gives leave to the contrary.

(2) A copy of the notice of motion and of the affidavits (if any) in support thereof must be served on all the other parties to the proceedings before the originals ate filed.

[*E.r.* 34]

Agreement between solicitors may be made order of court

34. Any agreement in writing between the solicitors of the parties to a cause or matter, dated and signed by those solicitors, may, if the Registrar thinks it reasonable and such as a judge would under the circumstances allow, be filed in the Central Office, and the agreement shall thereupon become an order of court and have the same effect as if such order had been made by a judge in person.

[*E.r.* 35]

Originating summons procedure

35.—(1) An originating summons in Admiralty may be issued out of the Central Office.

(2) Order 12 shall apply in relation to an originating summons in Admiralty to which appearance is required to be entered.

(a) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07

(3) Order 28, rule 2 shall apply in relation to Admiralty proceedings begun by originating summons.

(4) Rule 26 (except paragraph (3)) shall, with any necessary modifications, apply in relation to an Admiralty cause or matter begun by originating summons, and Order 28, rule 9 shall not apply to such a cause or matter.

[*E.r.* 36]

Limitation action: parties

36.—(1) In a limitation action the person seeking relief shall be the plaintiff and shall be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The plaintiff must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.

(3) At least one of the defendants to the action must be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.

(5) In this rule and rules 37, 38 and 39 "name" includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the writ by his name.

[*E.r.* 37]

Limitation action: summons for decree or directions

37.—(1) Within 21 days after the entry of appearance by one of the defendants named by their names in the writ or, if none of them enters an appearance, within 21 days after the time limited for appearing, the plaintiff, without serving a statement of claim, must take out a summons returnable in chambers before the Registrar asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.

(2) The summons must be supported by an affidavit or affidavits proving—

(*a*) the plaintiff's case in the action, and

(*b*) if none of the defendants named in the writ by their names has entered an appearance, service of the writ on at least one of the defendants so named.

(3) The affidavit in support of the summons must state—

(*a*) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names, and

(*b*) the address of each of those persons, if known to the plaintiff.

(4) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on any defendant who has entered an appearance.

(5) On the hearing of the summons the Registrar, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiffs liability and fix the amount to which the liability is to be limited.

(6) On the hearing of the summons the Registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.

(7) If on the hearing or resumed hearing of the summons the Registrar does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including a direction fixing the period within which any notice under Order 38, rule 19, must be served.

(8) Any defendant who, after the Registrar has given directions under paragraph (7), ceases to dispute the plaintiff's right to limit his liability must forthwith file a notice to that effect in the Central Office and serve a copy on the plaintiff and on any other defendant who has entered an appearance.

(9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under paragraph (8), the plaintiff may take out a summons returnable in chambers before the Registrar asking for a decree limiting his liability; and paragraphs (4) and (5) shall apply to a summons under this paragraph as they apply to a summons under paragraph (1).

[*E.r.* 38]

Limitation action: proceedings under decree

38.—(1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or entered an appearance, any decree in the action limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action)—

(*a*) need not be advertised, but

(*b*) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within paragraph (1), any decree in the action limiting the plaintiffs liability (whether made by the Registrar or on the trial of the action)—

(*a*) shall be advertised by the plaintiff in such manner at within such time as may be provided by the decree;

(*b*) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may enter an appearance in the action (if they have not already done so) and file their claims, and, in cases to which rule 39 applies, take out a summons, if they think fit, to set the order aside.

(3) The advertisement to be required under paragraph (2)(*a*) shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be a single advertisement in each of three newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability and the time allowed thereby for the entering of appearances, the filing of claims and the taking out of summonses to set the decree aside.

The plaintiff must within the time fixed under paragraph (2)(*b*) file in the registry a copy of each newspaper in which the advertisement under paragraph (2)(*a*) appears.

(4) The time to be allowed under paragraph (2)(*b*) shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the advertisements; and

after the expiration of the time so allowed, no appearance may be entered, claim filed or summons taken out to set aside the decree except with the leave of the Registrar or, on an appeal, of the judge.

(5) Save as aforesaid, any decree limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) may make any such provision as is authorised by [(**a**) sections 183 to 189 of the Merchant Shipping Act 1995.]

[*E.r.* 39]

Limitation action: proceedings to set aside decree

39.—(1) Where a decree limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) fixes a time in accordance with rule 38(2), any person with a claim against the plaintiff in respect of the casualty to which the action relates, who—

(*a*) was not named by his name in the writ as a defendant to the action, or

(*b*) if so named, neither was served with the writ nor entered an appearance,

may, within that time, after entering an appearance, take out a summons returnable in chambers before the Registrar asking that the decree be set aside.

(2) The summons must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the plaintiff in respect of the casualty in question and that he has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on the plaintiff and any defendant who has entered an appearance.

(4) On the hearing of the summons the Registrar, if he is satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate.

[*E.r.* 40]

References to Registrar

40.—(1) Any party (hereafter in this rule referred to as the "claimant") making a claim which is referred to the Registrar for decision, must, within 2 months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

(2) At any time after the claimants claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims but, in any case, not less than 28 days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the Registrar by summons for directions as to the proceedings on the reference. and the Registrar shall give such directions, if any, as he thinks fit including, without prejudice to the generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the Registrar may specify, a defence to that claimant's claim.

(3) The reference shall be heard on a day appointed by the Registrar and, unless the reference is in a limitation action or the parties to the reference consent to the

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(**a**) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07

appointment of a particular day, the appointment must be made by order on an application by summons made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(5) Not later than 7 days after an appointment for the hearing of a reference has been made the claimant or, where the reference is in a limitation action, the plaintiff must enter the reference for hearing by lodging in the registry by praecipe requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than 14 days before the day appointed for the hearing of the reference the claimant must file—

(*a*) a list, signed by him and every other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each such item, and

(*b*) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed;

and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this paragraph.

(7) If the claimant fails to comply with paragraph (1) or (6)(*b*), the Court may, on the application of any other party to the cause or matter, dismiss the claim.

[*E.r.* 41]

Hearing of reference

41.—(1) The Registrar may adjourn the hearing of a reference from time to time as he thinks fit.

(2) At or before the hearing of a reference, the Registrar may give a direction limiting the witnesses who may be called, whether expert witnesses or not, but any such direction may, on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the hearing.

(3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon.

(4) When the hearing of the reference has been concluded, the Registrar shall—

(*a*) reduce in writing his decision on the questions arising in the reference (including any order as to costs) and cause it to be filed;

(*b*) cause to be filed either with his decision or subsequently such statement (if any) on the grounds of the decision as he thinks fit; and

(*c*) send to the parties to the reference notice that he has done so.

(5) Where no statement of the grounds of the Registrar's decision is filed with his decision and no intimation has been given by the Registrar that he intends to file such a statement later, any party to the reference may, within 14 days after the filing of the decision, make a written request to the Registrar to file such a statement.

[*E.r.* 42]

Objection to decision on reference

42.—(1) Any party to a reference to the Registrar may, by motion in objection, apply to a judge in court to set aside or vary the decision of the Registrar on the reference, but notice of the motion, specifying the points of objection to the decision, must be filed within 14 days after the date on which notice of the filing of the decision was sent to that party under rule 41(4) or, if a notice of the filing of a statement of the grounds of the decision was subsequently sent to him thereunder, within 14 days after the date on which that notice was sent.

(2) The decision of the Registrar shall be deemed to be given on the date on which it is filed, but, unless he or the judge otherwise directs, the decision shall not be acted upon until the time has elapsed for filing notice of a motion in objection thereto, or while such a motion is pending or remains undisposed of.

(3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard, but may, if the Registrar announced his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 41(4).

[*E.r.* 43]

Drawing up and entry of judgments and orders

43. Every judgment given or order made in an Admiralty cause or matter shall be drawn up in the Central Office and shall be entered by an officer of the Central Office in the book kept for the purpose.

[*E.r.* 45]

ORDER 76

CONTENTIOUS PROBATE PROCEEDINGS

Application and interpretation

1.—(1) This Order applies to probate causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.

(2) In these Rules "probate action" means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for the decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.

(3) In this Order—

"the Order" means the Administration of Estates (Northern Ireland) Order 1979(**a**);

"the office" means the [(**b**) Chancery Office];

"will includes a codicil.

[*E.r.* 1]

Requirements in connection with issue of writ

2.—(1) A probate action must be begun by writ, issued out of the Office.

[(**c**)(2) Before a writ beginning a probate action is issued it must be indorsed with a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates.]

[*E.r.* 2]

Parties to action for revocation of grant

3. Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant or probate of his will or letters of administration of his estate shall be made a party to any action for revocation of the grant.

[*E.r.* 3]

Lodgement of grant in action for revocation

4.—(1) Where, at the commencement of an action for the revocation of a grant or probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration as the case may be, have not been lodged in the Office, then—

(*a*) if the action is commenced by a person to whom the grant was made, he shall lodge the probate or letters of administration in the Office within 7 days after the issue of the writ;

(*b*) if any defendant to the action has the probate or letters of administration in his possession or under his control he shall lodge it or them in the Office within 14 days after the service of the writ upon him.

(**a**) S.I. 1979/1575 (N.I. 14)
(**b**) Words substituted by S.R. 2008 No. 401 with effect from 03.11.08
(**c**) New rule 2(2) substituted by S.R. 1985 No. 170 with effect from 2.9.85

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the action, be ordered by the Court to lodge the probate or letters of administration in the Office within a specified time; and any person against whom such an order is made shall not be entitled to take any step in the action without the leave of the Court until he has complied with the order.

[*E.r.* 4]

Affidavit of testamentary scripts

5.—(1) Unless the Court otherwise directs, the plaintiff and every defendant who has entered an appearance in a probate action must swear an affidavit—

(*a*) describing any testamentary scripts of the deceased person whose estate is the subject of the action of which he has any knowledge or, if such be the case, stating that he knows or no such script, and

(*b*) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name and address of that person.

(2) Any affidavit required by this rule (together with any testamentary script referred to therein which is in the possession or under the control of the deponent) must be filed in the Office within 14 days after the entry of appearance by a defendant to the action or, if no defendant enters an appearance therein and the Court does not otherwise direct, before the plaintiff sets down the action.

(3) Where any testamentary script required by this rule to be filed or any part thereof is written in pencil, then, unless the Court otherwise directs, a facsimile copy of that script, or of the page or pages therof containing the part written in pencil, must also be filed and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script filed by any other party to the action under this rule, unless and until an affidavit sworn by him containing the information referred to in paragraph (l) has been filed.

(5) In this rule "testamentary script" means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

[*E.r.* 5]

Default of appearance

6.—(1) Order 13 shall not apply in relation to a probate action.

(2) Where any of several defendants to a probate action fails to enter an appearance, the plaintiff upon filing an affidavit proving due service of the writ, or notice of the writ, on the defendant may, after the time limited for appearing, proceed with the action as if that defendant had entered an appearance.

(3) Where the defendant, or all the defendants, to a probate action, fails or fail to enter an appearance, then, unless on the application of the plaintiff

the Court orders the action to be discontinued, the plaintiff may after the time limited for appearing by the defendant set down the action for trial.

(4) Before setting down the action for trial the plaintiff must file an affidavit proving due service of the writ, or notice of the writ, on the defendant and, if no statement of claim in indorsed on the writ, he must lodge a statement of claim in the Office.

[*E.r.* 6]

Service of statement of claim

7. The plaintiff in a probate action must, unless the Court gives leave to the contrary or unless a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who enters an appearance in the action and must do so before the expiration of 6 weeks after entry of appearance by that defendant or of 8 days after the filing by that defendant of an affidavit under rule 5, whichever is the later.

[*E.r.* 7]

Counterclaim

8.—(1) Notwithstanding anything in Order 15, rule 2(1), a defendant to a probate action who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action must add to his defence a counterclaim in respect of that matter.

(2) If the plaintiff fails to serve a statement of claim, any such defendant may, with the leave of the Court, serve a counterclaim and the action shall then proceed as if the counterclaim were the statement of claim.

[*E.r.* 8]

Contents of pleadings

9.—(1) Where the plaintiff in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.

(2) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his pleading that if the allegations made therein are proved he would be entitled to an interest in the estate.

[*E.r.* 9]

Default of pleadings

10.—(1) Order 19 shall not apply in relation to a probate action.

(2) Where any party to a probate action fails to serve on any other party a pleading which he is required by these Rules to serve on that other party, then, unless the Court orders the action to be discontinued or dismissed, that other party may, after the expiration of the period fixed by or under these rules for service of the pleading in question, set down the action for trial.

[*E.r.* 10]

ORDER 76

Discontinuance and dismissal

11.—(1) Order 21 shall not apply in relation to a probate action.

(2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or of any party to the action who has entered an appearance therein, order the action to be discontinued or dismissed on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will or letters of administration of the estate, of the deceased person, as the case may be, which is the subject of the action, be made to the person entitled thereto.

(3) An application for an order under this rule may be made by summons.

[*E.r.* 11]

Compromise of action: trial on affidavit evidence

12. Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the Court may order the trial on the action on affidavit evidence.

[*E.r.* 12]

Application for order to bring in will, etc.

13.—(1) Any application in a probate action under Article 15 of the Order for—

(*a*) an order requiring a person to bring a will or other testamentary paper into the Office shall be made by summons in the action, which must be served on the person against whom the order is sought;

(*b*) the issue of a subpoena requiring a person to bring into the Office a will or other testamentary paper may be made to the Master ex parte and must be supported by an affidavit setting out the grounds of the application.

(2) Any person against whom a subpoena is issued under the said Article 15, and who denies that the will or other testamentary paper referred to in the subpoena is in his possession or under his control may file an affidavit to that effect.

[*E.r.* 14]

Administration pendente lite

14.—(1) An application under Article 6 of the Order for an order for the grant of administration may be made by summons.

(2) Where an order for a grant of administration is made under the said Article 6, Order 30, rules 2, 4 and 6 and (subject to paragraph (3) of the said Article) rule 3, shall apply as if the administrator were a receiver appointed by the court.

[*E.r.* 15]

Probate counterclaim in other proceedings

15.—(1) In this rule "probate counterclaim" means a counterclaim in any action other than a probate action by which the defendant claims any such relief as is mentioned in rule 1(2).

(2) Subject to the following paragraphs, this Order shall apply with the necessary modifications to a probate counterclaim as it applies to a probate action.

(3) A probate counterclaim must contin a statement of the nature of the interest of the defendant and of the plaintiff in the estate of the deceased to which the counterclaim relates.

[(**a**)...]

(5) Unlesss an application under Order 15, rule 5(2) is made within 7 days after the service of a probate counterclaim for the counterclaim to be struck out and the application is granted, the Court shall, if necessary of its own motion, order the transfer of the action to the [(**b**) Chancery Division].

[*E.r.* 16]

(**a**) Rule 15(4) deleted by S.R. 1985 No. 170 with effect from 2.9.85
(**b**) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07

ORDER 77

PROCEEDINGS BY AND AGAINST THE CROWN

Application and interpretation

1.—(1) These rules apply to civil proceedings to which the Crown is a party subject to the following rules of this Order.

(2) In this Order—

"the Act" means the Crown Proceedings Act 1947(**a**) as it applies in Northern Ireland in relation to Her Majesty's Government in the United Kingdom and in relation to Her Majesty's Government in Northern Ireland;

"civil proceedings by the Crown", "civil proceedings against the Crown" and "civil proceedings by or against the Crown" have the same respective meanings as in Part II of the Act and do not include any of the proceedings specified in section 23(3) of that Act;

"civil proceedings to which the Crown is a party" has the same meaning as it has for the purposes of Part IV of the Act, by virtue of section 38(4) of that Act;

"order against the Crown" means any order (including an order for costs) made in any civil proceedings by or against the Crown or in any proceedings on the Crown side of the Queen's Bench Division, or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a government department or against an officer of the Crown as such;

"order" includes a judgment, decree, rule, award or declaration.

[*E.r.* 1]

Particulars to be included in indorsement of claim

2.—(1) In the case of a writ which begins civil proceedings against the Crown the indorsement of claim required by Order 6, rule 2, shall include a statement of the circumstances in which the Crown's liability is alleged to have arisen and as to the government department and officers of the Crown concerned.

(2) If in civil proceedings against the Crown a defendant considers that the writ does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for appearing, apply to the plaintiff by notice for a further and better statement containing such information as may be specified in the notice.

(3) Where a defendant gives a notice under this rule, the time limited for appearing shall not expire until 7 days after the defendant has notified the plaintiff in writing that the defendant is satisfied with the statement supplied in compliance with the notice or 7 days after the Court has, on the application of the plaintiff by summons served on the defendant not less than 7 days before the return day, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.

[*E.r.* 3]

(**a**) 1947 c. 44

ORDER 77

Service on the Crown

3.—(1) Order 10, Order 11 and any other provision of these Rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown are begun.

(2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Crown service on the Crown must be effected—

(*a*) by leaving the document at the office of the person who is in accordance with section 18 of the Act to be served, or of any agent whom that person has nominated for the purpose, but in either case with a member of the staff of that person or agent, or

(*b*) by posting it in a prepaid envelope addressed to the person who is to be served as aforesaid or to any such agent as aforesaid.

(3) In relation to the service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown, Order 65, rules 5 and 9, shall not apply, and Order 65, rule 7, shall apply as if the reference therein to rules 2 and 5(1)(*a*) of that Order were a reference to paragraph (2)(*a*) of this rule.

[*E.r.* 4]

Counterclaim and set-off

4.—(1) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, a person may not in any proceedings by the Crown make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.

(2) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, no counterclaim may be made, or set-off pleaded, without the leave of the Court, by the Crown in proceedings against the Crown, or by any person in proceedings by the Crown—

(*a*) if the Crown is sued or sues in the name of a government department and the subject-matter of the counterclaim or set-off does not relate to that department; or

(*b*) if the Crown is sued or sues in the name of the Attorney-General.

(3) Any application for leave under this rule must be made by summons.

[*E.r.* 6]

Summary judgment

5.—(1) No application against the Crown shall be made under Order 14, rule 1, or Order 86, rule 1, in any proceedings against the Crown nor under Order 14, rule 5, in any proceedings by the Crown.

(2) Where an application is made by the Crown under Order 14, rule 1, Order 14, rule 5, or Order 86, rule 1, the affidavit required in support of the application must be made by—

(*a*) the solicitor acting for the Crown, or

(*b*) an officer duly authorised by the solicitor so acting or by the department concerned;

and the affidavit shall be sufficient if it states that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

[*E.r.* 7]

Summary applications to the Court in certain revenue matters

6.—(1) This rule applies to applications under section 14 of the Act.

(2) An application to which this rule applies may be made by originating motion or originating summons.

(3) The person from whom any account or information or payment is claimed or by whom any books are required to be produced must be made respondent or, where the application is made by originating summons, defendant to the application.

(4) An originating summons or notice of originating motion under this rule—

(*a*) must be entitled in the matter or matters out of which the need for the application arises and in the matter of the Act; and

(*b*) must refer to the statutory provision under which the account or information or payment or the production of books is claimed and, where information is claimed, must show (by appropriate questions or otherwise) what information is required.

(5) Upon any application to which this rule applies an affidavit by a duly authorised officer of the government department concerned setting out the state of facts upon which the application is based and stating that he has reason to think that those facts exist shall be evidence of those facts; and if evidence if filed disputing any of those facts, further evidence may be filed, and the Court may either decide the matter upon the affidavits (after any cross-examination that may have been ordered) or may direct that it be decided by oral evidence in court.

(6) An order in favour of the Crown on an application to which this rule applies shall, unless the Court otherwise determines, name a time within which each of its terms is to be complied with.

(7) For the purpose of Order 59, rule 4, all orders made on applications to which this rule applies shall be deemed to be interlocutory.

(8) Nothing in this rule shall, in relation to any case in which the only relief claimed by the Crown is the payment of money, be construed as requiring the Crown to proceed by way of an application to which this rule applies or as preventing the Crown from availing itself of any other procedure which is open to it under these rules.

[*E.r.* 8]

Joinder of Commissioners of Inland Revenue under Order 15 rule 6(2)(*b*)(ii)

7. Nothing in Order 15, rule 6(2)(*b*)(ii), shall be construed as enabling the Commissioners of Inland Revenue to be added as a party to any cause or matter except with their consent signified in writing or in such manner as may be authorised.

[*E.r.* 8A]

Judgment in default

8.—(1) Except with the leave of the Court, no judgment in default of appearance or of pleading shall be entered against the Crown in civil proceedings against the Crown or in third party proceedings against the Crown.

(2) Except with the leave of the Court, Order 16, rule 5(1)(*a*), shall not apply in the case of third party proceedings against the Crown.

(3) An application for leave under this rule may be made by summons or, except in the case of an application relating to Order 16, rule 5, by motion; and the summons or, as the case may be, notice of the motion must be served not less than 7 days before the return day.

[*E.r.* 9]

Third party notices

9.—(1) Notwithstanding anything in Order 16, a third party notice (including a notice issuable by virtue of Order 16, rule 9) for service on the Crown shall not be issued without the leave of the Court, and the application for the grant of such leave must be made by summons, and the summons must be served on the plaintiff and the Crown.

(2) Leave to issue such a notice for service on the Crown shall not be granted unless the Court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

[*E.r.* 10]

Interpleader: application for order against Crown

10. No order shall be made against the Crown under Order 17, rule 3(3), except upon an application by summons served not less than 7 days before the return day.

[*E.r.* 11]

Discovery and interrogatories

11.[(**a**) (1) Order 24, rules 1 and 2, shall not apply in civil proceedings to which the Crown is a party.]

(2) In any civil proceedings to which the Crown is a party any order of the Court made under the powers conferred by section 28(1) of the 1947 Act shall be construed as not requiring the disclosure of the existence of any document the existence of which it would, in the opinion of a Minister of the Crown, be injurious to the public interest to disclose.

(3) Where in any such proceedings an order of the Court directs that a list of documents made in answer to an order for discovery against the Crown shall be verified by affidavit, the affidavit shall be made by such officer of the Crown as the Court may direct.

(4) Where in any such proceedings an order is made under the said section 28 for interrogatories to be answered by the Crown, the Court shall direct by what officer of the Crown the interrogatories are to be answered.

(5) In any proceedings by the Crown for the enforcement of any right for the enforcement of which proceedings by way of English information

(**a**) Paragraph (1) deleted by S.R. 1982 No. 217 with effect from 1.9.82 and new paragraph (1) inserted by S.R. 1994 No. 286 with effect from 1.10.94

might have been taken if the Act had not passed the Crown may serve interrogatories or further interrogatories (except any third or subsequent set of interrogatories) under Order 26 without the leave of the Court.

[*E.r.* 12]

Place of trial

12.—(1) Civil proceedings by or against the Crown shall not, except with the consent of the Crown, be directed to be tried elsewhere than at the Royal Courts of Justice, Belfast.

(2) Nothing in any of these Rules shall prejudice the right of the Crown to demand a local venue for the trial of any proceedings in which the Attorney General has waived his right to a trial at bar.

[*E.r.* 13]

Evidence

13.—(1) Civil proceedings against the Crown may be instituted under Order 39, rule 15, in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.

(2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects.

[*E.r.* 14]

Enforcement and satisfaction of orders

14.—(1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Crown.

(2) An application under the proviso to subsection (1) of section 25 of the Act for a direction that a separate certificate shall be issued under that subsection with respect to the costs (if any) ordered to be paid to the applicant, may be made to the Court ex parte without summons.

[*E.r.* 15]

Attachment of debts, etc.

15. Every application to the Court for an order under section 27(1) of the Act restraining any person from receiving money payable to him by the Crown and directing payment of the money to the applicant or some other person must be made by summons served at least 4 days before the return day on the Crown and, unless the Court otherwise orders, on the person to be restrained or his solicitor; and the application must be supported by an affidavit setting out the facts giving rise to it, and in particular identifying the particular debt from the Crown in respect of which it is made.

[*E.r.* 16]

Proceedings relating to postal packets

16.—(1) An application by any person under section 9(3) of the Act for leave to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives must be made by originating summons in the Queen's Bench Division.

(2) The Crown and the person in whose name the applicant seeks to bring proceedings must be made defendants to a summons under this rule.

(3) No appearance need be entered to a summons under this rule.

[*E.r.* 17]

Applications under ss. 17 *and* 29 *of the Act*

17.—(1) Every application to the Court under section 17(4) of the Act must be made by summons.

(2) An application such as is referred to in section 29(2) of the Act may be made to the Court at any time before trial by motion or summons, or may be made at the trial of the proceedings.

[*E.r.* 18]

ORDER 78

REMITTAL AND REMOVAL OF PROCEEDINGS

Interpretation and assignment of proceedings

1.—(1) In this Order—

"remittal" means remittal from the High Court to a county court under section 31 of the Act;

"removal" means removal from a county court to the High Court, under section 31 of the Act.

(2) Where proceedings commenced in a county court by equity civil bill are removed to the High Court they shall be assigned to the Chancery Division.

[(**a**) **1A.** Where in proceedings before a county court the court considers that there is a real possibility that a party would in the course of the proceedings be required to disclose material the disclosure of which would be damaging to the interests of national security, the court must transfer the proceedings to the High Court.]

Remittal and removal of proceedings

2.—(1) Any party may apply for the remittal or removal of any civil proceedings by summons to be served on every other party to the proceedings.

(2) The following particulars must be endorsed on the back of the summons—

(*a*) in an application for the remittal of proceedings, the county court, or courts if more than one, in which the proceedings could apart from any limitation by reason of amount or value or [(**b**) capital value, net annual value or both as the case may be] have been commenced;

(*b*) in an application for the remittal of proceedings, the county court to which it is proposed by the applicant, or has been agreed by the parties, that the proceedings should be remitted;

(*c*) in an application for the removal of proceedings, the county court in which the proceedings are pending;

(*d*) which, if any, parties concur in the application and to what extent;

(*e*) where the whole of the proceedings are not to be remitted or removed the part to which the application relates;

(*f*) the nature of the proceedings;

(*g*) the stage which has been reached in the proceedings; [(**c**)...]

(*h*) the grounds on which the order is sought; [(**d**) and]

[(**e**)(*i*) whether the making of a declaration of incompatibility under section 4 of the Human Rights Act 1998 has arisen or may arise in the proceedings.]

(3) The said summons shall be supported by an affidavit verifying the particulars endorsed on the summons and stating any other facts grounding the application.

Remittal and removal on consent

3. Where all parties consent to the remittal or removal of any proceedings any party may apply ex parte on a consent executed by the parties or their solicitors setting forth—

(*a*) the county court to or from which it has been agreed that the proceedings should be remitted or removed;

(*b*) where the whole of the proceedings are not to be remitted or removed the part to which the consent relates;

(**a**) Rule 1A inserted by S.R. 2013 No. 175 with effect from 27.06.13
(**b**) Words substituted by S.R. 2007 No. 192 with effect from 01.04.07
(**c**) Word deleted by S.R. 2000 No. 243 with effect from 2.10.00
(**d**) Word added by S.R. 2000 No. 243 with effect from 2.10.00
(**e**) Sub-paragraph (*i*) added by S.R. 2000 No. 243 with effect from 2.10.00

(*c*) the nature of the proceedings; [(**a**)...]

(*d*) the terms of any order as to costs which had been agreed upon; [(**b**) and]

[(**c**)(*e*) whether the making of a declaration of incompatibility has arisen or may arise in the proceedings.].

Opposing an application for remittal or removal

4. A party opposing the remittal or removal of any proceedings may show by affidavit or, with the leave of the Court, by oral evidence, that the proceedings or any part thereof ought not to be remitted or removed, as the case may be.

Reports of experts

5. For the purpose of making or opposing any application under this Order a party may exhibit or adduce in evidence the reports of medical or other experts.

Service of affidavits and exhibits

6. Every party shall serve on every other party to the proceedings a copy of every affidavit and exhibit intended to be used on the hearing of any application under this Order.

Directions

7. An order for the removal of any proceedings may include such directions as to the further conduct of the proceedings as may be necessary and may direct that the action be set down for trial forthwith, with or without further pleadings.

Procedure on remittal

8. Where an order is made for the remittal of any proceedings, the proper officer shall—

(*a*) give notice of the remittal to every party to the proceedings and to the Accountant General;

(*b*) send a copy of the order of remittal [(**d**)...] to the [(**e**) chief] clerk for the court to which the proceedings are to be remitted;

(*c*) upon receipt of the notice of remittal the Accountant General shall thereupon transfer to the county court to which the proceedings are to be remitted any sum of money paid into court under Order 22 in satisfaction of a claim or cause of action.

Procedure on removal

9.—(1) Where an order is made for the removal of any proceedings the proper officer shall send a copy of the order of removal to the chief clerk for the court from which the proceedings are to be removed.

(2) On receipt by the proper officer of the documents referred to in Order 22, rule [(**f**) 11], of the County Court Rules (Northern Ireland) [(**g**) 1981](**h**), that officer must forthwith—

(*a*) file the said documents and make an entry of the filing thereof in the cause book;

(**a**) Word deleted by S.R. 2000 No. 243 with effect from 2.10.00
(**b**) Word added by S.R. 2000 No. 243 with effect from 2.10.00
(**c**) Sub-paragraph (*e*) added by S.R. 2000 No. 243 with effect from 2.10.00
(**d**) Words omitted by S.R. 1983 No. 5 with effect from 28.2.83
(**e**) Words substituted by S.R. 1983 No. 5 with effect from 28.2.83
(**f**) Word substituted by S.R. 1983 No. 5 with effect from 28.2.83
(**g**) Figure substituted by S.R. 1983 No. 5 with effect from 28.2.83
(**h**) S.R. 1981 No. 225

(*b*) give notice to all the parties to the proceedings in the county court that the action is proceeding in the High Court and that the defendant is required to enter an appearance in the action in the appropriate office (naming it).

(3) The defendant must within 10 days after receipt of the notice referred to in rule 10 enter an appearance in accordance with Order 12, rules 1 to 4, and Order 12, rules 1, 2 and 4 shall apply as if the proceedings removed were an action begun by writ.

(4) The memorandum of appearance in an action begun in the county court and removed to the High Court shall be in Form No. 13 in Appendix A.

(5) The proceedings shall thereupon, subject to rules 7 and 10, continue as if they had been commenced in the court to which they have been removed.

(6) If the defendant, or any defendant (if more than one), fails to enter an appearance within the period prescribed by paragraph (3), the plaintiff may, with the leave of the court, enter judgment against the defendant or defendants, as the case may be, with costs.

Procedure on counterclaim

10.—(1) Where only the proceedings on a counterclaim are remitted or removed this Order shall apply as if the party setting up the counterclaim were the plaintiff and the party resisting it were the defendant, and references in this Order to the plaintiff and the defendant shall be construed accordingly.

(2) References in this Order to the plaintiff and the defendant shall, where the context so requires, be construed as references to the applicant and the respondent respectively.

[(a) 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 of 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(**b**) 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.

(**a**) Order 79 added by S.R. 1980 No. 433 with effect from 1.1.81
(**b**) 1980 c. 47

(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 [(**a**) the High Court or] 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

(**a**) Words inserted by S.R. 1984 No. 354 with effect from 12.11.84

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 [(**a**) Schedule 3 to the Magistrates Courts (Northern Ireland) Order 1981(**b**)].

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 [(**a**) the High Court or] 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 paragraphs (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 High Court or Court of Appeal

10. Where [(**a**) the High Court or] 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 [(**c**) [(**d**)...]] 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.

[(**e**)*Recommittal in respect of order under section 91 of the Justice Act (Northern Ireland) 2011*

11A. Where an application by the prosecutor or a surety for the review of an order under section 91 of the Justice Act (Northern Ireland) 2011 (power of a

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(a) Words inserted by S.R. 1984 No. 354 with effect from 12.11.84
(b) S.I. 1981/1675 (N.I. 26)
(c) Words inserted by S.R. 2012 No. 272 with effect from 01.08.12
(d) Words omitted by S.R. 2012 No. 431 with effect from 01.01.13
(e) Paragraph 11A inserted by S.R. 2012 No. 431 with effect from 01.1.13

magistrates' court to grant bail on compassionate grounds), the High Court decides to exercise its jurisdiction, the Court may, if it appears to it any of the grounds mentioned in rule 11 paragraphs (*a*) to (*c*) are satisfied, order that the person released on bail on foot of the order 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 80

DISABILITY

Interpretation

1. In this Order—

''patient'' means a person suffering or appearing to be suffering from mental disorder as defined in [(**a**) Article 3 of the Mental Health (Northern Ireland) Order 1986(**b**)]

''person under disability'' means a person who is a minor or a person who by reason of mental disorder within the meaning of the [(**a**) Mental Health (Northern Ireland) Order 1986] is incapable of managing or administering his property and affairs.

[*E.r.* 1]

Person under disability must sue, etc. by next friend or guardian ad litem

2.—(1) A person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not defend, make a counter-claim or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his guardian ad litem.

(2) Subject to the provision of these Rules, anything which in the ordinary conduct of any proceedings is required or authorised by a provision of these Rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian ad litem.

(3) A next friend or guardian ad litem of a person under disability must act by a solicitor.

[*E.r.* 2]

Appointment of next friend or guardian ad litem

3.—(1) Except as provided by paragraph (3) or (4) or by rule 4, an order appointing a person next friend or guardian ad litem of a person under disability is not necessary.

(2) Where a person is authorised under the [(**a**) Part VIII of the Mental Health (Northern Ireland) Order 1986] to conduct legal proceedings in the name of a patient or on his behalf, that person shall be entitled to be next friend or guardian ad litem, as the case may be, of the patient in any proceedings to which his authority extends unless, in a case to which paragraph (3) or (4) or rule 4 applies, some other person is appointed by the Court under that paragraph or rule to be next friend or guardian ad litem, as the case my be, of the patient in those proceedings.

(3) Where a person has been or is next friend or guardian ad litem of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian in substitution for the person previously acting in that capacity.

(**a**) Words substituted by S.R. 1986 No. 184 with effect from 31.7.86
(**b**) S.I. 1986/595 (N.I. 4)

(4) Where, after any proceedings have been begun, a party to the proceedings becomes a patient, an application must be made to the Court for the appointment of a person to be next friend or guardian ad litem, as the case may be, of that party.

(5) Except where the next friend or guardian ad litem, as the case may be, of a person under disability has been appointed by the Court—

(*a*) the name of any person shall not be used in a case or matter as next friend of a person under disability,

(*b*) an appearance shall not be entered in a cause or matter for a person under disability, and

(*c*) a person under disability shall not be entitled to appear by his guardian ad litem on the hearing of a petition, summons or motion which, or notice of which, has been served on him,

unless and until the documents listed in paragraph (6) have been filed in the appropriate office.

(6) The documents referred to in paragraph (5) are the following—

(*a*) a written consent to be next friend or guardian ad litem, as the case may be, of the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian;

(*b*) where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorised to conduct the proceedings in the cause or matter in question in the name of the patient of on his behalf, an office copy, sealed with the official seal of the Office of Care and Protection, of the order or other authorisation made or given under [(**a**) Part VIII of the Mental Health (Northern Ireland) Order 1986] by virtue of which he is so authorised; and

(*c*) except where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorised as mentioned in sub-paragraph (*b*), a certificate made by the solicitor for the person under disability certifying—

(i) that he knows or believes, as the case may be, that the person to whom the certificate relates is a minor or a patient, giving (in the case of a patient) the grounds of his knowledge or belief; and

(ii) where the person under disability is a patient, that there is no person authorised as aforesaid; and

(iii) except where the person named in the certificate as next friend or guardian ad litem, as the case may be, is the Official Solicitor, that the person so named has no interest in the cause of matter in question adverse to that of the person under disability.

[*E.r.* 3]

Appointment of guardian where person under disability does not appear

4.—(1) Where—

(*a*) in an action against a person under disability begun by writ, or by originating summons to which an appearance is required to be entered, no appearance is entered in the action for that person, or

(*b*) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no appearance is entered for that person,

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(**a**) Words substituted by S.R. 1986 No. 184 with effect from 31.7.86

an application for the appointment by the Court of a guardian ad litem of that person must be made by the plaintiff or defendant, as the case may be, after the time limited (as respects that person) for appearing and before proceeding further with the action or counterclaim.

(2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no appearance is entered for that person to the notice, an application for the appointment by the Court of a guardian ad litem of that person must be made by that party after the time limit (as respects that person) for appearing and before proceeding further with the third party proceedings.

(3) Where in any proceedings against a person under disability begun by petition or originating motion, or by originating summons to which no appearance need be entered, that person does not appear by a guardian ad litem at the hearing of the petition, motion or summons, as the case may be, the Court hearing it may appoint a guardian ad litem of that person in the proceedings or direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.

(4) At any stage in the proceedings in the Chancery Division under any judgment or order, notice of which has been served on a person under disability, the Court may, if no appearance is entered for that person, appoint a guardian ad litem of that person in the proceedings or direct that an application be made for the appointment of such a guardian.

(5) An application under paragraph (1) or (2) must be supported by evidence proving—

(*a*) that the person to whom the application relates is a person under disability,

(*b*) that the person proposed as guardian ad litem is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability,

(*c*) that the writ, originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability, and

(*d*) subject to paragraph (6), that notice of the application was, after the expiration of the time limited for appearing and at least 7 days before the day named in the notice for hearing of the application, so served on him.

(6) If the Court so directs, notice of an application under paragraph (1) or (2) need not be served on a person under disability.

(7) An application for the appointment of a guardian ad litem made in compliance with a direction of the Court given under paragraph (3) or (4) must be supported by evidence proving the matters referred to in paragraph (5)(*b*).

[*E.r.* 6]

Application to discharge or vary certain orders

5. An application to the Court on behalf of a person under disability served with an order made ex parte under Order 15, rule 7, for the discharge or variation of the order must be made—

(*a*) if a next friend or guardian ad litem is acting for that person in the cause or matter in which the order is made, within 14 days after the service of the order on that person;

(*b*) if there is no next friend or guardian ad litem acting for that person in that cause or matter, within 14 days after the appointment of such a friend or guardian to act for him.

[*E.r.* 7]

Admission not to be implied from pleading of person under disability

6. Notwithstanding anything in Order 18, rule 13(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

[*E.r.* 8]

Discovery and interrogatories

7. Orders 24 and 26 shall apply to a person under disability and to his next friend or guardian ad litem.

[*E.r.* 9]

Compromise, etc., by person under disability

8. Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the Court.

[*E.r.* 10]

Approval of settlement

9.—(1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then, notwithstanding anything in Order 5, rule 2, the claim may be made in proceedings begun by originating summons, and in the summons an application may also be made for—

(*a*) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient under Article 21 of the County Courts (Northern Ireland) Order 1980(**a**), or rule 10, or

(*b*) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule a claim is made under the Fatal Accidents Order (Northern Ireland) 1977(**b**), the originating summons must include the particulars mentioned in Article 4 of the Order.

(3) No appearance need be entered to an originating summons under this rule.

(4) In this rule "settlement" includes a compromise.

[*E.r.* 11]

(**a**) S.I. 1980 No. 397 (N.I. 3)
(**b**) S.R. 1977 No. 1251 (N.I. 18)

Control of money recovered by person under disability

10.—(1) Where in any proceedings—

(*a*) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability, or

(*b*) money paid into court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court, whether under Article 21 of the County Courts (Northern Ireland) Order 1980 or this rule, or under both that Article and this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the high Court and invested or otherwise dealt with there.

(3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special direction that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into court and whether before or after the money is transferred to or paid into a county court, to the plaintiff, or to the next friend in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's solicitor in respect of costs.

(4) Where in pursuance of directions given under this rule money is paid into the High Court, to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred of paid out of court, except in accordance with an order of the Court.

(5) The foregoing provisions of this rule shall apply in relation to a counterclaim by or on behalf of a person under disability, and a claim made by or on behalf of such a person in an action by any other person for relief under [(**a**) sections 183 to 189 of the Merchant Shipping Act 1995], as if for references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian ad litem respectively.

[*E.r.* 12]

Provision supplementary to rule 10

11.—(1) Where under Article 21 of the County Courts (Northern Ireland) Order 1980 money to which a person under disability is entitled is ordered to be transferred from the High Court to a county court or to be paid into a county court, the following provisions of this rule apply.

(2) Where the money is orderd to be transferred to a county court, the proper officer of the High Court shall send a sealed copy of the order and the payment schedule to the Accountant General, who shall proceed in accordance with rule 50 of the Court Funds Rules (Northern Ireland) 1979(**b**).

Where the money is ordered to be paid into a county court, the proper officer of the High Court shall send a sealed copy of the judgment or order to the chief clerk of the county court.

[*E.r.* 13]

(**a**) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07
(**b**) S.R. 1979 No. 105

Proceedings under Fatal Accidents Order: apportionment by court

12.—(1) Where a single sum of money is paid into court under Order 22, rule 1, in satisfaction of causes of action arising under the Fatal Accidents Order (Northern Ireland) 1977 and the Law Reform (Miscellaneous Provisions) Act 1937(**a**), and that sum is accepted, the money shall be apportioned between the different causes of action by the court either when giving directions for dealing with it under rule 10 (if that rule applies) or when authorising its payment out of court.

(2) Where, in an action in which a claim under the Fatal Accidents Order (Northern Ireland) 1977 is made by or on behalf of more than one person, a sum in respect of damages is adjudged or ordered or agreed to be paid in satisfaction of the claim, or a sum of money paid into court under Order 22, rule 1, is accepted in satisfaction of the cause of action under the said Order, then, unless the sum has been apportioned between the persons entitled thereto by the jury, it shall be apportioned between those persons by the Court.

The reference in this paragraph to a sum of money paid into court shall be construed as including a reference to part of a sum so paid, being the part apportioned by the Court under paragraph (1) to the cause of action under the said Order.

[*E.r.* 15]

Service of certain documents on person under disability

13.—(1) Where in any proceedings a document is required to be served personally or in accordance with Order 10, rule 1(2) on any person and that person is a person under disability this rule shall apply.

(2) Subject to the following provisions of this rule and to Order 24, rule 15(3), and Order 26, rule 6(3), the document must be served—

(*a*) in the case of a minor who is not also a patient, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;

(*b*) in the case of a patient, on the person (if any) who is authorised to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served or, if there is no person so authorised, on the person with whom he resides or in whose care he is;

and must be served in the manner required by these Rules with respect to the document in question.

(3) Notwithstanding anything in paragraph (2), the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(4) A judgement or order requiring a person to do, or refrain from doing, any act, a notice of motion or summons for the committal of any person, and a writ of subpoena against any person, must, if that person is a person under disability, be served personally on him unless the Court otherwise orders.

This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

[*E.r.* 16]

[(**b**) *Appointment of guardian of child's estate or fortune*

14.—(1) In any of the circumstances mentioned in paragraph (2) (*a*) to (*d*) the court may appoint the Official Solicitor or some other suitable person to be a guardian of the fortune or estate of a child provided that

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(**a**) 1937 c. 9 (N.I.)
(**b**) Rule 14 inserted by S.R. 1996 No. 321 with effect from 4.11.96

(*a*) the appointment is to subsist only until the child reaches the age of eighteen; and

(*b*) the consent of the persons with parental responsibility for the child (within the meaning of Article 6 of the Children (Northern Ireland) Order 1995(**a**)

(i) has been signified to the court; or

(ii) in the opinion of the court cannot be obtained or may be dispensed with.

(2) The circumstances referred to in paragraph (1) above are:

(*a*) where money is paid into court on behalf of the child in accordance with directions given under rule 10 (control of money recovered by person under disability);

(*b*) where a court or tribunal outside Northern Ireland notifies the court that it has ordered or intends to order that money to be paid to the child;

(*c*) where the child is absolutely entitled to the proceeds of a pension fund;

(*d*) where such an appointment seems desirable to the court.]

(a) S.I. 1995/755 (N.I. 2)

ORDER 80

[(a) *Investment of money recovered by person under disability*

15.—(1) Moneys paid into Court may be invested in the following securities—

(*a*) securities issued by Her Majesty's Government in the United Kingdom, the Government of Northern Ireland or the Government of the Isle of Man, being fixed-interest securities registered in the United Kingdom or the Isle of Man, Treasury Bills or Tax Reserve Certificates or any variable interest securities issued by Her Majesty's Government in the United Kingdom and registered in the United Kingdom;

(*b*) any securities the payment of interest on which is guaranteed by Her Majesty's Government in the United Kingdom or the Government of Northern Ireland;

(*c*) fixed-interest or variable interest securities issued in the United Kingdom by any public authority or by any nationalised industry or nationalised undertaking in the United Kingdom;

(*d*) debentures issued in the United Kingdom by a company incorporated in the United Kingdom, being debentures registered in the United Kingdom;

(*e*) equity shares in a public limited liability company whose shares are listed in the Official List of the Stock Exchange;

(*f*) equity shares in an investment trust company;

(*g*) any units of a gilt unit trust scheme;

(*h*) any units of an authorised unit trust scheme;

(*i*) any shares in an open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations (Northern Ireland) 2004(**b**) or the Open-Ended Investment Companies Regulations 2001(**c**).

(2) Pending or in lieu of such investment, moneys so paid in may be lodged on deposit receipt in accounts held with the National Debt Commissioners or in accounts held with such bank as the [(**d**) Department of Justice] may, with the concurrence of the [(**d**) Department of Finance and Personnel], designate under section 79 of the 1978 Act.

Interpretation

16.—(1) In rule 15, the expression—

"authorised unit trust scheme" has the meaning assigned by section 237(3) of the Financial Services and Markets Act 2000(**e**);

"debenture" includes debenture stock and bonds, whether constituting a charge on assets or not, and loan stock or notes;

"fixed-interest securities" means securities which under the terms of issue bear a fixed rate of interest;

"gilt unit trust scheme" means an authorised unit trust scheme, or a recognised scheme, the objective of which is—

(*a*) to invest at least 90% of the property of the scheme in loan stock, bonds or other instruments creating indebtedness which—

(i) are transferable; and

(**a**) Rules inserted by S.R. 2006 No. 486 with effect from 08.01.07
(**b**) S.R. 2004 No. 335
(**c**) S.I. 2001 No. 1228
(**d**) Words substituted by S.R. 2010 No. 381 with effect from 20.12.10
(**e**) 2000 c. 8

(ii) are issued or guaranteed by the government of the United Kingdom or of any other country or territory, by a local authority in the United Kingdom or in a relevant state, or by an international organisation the members of which include the United Kingdom or a relevant state;

(*b*) to invest the remainder of the property of the scheme in shares, debentures or other instruments creating or acknowledging indebtedness, certificates representing securities or units in a collective investment scheme.

Sub-paragraphs (*a*) and (*b*) must be read with—

(i) section 22 of the Financial Services and Markets Act 2000;

(ii) any relevant Order under that section; and

(iii) Schedule 2 to that Act;

"investment trust company" has the meaning assigned by section 842 of the Income and Corporation Taxes Act 1988 (**a**);

"securities" includes shares, debentures, Treasury Bills and Tax Reserve Certificates;

"share" includes stock;

"Treasury Bills" includes bills issued by Her Majesty's Government in the United Kingdom and Northern Ireland Treasury Bills;

"variable-interest securities" means securities which under the terms of issue bear variable rate of interest.

(2) In this rule, the expression "relevant state" means Austria, Finland, Iceland, Liechtenstein, Norway, Sweden or a state other than the United Kingdom State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992 as it has effect for the time being.]

(a) 1988 c. 1

ORDER 81

PARTNERS

Actions by and against firms within jurisdiction

1. Subject to the provisions of any statutory provision, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

[*E.r.* 1]

Disclosure of partners' names

2.—(1) Any defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their solicitors a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the plaintiffs or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the action be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made under paragraph (1), the proceedings shall continue in the name of the firm but with the same consequences as would have ensured if the persons whose names have been so declared had been named as plaintiffs in the writ.

(3) Paragraph (1) shall have effect in relation to an action brought against partners in the name of a firm as it has effect in relation to an action brought by partners in the name of a firm but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively, and with the omission of the words "or may order" to the end.

[*E.r.* 2]

Service of writ

3.—(1) Where by virtue of rule 1 partners are sued in the name of a firm, the writ may, except in the case mentioned in paragraph (2), be served—

(*a*) on any one or more of the partners, or

(*b*) at the principal place of business of the partnership within the jurisdiction, on any person having at the time of service the control or management of the partnership business there; or

(*c*) by sending a copy of the writ by ordinary first class post (as defined in Order 10, rule 1(2)) to the firm at the principal place of business of the partnership within the jurisdication;

and, subject to paragraph (2), where service of the writ is effected in accordance with this paragraph, the writ shall be deemed to have been duly served on the firm, whether or not any member of the firm is out of the jurisdiction.

(2) Where a writ is served on a firm in accordance with sub-paragraph (1)(*c*)—

(*a*) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to the firm; and

(*b*) any affidavit proving due service of the writ must contain a statement to the effect that—

(i) in the opinion of the deponent the copy of the writ, if sent to the firm at the address in question, will have come to the knowledge of one of the persons mentioned in paragraph (1)(*a*) or (*b*) within 7 days thereafter, and

(ii) the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.

(3) Where a partnership has, to the knowledge of the plaintiff, been dissolved before an action against the firm is begun, the writ by which the action is begun must be served on every person within the jurisdiction sought to be made liable in the action.

(4) Every person on whom a writ is served under paragraph (1)(*a*) or (*b*) must at the time of service be given a written notice stating whether he is served as a partner or as a person having the control or management of the partnership business or both as a partner and as such a person; and any person on whom a writ is so served but to whom no such notice is given shall be deemed to be served as a partner.

[*E.r.* 3]

Entry of appearance in an action against firm

4.—(1) Where persons are sued as partners in the name of their firm, appearance may not be entered in the name of the firm but only by the partners thereof in their own names, but the action shall nevertheless continue in the name of the firm.

(2) Where in an action against a firm the writ by which the action is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may enter an appearance in the action and state in his memorandum of appearance that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

An appearance entered in accordance with this paragraph shall, unless and until it is set aside, be treated as an appearance for the defendant firm.

(3) Where an appearance has been entered for a defendant in accordance with paragraph (2), then—

(*a*) the plaintiff may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;

(*b*) the defendant may either apply to the Court to set aside the service of the writ on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's claim either his liability as a partner or the liability of the defendant firm or both.

(4) The Court may at any stage of the proceedings in an action in which a defendant has entered an appearance in accordance with paragraph (2), on the application of the plaintiff or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

(5) Where in an action against a firm the writ by which the action is begun is served on a person as a person having the control or management of the partnership business, that person may not enter an appearance in the action unless he is a member of the firm sued.

[*E.r.* 4]

Leave to enforce judgment against firm

5.—(1) Where a judgment is given against a firm, leave to enforce the judgment against the property of a partner in the firm may be granted upon the ex parte application of the party who has obtained that judgment against a person who—

(*a*) entered an appearance in the action as a partner, or

(*b*) having been served as a partner with the writ of summons, failed to enter an appearance in the action, or

(*c*) admitted in his pleading that he is a partner, or

(*d*) was adjudged to be a partner.

(2) Leave under paragraph (1) shall not be granted against a member of the firm who was out of the jurisdiction when the writ of summons was issued unless he—

(*a*) entered an appearance to the action as a partner, or

(*b*) was served within the jurisdiction with the writ as a partner, or

(*c*) was, with the leave of the Court given under Order 11, served out of the jurisdiction with the writ, or notice of the writ, as a partner;

and, except as against any property of the firm within the jurisdiction or as provided by the foregoing provisions of this paragraph, a judgment given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

(3) Where a party who has obtained a judgment against a firm claims that a person is liable to satisfy the judgment as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for leave to enforce the judgment against that person, the application to be made by summons which must be served personally on that person.

(4) Where the person against whom an application under paragraph (3) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (2) give lead to enforce against that person, and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

[*E.r.* 5]

Leave to enforce judgment in actions between partners, etc.

6.—(1) Upon an application for leave to enforce a judgment given in—

(*a*) an action by or against a firm in the name of the firm against or by a member of the firm; or

(*b*) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common

the Court may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

[*E.r.* 6]

Actions begun by originating summons

7. Rules 2 to 6 shall, with the necessary modifications, apply in relation to an action by or against partners in the name of their firm begun by originating summons as they apply in relation to such an action begun by writ.

[*E.r.* 8]

Application to person carrying on business in another name

8. An individual carrying on business within the jurisdiction in a name or style other than his own name, may [(**a**) whether or not he is within the jurisdiction] be sued in that name or style as if it were the name of a firm, and rules 2 to 7 shall, so far as applicable, apply as if he were a partner and the name in which he carried on business were the name of his firm.

[*E.r.* 9]

(**a**) Words inserted by S.R. 1984 No. 110 with effect from 1.1.87

ORDER 82

DEFAMATION ACTIONS

1. These Rules apply to actions for libel or slander subject to the following rules of this Order.

[*E.r.* 1]

Indorsement of claim in libel action

2. Before a writ in an action for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

[*E.r.* 2]

[(a) *Obligation to give particulars*

3.—(1) Where in any action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.

(2) Where in an action for libel or slander the defendant alleges that, insofar as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(3) Without prejudice to Order 18, rule 8, but subject to paragraph (4), where the defendant makes an allegation as described in paragraph (2), the plaintiff shall serve a reply specifically admitting or denying any such allegation raised by the defendant and specifying any fact or matter upon which he relies in opposition to the defendant's allegations.

(4) No reply shall be required under paragraph (3) where all the facts or matters on which the plaintiff intends to rely in opposition to the defendant's allegations as described in paragraph (2) are already particularised elsewhere in the pleadings.

(5) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(6) Without prejudice to Order 18, rule 12, the plaintiff must give full particulars in the statement of claim of the facts and matters on which he relies in support of his claim for damages, including details of any conduct by the defendant which it is alleged has increased the loss suffered and of any loss which is peculiar to the plaintiff's own circumstances.

(a) Rule 3 substituted by S.R. 1999 No. 19 with effect from 15.2.99

[(**a**) (6A) Where the defendant relies on an offer to make amends made under section 2 of the Defamation Act 1996(**b**), (referred to in this Order as "the 1996 Act"), by way of defence, the defence must—

(*a*) state that the defendant is relying on the offer in accordance with section 4(2) of the 1996 Act;

(*b*) state that the offer has not been withdrawn or accepted; and

(*c*) have a copy of the offer attached to it.]

(7) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.]

[(**c**) *Ruling on meaning*

3A.—(1) At any time after the service of the statement of claim either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a particular meaning or meanings attributed to them in the pleadings.

(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the pleadings, he may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.

(3) Subject to paragraph (4), each party to the proceedings may make only one application under paragraph (1).

(4) Where a party has made an application under paragraph (1) and the respondent to that application subsequently amends his pleadings to allege a new meaning, the Court may allow the other party to make a further application under that paragraph in relation to that new meaning.

(5) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant, and as if the counterclaim were the statement of claim.]

Provision as to payment into court

4.—(1) Where in an action for libel or slander against several defendants sued jointly the plaintiff, in accordance with Order 22, rule 3(1), accepts money paid into court by any of those defendants in satisfaction of his cause of action against that defendant, then, notwithstanding anything in rule 3(2) of that Order, the action shall be stayed against that defendant only, but—

(*a*) the sum recoverable under any judgment given in the plaintiffs favour against any other defendant in the action by way of damages shall not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into court by the defendant as against whom the action has been stayed, and

(*b*) the plaintiff shall not be entitled to his costs of the action against the other defendant after the date of the payment into court unless either the amount of the damages awarded to him is greater than the amount paid into court and accepted by him or the judge is of opinion that there was reasonable grounds for him to proceed with the action against the other defendant.

(**a**) Paragraph 6A inserted by S.R. 2010 No. 49 with effect from 01.04.10
(**b**) 1996 c. 31
(**c**) Rule 3A inserted by S.R. 1999 No. 19 with effect from 15.2.99

(2) Where in an action for libel a party pleads the defence for which section 2 of the Libel Act 1843(**a**) provides, Order 22, rule 7 shall not apply in relation to that pleading.

[*E.r.* 4]

Statement in open court

5.—(1) Where a party accepts money paid into court in satisfaction of a cause of action for libel or slander, the plaintiff or defendant, as the case may be, may apply to a judge in chambers by summons for leave to make in open court a statement in terms approved by the judge.

(2) Where a party to an action for libel or slander which is settled before trial desires to make a statement in open court, an application must be made to the Court for an order that the action be set down for trial, and before the date fixed for the trial the statement must be submitted for the approval of the judge before whom it is to be made.

[*E.r.* 5]

Interrogatories not allowed in certain cases

6. In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.

[*E.r.* 6]

Evidence in mitigation of damages

7. In an action for libel or slander in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

[*E.r.* 7]

Fulfilment of offer of amends [(**b**)...]

8.—(1) An application to the Court under [(**c**) section 3 of the Defamation Act 1996] to determine any question as to the steps to be taken in fulfilment of an offer of amends made under that section must, unless the application is made in the course of proceedings for libel or slander in respect of the publication to which the offer relates, be made in chambers in the Queen's Bench Division, but only a judge may determine such question.

(2) No appearance need be entered to an originating summons by which such an application is made.

[*E.r.* 8]

(a) 1843 c. 96
(b) Words omitted by S.R. 2010 No. 49 with effect from 01.04.10
(c) Words substituted by S.R. 2010 No. 49 with effect from 01.04.10

ORDER 82

[(a) (3) The application must include—

(*a*) a copy of the offer to make amends;

(*b*) details of the steps taken to fulfil the offer to make amends;

(*c*) a copy of the text of any correction and apology;

(*d*) details of the publication of the correction and apology;

(*e*) a statement of the amount of any sum paid as compensation;

(*f*) a statement of the amount of any sum paid as costs; and

(*g*) why the offer to make amends is unsatisfactory.

(4) Where any step specified in section 2(4) of the 1996 Act has not been taken, the application must state—

(*a*) what steps are proposed by the party to fulfil the offer to make amends and the date or dates on which each step will be fulfilled; or

(*b*) that no proposal has been made to take that step to fulfil the offer to make amends.]

[(b) *Summary disposal under the Defamation Act 1996*

9.—(1) This rule applies to proceedings for summary disposal under sections 8 and 9 of the 1996 Act.

(2) The Court may, at any stage of the proceedings—

(*a*) treat any application, pleading or other step in the proceedings as an application for summary disposal; or

(*b*) make an order for summary disposal without any such application.

(3) The Court may, on any application for summary disposal, direct the defendant to elect whether or not to make an offer to make amends under section 2 of the 1996 Act.

(4) When it makes a direction under paragraph (3), the Court will specify the time by which and the manner in which—

(*a*) the election is to be made; and

(*b*) notification of the election is to be given to the Court and other parties.

(5) An application for summary disposal must be supported by an affidavit which—

(*a*) states that it is an application under section 8 of the 1996 Act;

(*b*) verifies the facts on which the application is based;

(*c*) identifies concisely any point of law on which the application relies;

(*d*) states that in the deponent's belief the claim or the defence has no realistic prospect of success and that there is no reason why the claim should be tried; and

(*e*) states whether or not the defendant has made an offer to make amends and whether or not the offer has been withdrawn.

(6) An application for summary disposal may be made at any time after the service of the statement of claim.

(a) Paragraphs inserted by S.R. 2010 No. 49 with effect from 01.04.10
(b) Rule inserted by S.R. 2010 No. 49 with effect from 01.04.10

(7) Where the Court makes an order for summary disposal, the order will specify the date by which the parties should reach agreement about the content, time, manner, form and place of publication of the correction and apology.

(8) Where the parties cannot agree on the content of any correction and apology within the time specified in the order of the Court, the plaintiff must—

(a) prepare a summary of the judgment by the Court; and

(b) serve it on all the other parties within 3 days of the date specified in the order.

(9) Where the parties cannot agree the summary of the judgment prepared by the plaintiff, they must within 3 days of receiving the summary—

(a) lodge with the Court and serve on all the other parties a copy of the summary showing amendments they wish to make to it; and

(b) apply to the Court for the Court to settle the summary.

(10) An application to settle the summary will be heard by the judge who gave the judgment.]

The Consumer Credit Act 1974

Interpretation

1. In this Order—

"the Act" means The Consumer Credit Act 1974(**b**) and a section referred to by number means the section so numbered in the Act and expressions which are defined in the Act have the same meaning in this Order as they have in the Act; and

a reference to proceedings or claims which relate to a regulated agreement shall be deemed to include a reference to proceedings or claims which relate to a security for a regulated agreement or to a debt or other liability arising under a regulated agreement.

Assignment of business

2. Proceedings under the Act shall be assigned to the Queen's Bench Division, with the exception of proceedings relating to an agreement secured by a mortgage which shall be assigned to the Chancery Division.

Commencement of proceedings

3.—(1) Save as otherwise provided in these Rules, proceedings under the Act may be commenced by writ or originating summons.

(2) Where proceedings brought by the creditor relate to a regulated agreement the originating process shall contain a statement clarifying which claim or claims relate to a regulated agreement.

Default of appearance or defence

4.—(1) Notwithstanding Order 13 or Order 19, no judgment in default of appearance or in default of defence in respect of claims which relate to a regulated agreement may be entered without the leave of the court unless the writ of summons contains a statement as required by rule 3(2) and there is produced a certificate by the plaintiff's solicitors or (if he sues in person) an affidavit stating that—

(a) the regulated agreement is not secured by a mortgage;

(b) a default notice in proper form as required by sections 87 and 88 was duly served in sufficient time before the commencement of proceedings and has not been complied with by the debtor or surety;

(c) it is not necessary to apply for an enforcement order granting leave to enforce (the creditor having complied with the relevant requirements of the Act and regulations made thereunder);

(d) there has been no breach of the requirement in section 141(5) as to the joinder of parties to the proceedings; and

(e) no notice of intention to apply for a time order or notice of intention to have a credit agreement reopened as extortionate has been filed in the Central Office or the Chancery Office (as the case may be) or received by the plaintiff.

(a) Order 83 substituted by S.R. 2002 No. 202 with effect from 21.6.02
(b) 1974 c. 39

(2) Notwithstanding Order 65 rule 9, where the leave of the Court is required for judgment in default of appearance or defence, the summons and a copy of the affidavit must be served on every other party to the proceedings.

Joinder of parties

5.—(1) Where the debtor or any surety has not been served with a writ or originating summons commencing proceedings relating to a regulated agreement, the Court may, on an application which may be made ex parte and shall be grounded upon an affidavit, dispense with the requirement in section 141(5) (all parties to a regulated agreement and any surety to be parties to any proceedings).

(2) In proceedings relating to a regulated agreement where—

(a) the plaintiff was not one of the original parties to the agreement, and

(b) the former creditor's rights and duties under the agreement have passed to the plaintiff by operation of law or assignment,

the requirement in section 141(5) shall not apply to the former creditor, unless the Court shall otherwise direct.

(3) Notice of an application under paragraph (1) shall be served on such person as the Court may direct.

(4) This rule shall apply without prejudice to Order 15.

Action to recover possession of goods under a regulated hire-purchase agreement

6. In an action to recover possession of goods under a regulated hire-purchase agreement the statement of claim or (as the case may be) the affidavit filed in support of the originating summons shall include the following particulars—

(a) the date of the agreement and the parties thereto, with sufficient particulars to enable the debtor to identify the agreement, and details of any sureties;

(b) where the plaintiff was not one of the original parties to the agreement, the means by which the rights and duties of the creditor under the agreement passed to him;

(c) a statement that the agreement is a regulated agreement;

(d) the place where the agreement was signed by the debtor (if known);

(e) whether a default notice or a notice under section 76(1) has been served on the debtor, and the date and method of service;

(f) the goods claimed;

(g) the total price;

(h) the amount paid by or on behalf of the debtor;

(i) the date when the right to demand recovery of the goods accrued;

(j) the amount of arrears accrued at the date when the right to demand recovery of the goods accrued;

(k) the amount of any further balance under the agreement being the total price less—

(a) the amount paid; and

(b) any arrears; and

(l) the amount (if any) claimed in addition to the delivery of the goods, stating the cause of action in respect of which each such claim is made.

Particulars to be given in other claims arising out of a regulated hire-purchase agreement

7. Where a plaintiff's claim arises out of a regulated hire-purchase agreement but is not brought to recover possession of goods, the statement of claim or (as the case may be) the affidavit filed in support of the originating summons shall include the following particulars—

(*a*) the date of agreement and the parties thereto, with sufficient particulars to enable the debtor to identify the agreement, and details of any sureties;

(*b*) where the plaintiff was not one of the original parties to the agreement, the means by which the rights and duties of the creditor under the agreement passed to him;

(*c*) a statement that the agreement is a regulated agreement;

(*d*) the place where the agreement was signed by the debtor (if known);

(*e*) whether a default notice or a notice under section 76(1) has been served on the debtor, and the date and method of service;

(*f*) the goods let under the agreement;

(*g*) the total price;

(*h*) the amount paid by or on behalf of the debtor;

(*i*) the amount (if any) claimed as being due and unpaid in respect of any instalment or instalments of the total price; and

(*j*) particulars of any other claim and the circumstances in which it arises.

Conditional sale agreements

8. The provisions of rules 6 and 7 shall apply to conditional sale agreements as they apply to hire-purchase agreements subject to the following modifications—

(*a*) for any reference to the debtor there shall be substituted a reference to the buyer; and

(*b*) for any reference to a hire-purchase agreement or to goods let under the agreement, there shall be substituted a reference to the conditional sale agreement, or to goods to be sold under the agreement, as the case may be.

Enforcement Orders

9.—(1) Subject to paragraph (2), an application for an enforcement order shall be made by originating summons.

(2) If, apart from the need to obtain an enforcement order, a creditor is entitled to payment of the money or to possession of the goods or land to which the regulated agreement relates, an application for an enforcement order shall be made in the course of an action to enforce the agreement.

(3) The writ or originating summons commencing proceedings in which an enforcement order is sought shall be endorsed with or contain a statement of the circumstances rendering such an order necessary.

Orders under section 86(2), 92(1) or 92(2)

10. Rule 9 shall apply to an application for an order under section 86(2) (enforcement of a partly secured or unsecured regulated agreement on the death of the debtor or hirer), 92(1) (entry into premises to take possession of goods), or 92(2) (recovery of possession of land where debtor is in breach of a regulated conditional sale agreement) as it applies to an enforcement order.

[*Supplt. No. 48 (September 2009)*]

ORDER 83

Time Orders

11.—(1) An application under [(**a**) section 129(1)(*b*) or (*ba*)] for a time order shall be made by originating summons supported by an affidavit which shall include the following particulars—

(*a*) the date of the agreement and the parties to it, with sufficient particulars to enable the creditor to identify the agreement, and details of any sureties;

(*b*) if the creditor was not one of the original parties to the agreement, the name of the original party to the agreement;

(*c*) the place where the agreement was signed by the debtor;

(*d*) details of the notice served by the creditor giving rise to the application;

(*e*) the total unpaid balance admitted to be due under the agreement and the amount of any arrears (if known) together with the amount and frequency of the payments specified by the agreement;

(*f*) the debtor's proposals as to payment of any arrears and of future instalments together with the reasons for the relevant breach of the agreement and details of his means; and

(*g*) where the application relates to a breach of the agreement other than the non-payment of money, the reasons for that breach and the debtor's proposals for remedying the breach.

(2) Where in proceedings (other than mortgage actions to which Order 88 rule 4A applies) commenced by a creditor, a debtor or surety wishes to apply for a time order under section 129(1)(*a*) or section 129(1)(*c*), he shall forthwith file and serve on the other party or parties to the proceedings a notice of his intention so to apply.

(3) If at the time of serving a notice under paragraph (2) the debtor or surety has not entered an appearance in the proceedings the notice must specify an address for service as if it were a memorandum of appearance.

(4) After a notice under paragraph (2) has been served in an action begun by writ, judgment in default of appearance or in default of defence shall not be entered without the leave of the Court.

(5) An application for leave under paragraph (4) must be made by summons supported by affidavit and, notwithstanding anything in Order 65 rule 9, the summons and a copy of the affidavit must be served on every other party to the proceedings.

[(**b**) (6) An applicant who is a debtor or hirer making an application for an order under section 129(1)(*ba*) must attach to the supporting affidavit a copy of the notice served on the creditor or owner under section 129A(1)(*a*).]

Powers of Court: regulated agreements

12.—(1) On the hearing of any application in proceedings which relate to a regulated agreement and, without prejudice to any of the Court's other powers under the Act or otherwise, the Court may, whether or not the debtor or surety has entered an appearance, served any pleading or filed or served a notice under rule 11 or appears at the hearing, exercise the powers of the Court under sections 129 to 136.

(2) Where, on an application for leave to enter judgment in default of appearance or defence the Court refuses such leave in respect of a claim or any part of a claim, it may make or give any such order or direction as it might have made or given if the application had been an application under Order 14 rule 1 or Order 86 rule 1 (as the case may be).

(**a**) Words substituted by S.R. 2009 No. 230 with effect by 07.09.09

(**b**) Paragraph inserted by S.R. 2009 No. 230 with effect by 07.09.09

Application for variation, revocation etc of orders

13. An application for an order under section 130(6) (variation or revocation of time orders), 133(6) (revocation and payment after breach of return orders or transfer orders) or 135(4) (variation of conditional or suspended orders) may be made by summons issued in the same action or proceedings in which the order to be varied or revoked was made.

[(**a**) *Unfair relationships*]

14.—(1) Where a defendant desires [(**a**) to apply in accordance with section 140B(2)(*b*) or (*c*) for an order under section 140B] he shall forthwith file and serve on the other party or parties to the proceedings a notice to that effect.

(2) If at the time of serving a notice under paragraph (1) the debtor or surety has not entered an appearance in the proceedings, the notice must specify an address for service as if it were a memorandum of appearance.

(3) After a notice under paragraph (1) has been served in an action begun by writ, judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(4) An application for leave under paragraph (3) must be made by summons supported by affidavit, and notwithstanding anything in Order 65 rule 9, the summons and a copy of the affidavit must be served on every other party to the proceedings.

(5) On the hearing of an application for leave under paragraph (3) or of any proceedings in which a notice under paragraph (1) has been filed, the Court may, whether or not the debtor or surety has entered an appearance or appears at the hearing, exercise the powers of the Court under sections [(**a**) 140A to 140D].

(6) Where, on an application under paragraph (3), the Court refuses leave to enter judgment on a claim or any part of a claim, it may make or give any such order or direction as it might have made or given if the application had been an application under Order 14 rule 1 or Order 86 rule 1 (as the case may be) for judgment on the claim.

References to the Act and regulations

15. Every process issued under the Act shall be endorsed with a statement identifying the particular provision of the Act and any regulation made thereunder pursuant to which relief is sought.]

(**a**) Words substituted by S.R. 2008 No. 401 with effect from 03.11.08

[(a) ORDER 84

Adoption

[(b)...]

PART IV

CONVENTION PROCEEDINGS

Introductory

27.—(1) This Part of this Order shall apply to Convention proceedings and, subject to the provisions of this Part, Parts I, III and V of this Order shall apply, with the necessary modifications, to Convention proceedings as they apply to proceedings in the High Court under the 1967 Act or the 1987 Order.

(2) Any reference in this Part of this Order to the nationality of a person who is not solely a United Kingdom national means that person's nationality as determined in accordance with section 9 of the 1969 Act.

Originating summons

28.—(1) An applicant for a Convention adoption order shall state in his originating summons that he is applying for a Convention adoption order.

(2) The originating summons—

(*a*) need not contain paragraphs corresponding to paragraph 2, of Form 8 but

(*b*) shall contain the additional information required by Part III of Appendix F.

Evidence as to nationality

29.—(1) Any document (or copy of a document) which is to be used for the purpose of satisfying the court as to the nationality of the applicant or of the child shall be attached to the originating summons.

(2) Where the applicant claims that for the purposes of section 1(2)(*a*), 4(*a*) or 5(*a*) of the 1969 Act he or the child is a national of a Convention country, he shall attach to the originating summons a statement by an expert as to the law of that country relating to nationality applicable to that person.

Statement at hearing

30. The requirement that the conditions in section 1(2), (3) and (4) or (5) of the 1969 Act are satisfied immediately before the order is made may be established by—

(*a*) oral evidence at the hearing of an application for a Convention adoption order, or

(*b*) a document executed by the applicant containing a statement to that effect attested in accordance with rule 44 and such a statement shall be admissible in evidence without further proof of the signature of the applicant.

Orders

31. Within 7 days after a Convention adoption order has been drawn up, the Master shall by notice to the Registrar General request him to send a copy of the adoption order to the designated authorities of any Convention country—

(a) Order 84 inserted by S.R. 1989 No. 343 with effect from 01.10.89

(b) Parts I to III and V and Appendix F and G of Order 84 revoked with savings by S.R. 2003 No. 263 with effect from 01.06.03

(*a*) of which the child is a national;

(*b*) in which the child was born;

(*c*) in which the applicant habitually resides; or

(*d*) of which the applicant is a national.

Additional provisions for cases where child is not a United Kingdom national

Scope of rules 34 to 37

32. Rules 34 to 37 shall apply to any case where the child is not a United Kingdom national, and in such a case—

(*a*) the provisions in Part III of this Order, other than rule 19 (agreement to adoption), and

(*b*) paragraphs 9 to 14 of Form 8

shall apply with the necessary modifications to take account of section 1(6)(*a*) of the 1969 Act.

Evidence as to foreign law relating to consents and consultations

33. The applicant shall file, with his originating summons, a statement by an expert as to the provisions relating to consents and consultations of the internal law relating to adoption of the Convention country of which the child is a national.

Form of consent etc

34.—(1) Any document signifying the consent of a person to, or otherwise containing the opinion of a person on the making of, the Convention adoption order shall be in a form which complies with the internal law relating to adoption of the Convention country of which the child is a national: provided that where the court is not satisfied that a person consents with full understanding of what is involved, it may call for further evidence.

(2) A document referred to in paragraph (1) shall, if sufficiently witnessed, be admissible as evidence of the consent or opinion contained therein without further proof of the signature of the person by whom it is executed.

(3) A document referred to in paragraph (1), if executed before the date of the applicant's originating summons referred to in rule 28(2), shall be attached to that summons.

Notice of hearing

35.—(1) On serving notice of the hearing or notice of presentation on the parties as required under rule 20, the applicant shall also serve notice on any person:—

(*a*) whose consent to the making of the order is required, not being an applicant, or

(*b*) who, in accordance with the internal law relating to adoption of the Convention country of which the child is a national has to be consulted about, but does not have to consent to, the adoption.

(2) Any person served or required to be served with notice under this rule shall be treated as if he had been served or was required to be served with notice under rule 20.

Master to receive opinions on adoptions

36. For the purposes of these rules and of section 1(7)(*a*) of the 1969 Act, the Master is the proper officer of the court to whom any person whose consent is required under, or who is consulted in pursuance of, the internal law relating to adoption of the Convention country of which the child is a national may communicate his consent or other opinion on the adoption.

Proceedings under section 6 of the 1969 Act

Application to annul or revoke adoption

37.—(1) An application for an order under section 6(1) or (2) of the 1969 Act shall be made by originating summons issued out of the office in Form 13; and the person filing the summons shall be described as the applicant and the adopted person and any adopter, not being the applicant, shall be described as a respondent.

(2) An application under section 6(1) of the 1969 Act shall not, except with the leave of the court, be made later than 2 years after the date of the adoption to which it relates.

Application to declare adoption invalid or determination invalid or affected

38. An application for an order or decision under section 6(3) of the 1969 Act shall be made by originating summons issued out of the Office in Form 14; and the person filing the summons shall be described as the applicant and the adopted person and any adopter, not being the applicant, shall be described as a respondent.

Evidence in support of application

39.—(1) Evidence in support of an application under section 6 of the 1969 Act shall be given by means of an affidavit in Form 15 which shall be filed within 14 days after the issue of the originating summons.

(2) Where the application is made under section 6(1) or (3) of the 1969 Act there shall be exhibited to the affidavit a statement of the grounds upon which the applicant intends to rely and, subject to rule 45, there shall be filed with the affidavit expert evidence of any provision of foreign law relating to adoption on which the applicant intends to rely,

(3) The court may order any deponent to give oral evidence concerning the grounds stated in, or exhibited to, his affidavit.

Guardian ad litem

40. Where the adopted person is under the age of 18 on the date on which an application under section 6 of the 1969 Act is made, rules 17 and 18 shall apply to the application as they apply to an application for an adoption order.

Notice of order made under Section 6 etc

41.—(1) Where under section 6 of the 1969 Act the court has ordered that an adoption be annulled or revoked or that an adoption of a determination shall cease to be valid in Northern Ireland, the Master shall serve notice of the order on the Registrar General, and shall state in the notice—

(*a*) the date of the adoption;

(*b*) the name and address of the authority which granted the adoption; and

(*c*) the names of the adopter or adopters and of the adopted person as given in the affidavit referred to in rule 39.

(2) A notice under paragraph (1) in respect of the annulment or revocation of an adoption shall request the Registrar General to send a copy of the adoption order to the designated authorities of any Convention country—

(*a*) in which the adoption was granted;

(*b*) of which the adopted person is a national; or

(*c*) in which the adopted person was born.

(3) Where under Article 55(1) the court has ordered that a Convention adoption order be revoked, the notice to the Registrar General under Article 55(4) shall request the Registrar General to send a copy of the adoption order to the designated authorities of any Convention country—

(*a*) of which the adopted person is a national; or

(*b*) in which the adopted person was born.

SUPPLEMENTARY

Evidence as to specified or notified provisions

42.—(1) Where the applicant seeks to satisfy the court as to any question which has arisen or is likely to arise concerning a provision:—

(*a*) of the internal law of the Convention country of which the applicant or any other person is or was a national,

(*b*) which has been specified in an order—

(i) under section 17(8) of the Adoption Act 1976 (a 'specified provision'), or

(ii) under section 54(4) of the Adoption Act 1976 (a 'notified provision'),

expert evidence of the specified or notified provision shall, where practicable, be attached to the originating summons.

(2) Paragraph (1) shall apply, in the case of a person who is or was a United Kingdom national, for the purposes of a notified provision in respect of a specified country as it applies for the purposes of a notified provision in respect of a Convention country of which a person is or was a national.

Interim order

43. Where the applicant is a national or both applicants are nationals of a Convention country, the court shall take account of any specified provision (as defined in section 1(8) of the 1969 Act) of the internal law of that country before any decision is made to postpone the determination of the application and to make an interim order.

Witness of documents

44. A document shall be sufficiently attested for the purposes of this Part of these rules if it is witnessed by one of the following persons—

(*a*) if it is executed in Northern Ireland, the guardian ad litem, a Lay Magistrate, any officer of the Court of Judicature appointed by the Lord Chief Justice in accordance with section 112 of the Judicature (Northern Ireland) Act 1978,

(*b*) if it is executed elsewhere, any person specified in rule 7(2), (3) or (4), according to the country in which it is executed.

Service of documents

45.—(1) Any document to be served for the purposes of this Part of this Order may be served out of the jurisdiction without the leave of the court.

(2) Any document served out of the jurisdiction in a country in which English is not an official language shall be accompanied by a translation of the document in the official language of the country in which service is to be effected or, if there is more than one official language of the country, in any one of those languages which is appropriate to the place in that country where service is to be effected.

Translation of documents

46. Where a translation of any document is required for the purposes of Convention proceedings, the translation shall, unless otherwise directed, be provided by the applicant.

[(a) ORDER 84A

Parental Orders

[(b) *Interpretation*

1.—(1) In this Order unless the context otherwise requires—

"the 2008 Act" means the Human Fertilisation and Embryology Act 2008(c) and expressions which are defined in the 2008 Act have the same meaning as in that Act;

"the 1987 Order" means the Adoption (Northern Ireland) Order 1987(d) as applied with modifications by the Parental Orders Regulations and expressions which are defined in the 1987 Order have the same meaning as in that Order;

"the Parental Orders Regulations" means the Human Fertilisation and Embryology (Parental Orders) Regulations 2010(e);

reference to a Form by number is reference to the Form as numbered in Appendix H;

"the birth mother" means the woman who carried the child;

"the other parent" means any person, other than the birth mother, who is a parent of the child but is not one of the petitioners and includes any man who is the father by virtue of section 35 of the 2008 Act or any woman who is a parent by virtue of section 42 or 43 of the 2008 Act;

"the birth parents" means the birth mother and the other parent;

"the Office" means the Office of Care and Protection and "the Master" means the Master (Care and Protection).]

Proceedings

2. Any hearing of an application under the [(f) 2008] Act or the 1987 Order shall be dealt with in chambers unless the court otherwise directs.

Commencement of proceedings

3.—(1) An application for a parental order shall be made by originating summons in Form 1 issued out of the Office.

(2) The applicants shall be [(f) the persons who may apply for a parental order pursuant to section 54 of the 2008 Act] and the respondents shall be the birth parents (except where the applicants seek to dispense with their consent) and any other persons or body in whom the parental rights and duties relating to the child are vested at the time of the application.

(3) The court may at any time direct that any other person or body be made a respondent to the summons.

(4) On filing the originating summons the applicants shall pay the appropriate fee and supply three copies of the originating summons together with any other documents required to be supplied.

(a) Order 84A inserted by S.R. 1995 No. 2 with effect from 2.2.95
(b) Rule substituted by S.R. 2010 No. 381 with effect from 20.12.10
(c) 2008 (c. 22)
(d) S.I. 1987/2203 (N.I. 22)
(e) S.I. 2010/985
(f) Words substituted by S.R. 2010 No. 381 with effect from 20.12.10

ORDER 84A

Appointment of guardian ad litem

4.—(1) As soon as practicable after the originating summons has been filed, the Master shall appoint a guardian ad litem of the child and shall send to him a copy of the originating summons together with any documents attached thereto.

(2) The guardian ad litem shall be an officer of a Board or of an HSS trust or a person employed by such other organisation as the Department may approve.

Duties of guardian ad litem

5.—(1) With a view to safeguarding the interests of the child before the court the guardian ad litem shall—

(*a*) investigate so far as is reasonably practicable the matters set out in [(**a**) section 54(1) to (8) of the 2008 Act];

(*b*) so far as he considers necessary, investigate any matter contained in the originating summons or other matter which appears relevant to the making of a parental order;

(*c*) on completing his investigations make a report in writing to the court, drawing attention to any matters which, in his opinion, may be of assistance to the court in considering the application and shall so notify the applicants that he has done so;

(*d*) perform, at any time before the final determination of the application, such other duties as appear to him to be necessary or as the court may direct.

(2) With a view to obtaining the directions of the court on any matter, the guardian ad litem may at any time make such interim report to the court as appears to him to be necessary and in such a case the Master shall notify the applicants.

(3) The guardian ad litem shall attend any hearing of the application if so required by the court.

(4) Any report made to the court under this rule shall be confidential.

Agreement

6.—(1) Any document signifying the agreement of the birth parents to the making of a parental order shall be in Form 2 and shall, if executed in Northern Ireland, be witnessed by a Lay Magistrate.

(2) If the document is executed outside Northern Ireland it shall be witnessed by one of the persons specified in rule 7(2), (3) or (4) of Order 84, according to the country in which it is executed.

(3) If the document is executed before the commencement of proceedings, it shall be filed with the originating summons.

Notice of hearing

7.—(1) Within 14 days of being notified by the guardian ad litem that he has made his report to the court, the applicants shall apply to the Master to fix a date for the hearing of the application.

(2) On an application under paragraph (1) the Master shall fix a date and time for the hearing and shall take account of any directions given under paragraph (6).

(3) The Master shall inform the applicants and the guardian ad litem of the date and time fixed for hearing and the applicants shall serve notice of the hearing in Form 3 on all the parties and any Board, HSS trust or voluntary organisation which has at any time provided accommodation for the child.

(a) Words substituted by S.R. 2010 No. 381 with effect from 20.12.10

(4) If the applicants have no solicitor acting for them the Notice in Form 3 shall be signed by the Master.

(5) Anyone wishing to object to the making of a parental order, shall within 14 days of the date of service on him of the Notice of Hearing give the Master written notice of his intention to object in Form 4.

(6) If at any stage before the hearing of the application it appears to the court that directions for the hearing are required the court may give such directions as it considers necessary.

Objections

8.—(1) Where the Master receives notice of objection under rule 7(5) he shall notify the judge, the applicants (or their solicitor) and the guardian ad litem, and the judge shall give such directions as appear appropriate.

(2) The judge may direct that the person who served such notice of objection shall appear before him in his chambers on a date fixed by him and upon hearing the nature of or grounds for the objection made by him or his legal representative on his behalf give such directions or make such orders as appear just.

The hearing

9.—(1) Subject to any directions given under rule 8(2) on the hearing of the summons, any person served with a Notice of Hearing under rule 7(3) may attend and be heard on the question whether a parental order should be made.

(2) Any member or employee of a Board, HSS trust or other body may address the court if he is duly authorised in that behalf.

(3) The judge shall not make a parental order except after the personal attendance before him of the applicants.

(4) If there are special circumstances which appear to the court to make the attendance of any other party desirable, the court may direct that that party shall attend.

Proof of identity of child, etc.

10. Where the child who is the subject of the proceedings is identified in the originating summons by reference to a birth certificate which is the same, or relates to the same entry in the Register of Births, as a birth certificate exhibited to a form of agreement, the child so identified shall be deemed, unless the contrary appears, to be the child to whom the form of agreement refers.

Notices and copies of orders etc

11.—(1) A parental order shall be made in Form 5.

(2) Within 7 days of the making of the parental order the Master shall send a copy of the order to the Registrar General.

(3) Where a parental order is made or refused the Master shall serve notice to that effect on every respondent.

(4) A copy of a parental order may be supplied to the applicants.

(5) A copy of a parental order may be supplied to any other person with the leave of the court.

Application in respect of removal of, or for return of, child

12.—(1) An application under Article 28(1) or 30(1) or (2) of the 1987 Order shall be made by sending a notice of application in Form 6 to the Master.

(2) Subject to paragraph (4), the Master shall serve a copy of the notice of application, together with a notice of the date of hearing on the parties to the proceedings for a parental order, on any guardian ad litem who has been appointed at the date of the application and on any other person or body, not being the child, as the court thinks fit.

(3) Anyone who wishes to object to the application shall, within 14 days of the service of the application on him, send written notice of his objection to the Master.

(4) The Master shall serve a copy of the written notice of objection on each person served with a copy of the application.

(5) The court may at any time give directions, as to the appointment of a guardian ad litem of the child or, as to the conduct of the application under this rule.

(6) Where an application under this rule is determined the Master shall serve notice of the effect of the determination on all parties.

Application for amendment of orders and revocation of directions

13.—(1) An application under Article 52 of the 1987 Order for the amendment of a parental order, or, for the revocation of a direction, for the marking of an entry in the Register of Births or the Parental Order Register, to the Registrar General, may be made ex parte in the first instance, but the court may require notice of the application to be served on such persons as it thinks fit.

(2) Where the application referred to in paragraph (1) is granted, the Master shall send to the Registrar General a notice specifying the amendments or informing him of the revocation and shall give sufficient particulars of the order to enable the Registrar General to identify the case.

Service of documents

14. The person effecting service of any document under this Order shall make, sign and file a certificate showing the date, place and mode of service. If he has failed to effect service of any document, he shall make, sign and file a certificate of non-service showing the reason why service has not been effected.

Costs

15. On the determination of proceedings to which this Order applies, the judge may make such order as to the costs as he thinks just and, in particular, may order the applicants to pay—

(*a*) the expenses incurred by the guardian ad litem,

(*b*) the expenses incurred by any respondent in attending the hearing, or such part of those expenses as the judge thinks proper.

Custody, inspection and disclosure of documents and information

16.—(1) All documents relating to proceedings for a parental order shall, while they are in the custody of the court, be kept in a place of special security.

(2) A party who is an individual and is referred to in a confidential report supplied to the court by a guardian ad litem may inspect, for the purposes of the hearing, that part of such report as refers to him, subject to any direction given by the court that—

(*a*) no part of the report shall be revealed to that party, or

(*b*) the part of the report referring to that party shall be revealed only to that party's legal advisers, or

(*c*) the whole or any other part of the report shall be revealed to that party.

(3) Any person who obtains any information in the course of, or relating to, proceedings for a parental order shall treat that information as confidential and shall only disclose it if—

(*a*) the disclosure is necessary for the proper exercise of his duties, or

(*b*) the information is requested—

(i) by a court (whether in Northern Ireland or not) having power to determine proceedings for parental orders and related matters, for the purpose of the discharge of its duties in that behalf; or

(ii) by a person who is authorised in writing by the Department to obtain the information for the purposes of research.

(4) Save as required or authorised by a provision of any enactment or of this Order or with the leave of the court, no document or order held by or lodged with the court in relation to proceedings for a parental order shall be open to inspection by any person, and no copy of any such document or order, or of an extract from any such document or order, shall be taken by or issued to any person.]

ORDER 85

ADMINISTRATION AND SIMILAR ACTIONS

Interpretation

1. In this Order "administration action" means an action for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust.

[*E.r.* 1]

Determination of questions, etc., without administration

2.—(1) An action may be brought for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration action and a claim need not be made in the action for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.

(2) Without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions:—

(*a*) any question arising in the administration of the estate of a deceased person or in the execution of a trust;

(*b*) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;

(*c*) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

(3) Without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs:—

(*a*) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;

(*b*) an order requiring the payment into court of money held by a person in his capacity as executor, administrator or trustee;

(*c*) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;

(*d*) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;

(*e*) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court.

[*E.r.* 2]

Parties

3.—(1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration action or such an action as is referred to in rule 2 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant.

(2) Notwithstanding anything in Order 15, rule 4(2), and without prejudice to the powers of the Court under that Order, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such an action as is mentioned in paragraph (1) relates need not be parties to the action; but the plaintiff may make such of those persons, whether all or any one or more of them, parties as, having regard to the nature of the relief or remedy claimed in the action, he thinks fit.

(3) Where, in proceedings under a judgment or order given or made in an action for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party other than the executors or administrators of the estate shall be entitled to appear in any proceedings relating to that claim without the leave of the Court, and the Court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

[*E.r.* 3]

Grant of relief in action begun by originating summons

4. In an administration action or such an action as is referred to in rule 2, the Court may make any certificate or order and grant any relief to which the plaintiff may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant notwithstanding that the action was begun by originating summons, but the foregoing provision is without prejudice to the power of the Court to make an order under Order 28, rule 8, in relation to the action.

[*E.r.* 4]

Judgments and orders in administration actions

5.—(1) A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.

(2) Where an administration action is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the plaintiff alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may—

(*a*) order that proceedings in the action be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the plaintiff with proper accounts;

(*b*) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the action relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the leave of the judge in person.

[*E.r.* 5]

Conduct of sale of trust property

6. Where in an administration action an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have the conduct of the sale unless the Court otherwise directs.

[*E.r.* 6]

ORDER 86

ACTIONS FOR SPECIFIC PERFORMANCE, ETC.: SUMMARY JUDGMENT

Application by plaintiff for summary judgment

1.—(1) In any action in the Chancery Division begun by writ indorsed with a claim—

(*a*) for specific performance of an agreement (whether in writing or not) for the sale, [(**a**) purchase, exchange, mortgage or charge] of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages, or

(*b*) for recission of such an agreement, or

(*c*) for the forfeiture or return of any deposit made under such an agreement,

the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.

(2) An application may be made against a defendant under this rule whether or not he has entered an appearance in the action.

[*E.r.* 1]

Manner in which application under rule 1 must be made

2.—(1) An application under rule 1 shall be made by summons supported by an affidavit verifying the facts on which the cause of action is based and stating that in the deponent's belief there is no defence to the action.

[(**b**) . . .]

(2) The summons must set out or have attached thereto minutes of the judgment sought by the plaintiff.

(3) The summons, a copy of the affidavit in support and of any exhibit referred to therein must be served on the defendant not less than 4 clear days before the return day.

[*E.r.* 2]

Judgment for plaintiff

3. Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the Court may give judgment for the plaintiff in the action.

[*E.r.* 3]

Leave to defend

4.—(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) The court may give a defendant against whom such an application is made leave to defend the action either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(3) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in such capacity—

(**a**) Words substituted by S.R. 1983 No. 5 with effect from 28.2.83
(**b**) Words deleted by S.R. 2001 No. 254 with effect from 5.9.01

(*a*) to produce any document;

(*b*) if it appears to the court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

[*E.r.* 4]

Directions

5. Where the Court orders that a defendant have leave to defend the action, the Court shall give directions as to the further conduct of the action.

[*E.r.* 5]

Costs

6. If the plaintiff makes an application under rule 1 where the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconventional leave to defend, then, without prejudice to Order 62, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid by him forthwith.

[*E.r.* 6]

Setting aside judgment

7. Any judgment given against a defendant who does not appear at the hearing of an application under rule 1 may be set aside or varied by the Court on such terms as it thinks just.

[*E.r.* 7]

ORDER 87

DEBENTURE HOLDERS' ACTIONS: RECEIVER'S REGISTER

Receiver's register

1. Every receiver appointed by the Court in an action to enforce registered debentures or registered debenture stock shall, if so directed by the Court, keep a register of transfers of, and other transmissions of title to, such debentures or stock (in this Order referred to as "the receiver's register").

[*E.r.* 1]

Registration of transfers, etc.

2.—(1) Where a receiver is required by rule 1 to keep a receiver's register, then, on the application of any person entitled to any debenture or debenture stock by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as to the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title in that register.

(2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by affidavit, send by post to the registered holder of the debentures of debenture stock transferred at his registered address a notice stating—

(*a*) that an application for the registration of the transfer has been made, and

(*b*) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,

and no transfer shall be registered until the period so specified has elapsed.

The period to be specified in the notice shall in no case be less than 7 days after a reply from the registered holder would in the ordinary course of post reach the receiver if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

(3) On registering a transfer or other transmission of title under this rule the receiver must indorse a memorandum thereof on the debenture or certificate of debenture stock, as the case may be, transferred or transmitted, containing a reference to the action and to the order appointing him receiver.

[*E.r.* 2]

Application for rectification of receiver's register

3.—(1) Any person aggrieved by any thing done or omission made by a receiver under rule 2 may apply to the Court for rectification of the receiver's register, the application to be made by summons in the action in which the receiver was appointed.

(2) The summons shall in the first instance be served only on the plaintiff or other party having the conduct of the action but the Court may direct the summons or notice of the application to be served on any other person appearing to be interested.

(3) The Court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name entered in or omitted from the receiver's register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

[*E.r.* 3]

Receiver's register evidence of transfers, etc.

4. Any entry made in the receiver's register, if verified by an affidavit made by the receiver or by such other person as the court may direct, shall in all proceedings in the action in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purpose of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the action certifying the holders of the debentures or debenture stock certificates.

[*E.r.* 4]

Proof of title of holder of bearer debenture, etc.

5.—(1) This rule applies in relation to an action to enforce bearer debentures or to enforce debenture stock in respect of which the company has issued debenture stock bearer certificates.

(2) Notwithstanding that judgment has been given in the action and that a certificate has been made therein certifying the holders of such debentures or certificates as are referred to in paragraph (1), the title of any person claiming to be such a holder shall (in the absence of notice of any defect in the title) be sufficiently proved by the production of the debenture or debenture stock certificate, as the case may be, together with a certificate of identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced and certifying the person (giving his name and address) who is the holder thereof.

(3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in the Chancery Office, the solicitor of the plaintiff in the action must cause to be indorsed thereon a notice stating—

(*a*) that the person whose name and address is specified in the notice (being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2)) has been recorded in the Chancery Office as the holder of the debenture or debenture stock certificate, as the case may be, and

(*b*) that that person will, on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with paragraph (2), and

(*c*) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.

(4) The solicitor of the plaintiff in the action must preserve any certificates of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, must verify the record by affidavit.

[*E.r.* 5]

Requirements in connection with payments

6.—(1) Where an action to enforce any debentures or debenture stock an order is made for payment in respect of the debentures or stock, the Accountant General shall not make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which paragraph (2) provides or the Court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.

(2) For the purpose of obtaining any such payment the debenture or debenture stock certificate must be produced to the solicitor of the plaintiff in the action or to such other person as the Court may direct, and that solicitor or other person must indorse thereon a memorandum of payment and must make and sign a certificate certifying that the statement set out in the certificate has been indorsed on the debenture or debenture stock certificate, as the case may be, and send the certificate to the Accountant General.

[*E.r.* 6]

ORDER 88

MORTGAGE ACTIONS

Application and interpretation

1.—(1) This Order applies to any action (whether begun by writ or originating summons) by a mortgagee or a mortgagor or by any person having the right to foreclose or redeem any mortgage, being an action in which there is a claim for any of the following reliefs, namely—

(*a*) payment of moneys secured by the mortgage,

(*b*) sale of the mortgaged property,

(*c*) foreclosure,

(*d*) delivery of possession to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property,

(*e*) redemption,

(*f*) reconveyance of the property or its release from the security,

(*g*) delivery of possession by the mortgagee.

[(**a**)(*h*) an enforcement order or a time order where a regulated agreement is secured by a mortgage.]

[(**b**)(2) In this Order—

"the Act of 1974" means the Consumer Credit Act 1974(**c**);

"enforcement order", "time order" and "regulated agreement" have the same meaning as in section 189(1) of the Act of 1974; and

"mortgage" includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.]

(3) An action to which this Order applies is referred to in this Order as a mortgage action.

(4) These Rules apply to a mortgage action subject to the following provisions of this Order.

[*E.r.* 1]

Assignment of certain actions to Chancery Division

2. Without prejudice to Order 1, rule 10, any action in which there is a claim for—

(*a*) payment of moneys secured by a mortgage of any real or leasehold property, [(**d**) ...]

(*b*) delivery of possession to the mortgagee of any such property by the mortgagor or by any other person who is alleged to be in possession of the property, [(**e**) or]

[(**f**)(*c*) an enforcement order or a time order where a regulated agreement is secured by a mortgage of any such property]

shall be assigned to the Chancery Division.

[*E.r.* 2]

(**a**) New sub-paragraph inserted by S.R. 2001 No. 254 with effect from 5.9.01
(**b**) New paragraph (2) substituted by S.R. 2001 No. 254 with effect from 5.9.01
(**c**) 1974 c. 39
(**d**) Word deleted by S.R. 2001 No. 254 with effect from 5.9.01
(**e**) Word inserted by S.R. 2001 No. 254 with effect from 5.9.01
(**f**) New sub-paragraph inserted by S.R. 2001 No. 254 with effect from 5.9.01

ORDER 88

Commencement of action

3. The writ or originating summons by which a mortgage action is begun shall be indorsed with or contain a statement showing—

[(**a**)(*a*) where the mortgaged property is situated including its postal address (if any); and]

(*b*) if the plaintiff claims possession of the mortgaged property, whether the property consists of or includes a dwelling house and, if so, whether the dwelling house is one to which [(**b**) Part III of] the Rent (Northern Ireland) Order 1978(**c**) applies.

[*E.r.* 3]

[(**d**)...]

Claims for possession: non-appearance by a defendant

[(**e**) **4.**]—(1) Where in a mortgage action in the Chancery Division begun by originating summons, being an action in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to enter an appearance, the following provisions of this rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant.

This rule shall not be taken as affecting Order 28, rule 3, or rule 5(2), in so far as it requires any document to be served on, or notice given to, a defendant who has entered an appearance in the action.

(2) Not less than 4 clear days before the day fixed for the first hearing of the originating summons the plaintiff must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the affidavit in support of the summons.

[(**f**)...]

[(**g**) (3)] Where the hearing is adjourned, then, subject to any directions given by the Court, the plaintiff must serve notice of the appointment for the adjourned hearing, together with a copy of any further affidavit intended to be used at that hearing, on the defendant not less than 2 clear days before the day fixed for the hearing.

[(**h**)...]

[(**g**) (4)] Service under paragraph (2) or [(**i**) (3)], and the manner in which it was effected may be proved by a certificate signed by the plaintiff, if he sues in person, and otherwise by his solicitor.

The certificate may be indorsed on the affidavit in support of the summons or, as the case may be, on any further affidavit intended to be used at an adjourned hearing.

[(**j**)...]

[(**k**) (5)] Where the plaintiff gives notice to the defendant under Order 3, rule 6, of his intention to proceed, service of the notice, and the manner in which it was effected may be proved by a certificate signed as mentioned in paragraph [(**i**) (4)].

[*E.r.* 5]

(**a**) Paragraph substituted by S.R. 2005 No. 163 with effect from 18.04.05
(**b**) Words inserted by S.R. 1981 No. 224 with effect from 1.9.81
(**c**) S.I. 1978/1050 (N.I. 20)
(**d**) Former rule 4 deleted by S.R. 1992 No. 399 with effect from 1.11.92
(**e**) Rule 5 renumbered 4 by S.R. 1992 No. 399 with effect from 1.11.92
(**f**) Original paragraph 3 deleted by S.R. 1992 No. 399 with effect from 1.11.92
(**g**) Paragraphs 4, 5, 6 & 7 renumbered 3, 4, 5 & 6 by S.R. 1995 No. 2 with effect from 2.2.95
(**h**) Words deleted by S.R. 1992 No. 399 with effect from 1.11.92
(**i**) References substituted by S.R. 1995 No. 2 with effect from 2.2.95
(**j**) Paragraph deleted by S.R. 2001 No. 254 with effect from 5.9.01
(**k**) Paragraph 6 renumbered 5 by S.R. 2001 No. 254 with effect from 5.9.01

[(**a**) *Claim for possession: notice to be sent to defendant in default of payment*

[(**b**) **4A.**—(1) Where the plaintiff—

(*a*) claims in a mortgage action delivery of possession of land which comprises or includes a dwelling house because of failure to pay monies secured by the mortgage; or

(*b*) applies for the removal or variation of a stay or suspension contained in an order for delivery of possession made as a result of such a claim in a mortgage action relating to such land,

he shall, when serving a copy of the notice of appointment or any summons (not being an originating summons) for such a claim or application also serve on the defendant a notice in Form No.10A in Appendix A.]

(2) Paragraph (4) of rule 4 shall apply to service of a notice under this rule as it applies to service under paragraph (2) or (3) of that rule save that a copy of the notice in Form 10A [(**c**)...] shall be attached to the certificate proving service.]

Claim for possession of land: notice to occupiers

[(**d**) **4B.**—(1) Where the plaintiff—

(*a*) claims in a mortgage action delivery of possession of land which comprises or includes a dwelling house, or

(*b*) applies for the removal or variation of a stay or suspension contained in an order for delivery of possession as a result of such a claim made in a mortgage action,

he shall, not less than four clear days before the date fixed for the first hearing of the summons or application and unless the court otherwise directs, post to or insert through the letter box at the property a sealed envelope addressed to "The Occupier" and containing a notice in Form 10C of Appendix A.

(2) Paragraph (4) of rule 4 shall apply to service of a notice under this rule as it applies to service under paragraph (2) or (3) of that rule save that a copy of the notice in Form 10C shall be attached to the certificate proving service.]

Action in Chancery Division for possession or payment: evidence

[(**e**) **5.**]—(1) The affidavit in support of the originating summons by which an action [(**f**) (other than an action to which rule 5A applies)] to which this rule applies is begun must comply with the following provisions of this rule.

This rule applies to a mortgage action in the Chancery Division begun by originated summons in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.

[(**g**) (2) The affidavit must exhibit—

(*a*) the original mortgage or a true copy thereof, and

(*b*) where the mortgage secures a regulated agreement, the original agreement or a true copy thereof

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(**a**) Rule 4A substituted by S.R. 2001 No. 254 with effect from 5.9.01
(**b**) Paragraph substituted by S.R. 2005 No. 163 with effect from 18.04.05
(**c**) Words deleted by S.R. 2005 No. 163 with effect from18.04.05
(**d**) Rule 4B substituted by S.R. 2002 No. 202 with effect from 21.06.02
(**e**) Rule 6 renumbered 5 by S.R. 1992 No. 399 with effect from 1.11.92
(**f**) Words inserted by S.R. 1992 No. 399 with effect from 1.11.92
(**g**) Paragraph (2) substituted by S.R. 2001 No. 254 with effect from 5.9.01

and the original mortgage (or, in the case of a registered charge, the certificate of charge) and the original agreement must be produced at the hearing of the summons.]

[(a) (2A) The affidavit must state whether the debt which is secured by the mortgage arose under a regulated agreement and, if so, specify—

(*a*) the date on which any notice required by section 76 or section 87 of the Act of 1974 was given,

(*b*) where the plaintiff has obtained or is now applying for an enforcement order, particulars of any enforcement order obtained or, as the case may be, the circumstances which render such an order necessary, and

(*c*) the amount of a day's interest.]

(3) Where the plaintiff claims delivery of possession the affidavit must show the circumstances under which the right to possession arises and, except where the Court in any case or class of case otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of—

(*a*) the amount of the advance;

[(b)(*b*) the amount of the periodic repayments and payments of interest required to be made;

(*bb*) the rate of interest payable—

(i) at the commencement of the mortgage;

(ii) at the commencement of the proceedings; and

(iii) at the date of the affidavit,]

(*c*) the amount of any interest or instalments in arrears at the date of issue of the originating summons and at the date of the affidavit; and

(*d*) the amount remaining due under the mortgage.

[(c) (4) Where the plaintiff claims delivery of possession, the affidavit must—

[(d) (*a*) give particulars of the inquiries made as to the occupation of the mortgaged property and of the plaintiff's knowledge, information and belief as to—

(i) whether or not the property is occupied; and

(ii) if it is believed to be occupied, the identity of every person believed to be in occupation.]

(*b*) state, in the case of a dwelling house, whether a charge has been registered pursuant to Article 6 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 [(e) or Article 6 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998(f)] and if so, on whose behalf, and whether he has served notice of the proceedings on the person on whose behalf the charge is registered.]

(5) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and the mortgagee, the affidavit must show how and when the tenancy was determined and if by service of notice when the notice was duly served.

[(g) (6) Where the plaintiff claims payment of moneys secured by a mortgage, the affidavit must show how the payment is calculated, including—

(a) Paragraph (2A) substituted by S.R. 2001 No. 254 with effect from 5.9.01
(b) Sub-paragraph 5(3)(b) substituted by S.R. 2001 No. 254 with effect from 5.9.01
(c) Paragraph (4) substituted by S.R. 1995 No. 2 with effect from 2.2.95
(d) Sub-paragraph 5(4)(a) substituted by S.R. 2001 No. 254 with effect from 5.9.01
(e) Words inserted by S.R. 2001 No. 254 with effect from 5.9.01
(f) S.I. 1998/1071 (N.I. 6)
(g) Paragraph (6) substituted by S.R. 1999 No. 333 with effect from 6.9.99

(*a*) the amount of the advance and the amounts and dates of any periodic payments and any interest claimed;

(*b*) the amount which would have been paid (after taking into account any adjustment for early settlement) in order to redeem the mortgage at the date of commencement of the proceedings and at a stated date not more than 14 days after the date of commencement of the proceedings, specifying the amount of the solicitor's costs and administrative charges which would be payable;

(*c*) the dates between which a particular rate of interest applied, the number of days in that period and the capital on which the interest was calculated.]

(7) Where the plaintiff's claim includes a claim for interest to judgment, the affidavit must state the amount of a day's interest.

[*E.r.* 6]

[(**a**) *Action for the enforcement of orders charging land by sale*

5A.—(1) This rule applies to a mortgage action in the Chancery Division [(**b**) for possession] to enforce an order charging land by sale of the property charged.

(2) The affidavit in support of the originating summons must—

(*a*) identify the charging order sought to be enforced and the subject matter of the charge;

(*b*) specify the amount in respect of which the charge was imposed and the balance outstanding at the date of the affidavit;

(*c*) verify, so far as known, the debtor's title to the property charged;

(*d*) identify any prior incumbrances on the property charged, stating, so far as is known, the name and addresses of the incumbrancers and the amounts owing to them;

(*e*) set out the plaintiff's proposals as to the manner of sale of the property charged together with estimates of the gross price which would be obtained on a sale in that manner and of the costs of such a sale; and

(*f*) where the property charged consists of land in respect of which the plaintiff claims delivery of possession—

(i) give particulars of every person who to the best of the plaintiff's knowledge is in possession of the property charged or any part of it; and

(ii) state, in the case of a dwelling house, whether a charge has been registered pursuant to Article 6 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 [(**c**) or Article 6 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998(**d**)] and if so, on whose behalf, and whether he has served notice of the proceedings on the person on whose behalf the charge is registered.]

[(**e**) (3) In an action to which this rule applies—

(*a*) where the amount owing to a prior incumbrancer is unknown the plaintiff shall, not less than 4 clear days before the date fixed for the first hearing of the summons, serve upon that incumbrancer notice bearing the title and record number of the action and stating—

(i) the relief sought by the plaintiff in the action;

(ii) that the plaintiff is unaware of the amount (if any) owing to the prior incumbrancer and secured against the mortgaged property;

(**a**) Rule 5A inserted by S.R. 1992 No. 399 with effect from 1.11.92
(**b**) Words inserted by S.R. 1995 No. 2 with effect from 2.2.95
(**c**) Words inserted by S.R. 2001 No. 254 with effect from 5.9.01
(**d**) S.I. 1998/1071 (N.I. 6)
(**e**) Paragraph substituted by S.R. 2005 No.163 with effect from 18.04.05

(iii) that the prior incumbrancer may apply to intervene in the proceedings if for any reason he thinks fit; and

(iv) the date, time and place fixed for the hearing;

(*b*) the court may direct an account to be taken of all incumbrances subsequent as well as prior to or contemporaneous with the plaintiff's demand and an inquiry as to their respective priorities and the court may make an order for delivery of possession conditional on the result of such an account and inquiry.]

Action by writ: judgment in default

[(a) **6.**]—(1) Notwithstanding anything in Order 13 or Order 19, in a mortgage action begun by writ judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.

(3) Where a summons for leave under this rule is issued in an action in the Chancery Division, [(b) rule 4(2) to (6)] shall apply in relation to the action subject to the modification that for references therein to the originating summons, and for the reference in paragraph (2) to the notice of appointment there shall be substituted reference to the summons.

(4) Where a summons for leave under this rule is issued in an action to which rule [(c) 5] would apply had the action been begun by originating summons, the affidavit in support of the summons must contain the information required by that rule.

[*E.r.* 7]

Action for sale of mortgaged property: parties: disposal of surplus proceeds of sale: sale of unsold property

[(d) **7.**]—(1) This rule applies to a mortgage action in the Chancery Division in which the plaintiff is a mortgagee and claims sale of the mortgaged property.

(2) Notwithstanding anything in Order 15, rule 4(2), and without prejudice to the powers of the Court under that Order, no other mortgagee or trustee for such mortgagee need to be a party to the action unless he is in actual possession or receipt of the rents and profits of the mortgaged property.

(3) A person at whose suit or for whose benefit a receiver has been appointed, or continues to receive the rents and profits of the mortgaged property, shall not be deemed to be in receipt of such rents and profits within the meaning of paragraph (2).

(4) Where mortgaged property has been sold and surplus produce of such sale remains in court after payment of the demands and costs of the plaintiff and prior and contemporaneous mortgages, the Court may order such surplus to be distributed amongst the mortgagees who have proved their demand in the action under an inquiry directed pursuant to paragraph (6), according to their priorities.

(5) Where any part of the mortgaged property the subject to such action remains unsold after payment of the plaintiff's demand, and prior and contemporaneous mortgages, any mortgagee subsequent in order of priority to the demand of the plaintiff may apply to the Court for an order directing a sale of such unsold property,

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(a) Rule 7 renumbered 6 by S.R. 1992 No. 399 with effect from 1.11.92
(b) Words substituted by S.R. 1995 No. 2 with effect from 2.2.95
(c) Reference substituted by S.R. 1995 No. 2 with effect from 2.2.95
(d) Rule 8 renumbered 7 by S.R. 1992 No. 399 with effect from 1.11.92

or a competent part thereof, for payment of the demands subsequent to that of the plaintiff which have been proved as aforesaid, and the Court may direct such sale if it shall be of opinion that such mortgagees, or any of them, would be entitled to have their demands raised by a sale of such property, or may direct a receiver to be appointed or continued over such unsold property, for the benefit of such subsequent mortgagees, and distribute the funds to be received by such receiver accordingly.

(6) Subject to paragraph (7), an order for sale in a mortgage action [(**a**) may] direct an account to be taken of all mortgages subsequent as well as prior to, or contemporaneous with, the plaintiff's demand, and an inquiry as to the respective priorities of all such demands as shall be proved.

[(**b**) (7) If the Court, on directing such an account, shall be of the opinion that extending it to mortgages subsequent to the demand of the plaintiff will improperly delay the plaintiff in recovering his demand, the account may be confined to the rights of the plaintiff and of mortgages prior to and contemporaneous with him.]

(**a**) Word substituted by S.R. 1995 No. 2 with effect from 2.2.95
(**b**) Paragraph 7 substituted by S.R. 1995 No. 2 with effect from 2.2.95

ORDER 89

CO-ORDINATION OF EXERCISE OF JURISDICTION IN RELATION TO PERSONS UNDER DISABILITY

Application

1. The rules of this Order shall apply for the purposes of avoiding conflict and of co-ordinating jurisdiction exercised in relation to any person under disability.

Interpretation

2. In this Order—

"the assigned judge" includes any judge who exercises jurisdiction in a cause or matter assigned to the assigned judge referred to in section 29 of the Act;

"the seised judge" means any judge, including the assigned judge, referred to in section 29 of the Act, who exercises jurisdiction in any other cause or matter;

the expression "the assigned judge" and "the seised judge" include a master when exercising the corresponding jurisdiction:

"patient" means a person under disability, other than minority, the management of whose affairs is under the control of the Court;

"person under disability" means a person who is a minor or a person who by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961(**a**) is incapable of managing and administering his property and affairs.

Powers of seised judge

3.—(1) Where a cause or matter affecting a person under disability is brought before the seised judge or any question affecting such a person arises in a cause or matter so brought, the seised judge may—

(*a*) make an order making a minor a ward of court, if he considers it proper to do so, and shall thereupon transfer the matter of the wardship to the assigned judge;

(*b*) refer the question of wardship to the assigned judge;

(*c*) where a question arising in the proceedings affects the welfare (including the care, custody and control) or property of a person under disability either—

(i) refer the question to the assigned judge; or

(ii) make such order as he considers necessary to dispose of the question (not being an order which conflicts with an order previously made in wardship proceedings in Northern Ireland affecting a minor).

(2) Any order made under paragraph (1)(*c*)(ii) may be varied or discharged by the seised judge or the assigned judge.

(**a**) 1961 c. 15 (N.I.)

ORDER 89

Report by seised judge

4. The seised judge shall, when he makes an order under rule 3(1), furnish to the Office of Care and Protection for the use of the assigned judge a report on the relevant facts and proceedings together with such observations and recommendations as he thinks fit.

Powers of assigned judge

5. The assigned judge, when a cause or matter is transferred to him or a question is referred to him, may proceed as if it had originated before him.

Disability to be indorsed on writ etc.

6.—(1) Where a person under disability who is a party to or otherwise affected by a cause or matter, other than a wardship application or a matter relating to patients, is a ward of court or a patient, this must be stated in the indorsement of the writ of summons or in the petition, originating summons or originating motion, as the case may be.

(2) Where a person becomes a ward of court or a patient while a cause of matter is pending, the party acting on behalf of that person must amend the proceedings so as to comply with paragraph (1) and give notice of the amendment to any other party.

Transmission of order

7. If the seised judge makes an order—

(*a*) which relates to a person under disability and which brings him within the jurisdiction of the Office of Care and Protection;

(*b*) which makes a minor a ward of court;

(*c*) which relates to or affects a ward of court or a patient; or

(*d*) which the judge directs to be transmitted pursuant to this rule,

a copy of the order shall be transmitted by the department in which the order is drawn up to the Office of Care and Protection.

ORDER 90

[(a) PROCEEDINGS RELATING TO MINORS, THE CHILD ABDUCTION CUSTODY ACT 1985 AND THE FAMILY LAW ACT 1986]

[(b) I. GENERAL]

Interpretation

1. In this Order, "Office" means the Office of Care and Protection, and "the Master" means the Master (Care and Protection).

[*E.r.* 1]

Assignment and commencement of proceedings

2. All proceedings to which this Order relates shall be assigned to the Family Division and shall be begun in the Office.

[*E.r.* 2]

[(b) II. PROCEEDINGS RELATING TO MINORS]

Application to make a minor a ward of court

3.—(1) An application to make a minor a ward of court must be made by originating summons issued out of the Office.

(2) Where there is no person other than the minor who is a suitable respondent, an application may be made ex parte to the Master for leave to issue either an ex parte originating summons or an originating summons with the minor as respondent thereto; and, except where such leave is granted, the minor shall not be made a respondent to an originating summons under this rule in the first instance.

(3) The date of the minor's birth shall, unless otherwise directed, be stated in the summons and the applicant shall—

(*a*) on issuing the summons or before or at the first hearing thereof lodge in the Office a certified copy of the full entry in the Register of Births or, as the case may be, in the Adopted Children Register relating to the minor, or

(*b*) at the first hearing of the summons apply for directions as to proof of birth of the minor in some other manner.

[(c) (3A) The name of each party to the proceedings shall be qualified by a brief description, in the body of the summons, of his interest in, or relationship to, the minor.]

(4) Unless the Court otherwise directs, the summons shall state the whereabouts of the minor or, as the case may be, that the applicant is unaware of his whereabouts and shall be served on the respondent, the Director of the Health and Social Services Board for the area in which the minor ordinarily resides (except where the Director is the applicant) and on such other person or persons as the Master may direct.

(5) Every respondent other than the minor shall, forthwith after being served with the summons—

(*a*) lodge in the Office a notice stating the address of the respondent and the whereabouts of the minor or, as the case may be, that the respondent is unaware of his whereabouts, and

(*b*) unless the Court otherwise directs, serve a copy of the notice on the applicant.

(a) New title substituted by S.R. 1998 No. 71 with effect from 4.4.88
(b) New heading inserted by S.R. 1986 No. 203 with effect from 1.8.86
(c) Paragraph (3A) inserted by S.R. 1982 No. 217 with effect from 1.9.82

(6) Where any party other than the minor changes his address or becomes aware of any change in the whereabouts of the minor after the issue or, as the case may be, service of the summons, he shall, unless the Court otherwise directs, forthwith lodge notice of the change in the Office and serve a copy of the notice on every other party.

(7) The summons shall contain a notice to the respondent informing him of the requirements of paragraphs (5) and (6).

(8) In this rule any reference to the whereabouts of a minor is a reference to the address at which and the person with whom he is living and any other information relevant to the question where he may be found.

[*E.r.* 3]

Enforcement of order

4. The power of the High Court to secure compliance with any direction relating to a ward of court may be exercised by an order addressed to the Official Solicitor or such other person as the judge may nominate.

[*E.r.* 3A]

When minor ceases to be ward of court

5.—(1) A minor who, by virtue of section 26(2) of the Act, becomes a ward of court on the issue of a summons under rule 3 shall cease to be a ward of court—

(*a*) if an application for an appointment for the hearing of the summons is not made within the period of 21 days after the issue of the summons, at the expiration of that period;

(*b*) if an application for such an appointment is made within that period, on the determination of the application made by the summons unless the Court hearing it orders that the minor be made a ward of court.

(2) Nothing in paragraph (1) shall be taken as affecting the power of the Court under section 26(3) of the Act to order that any minor who is for the time being a ward of court shall cease to a ward of court.

(3) If no application for an appointment for the hearing of a summons under rule 3 is made within the period of 21 days after the issue of the summons, a notice stating whether the applicant intends to proceed with the application made by the summons must be left at the Office immediately after the expiration of that period.

[*E.r.* 4]

[**(a)** . . .]

Jurisdiction of the Master

9.—(1) In proceedings to which [**(b)** this Part of] this Order applies, the Master may transact all such business and exercise all such authority and jurisdiction as may be transacted and exercised by a judge in chambers.

(2) Paragraph (1) is without prejudice to the power of the judge to whom the business of the Family Division has been assigned pursuant to section 17 of the Act to reserve to himself the transaction of any such business or the exercise of any such authority or jurisdiction.

[*E.r.* 12]

[**(c)** III. CHILD ABDUCTION AND CUSTODY ACT 1985

Interpretation

10. In this Part of this Order, unless the context otherwise requires—

(a) Rules 6–8 revoked by S.R. 1996 No. 321 with effect from 4.11.96
(b) Words inserted by S.R. 1986 No. 203 with effect from 1.8.96
(c) New Part added by S.R. 1986 No. 203 with effect from 1.8.86

(*a*) "the Act" means the Child Abduction and Custody Act 1985 and words or expressions bear the same meaning as in the Act;

(*b*) "the Hague Convention" means the convention defined in section 1(1) of the Act and "the European Convention" means the convention defined in section 12(1) of the Act;

[(**a**)(*c*) "the Council Regulation" means the Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.]

Mode of application

11.—(1) Except as otherwise provided by this Part, every application under the Hague Convention and the European Convention shall be made by originating summons, which shall be in Form No.6 in Appendix A and shall be issued out of the Office of Care and Protection.

(2) An application in custody proceedings for a declaration under section 23(2) of the Act shall be made by summons in those proceedings.

Contents of originating summons: general provisions

12. The originating summons under which any application is made under the Hague Convention or the European Convention shall state—

(*a*) the name and date of birth of the child in respect of whom the application is made;

(*b*) the names of the child's parents or guardians;

(*c*) the whereabouts or suspected whereabouts of the child;

(*d*) the interest of the plaintiff in the matter and the grounds of the application; and

(*e*) particulars of any proceedings (including proceedings of the jurisdiction and concluded proceedings) relating to the child

and shall be accompanied by all relevant documents including but not limited to the documents specified in Article 8 of the Hague Convention or, as the case may be, Article 13 of the European Convention.

Contents of originating summons: particular provisions

13.—(1) In application under the Hague Convention, in addition to the matters specified in rule 12—

(*a*) the originating summons under which an application is made for the purposes of Article 8 for the return of a child shall state the identity of the person alleged to have removed or retained the child and, if different, the identity of the person with whom the child is alleged to be;

(*b*) the originating summons under which an application is made for the purposes of Article 15 for a declaration shall identify the proceedings in which the request that such a declaration be obtained was made.

(2) In application under the European Convention, in addition to the matters specified in rule 12 the originating summons shall identify the decision relating to custody or on rights of access which is sought to be registered or enforced or in relation to which a declaration that it is not to be recognised is sought.

(**a**) Paragraph inserted by S.R. 2006 No. 486 with effect from 08.01.07

ORDER 90

[(a) (3) Where the application is one to which the Council Regulation also applies the originating summons shall identify—

(*a*) any details of measures taken by courts or authorities to ensure the protection of the child after its return to the Member State of habitual residence of which the applicant is aware; and

(*b*) details of any person with parental responsibility who is not already listed in accordance with rule 12.]

Defendants

14. The defendants to an application under the Act shall be—

(*a*) the person alleged to have brought into the United Kingdom the child in respect of whom an application under the Hague Convention is made;

(*b*) the person with whom the child is alleged to be;

(*c*) any parent or guardian of the child who is within the United Kingdom and is not otherwise a party; and

(*d*) the person in whose favour a decision relating to custody has been made, if he is not already a party; and

(*e*) any other person who appears to the Court to have a sufficient interest in the welfare of the child.

Appearance

15. Notwithstanding Order 12, rule 9, the time limited for entering an appearance to an originating summons by which an application is made under the Hague Convention shall be 4 days after service of the originating summons (including the day of service) or, in the case of a defendant joined under rule 14(*e*), such time as the Court may direct.

Evidence and notice of appointment to hear summons

16.—(1) Notwithstanding Order 28 rule 1A—

(*a*) the plaintiff on issuing an originating summons under the Hague Convention or the European Convention may lodge a statement in support of his application in the Office and shall serve a copy of the same on the defendant with the originating summons;

(*b*) a defendant to an application under the Hague Convention or the European Convention may within 7 days after service of the originating summons on him lodge affidavit evidence in the Office and serve a copy of the same on the plaintiff,

(*c*) the plaintiff in an application under the European Convention may within 7 days thereafter lodge in the Office a Statement in reply and serve a copy thereof on the defendant.

(2) Notwithstanding Order 28, rule 2, the plaintiff must at the time of issue of the originating summons obtain an appointment for the attendance of the parties before the Court for the hearing of the summons, and a day and time, not later than 14 days from the date of issue of the summons, shall be fixed by a notice in Form No.10 in Appendix A sealed by the proper officer.

(3) Order 28, rule 3(1), shall apply to a notice under the previous paragraph in the same manner as it applies to a notice under Order 28, rule 2.

(a) Paragraph inserted by S.R. 2006 No. 486 with effect from 08.01.07

Hearing

17. Any application under the Act (other than an application (*a*) to join a defendant (*b*) to dispense with service, or (*c*) for the transfer of proceedings) shall be heard and determined by a judge and shall be dealt with in chambers unless the Court otherwise directs.

Dispensing with service

18. The Court may dispense with service of any summons (whether originating or ordinary) in any proceedings under the Act.

Adjournment of Summons

19. Notwithstanding Order 28, rule 5, the hearing of the originating summons under which an application under the Hague Convention or the European Convention is made may be adjourned for a period not exceeding 21 days at a time.

Stay of Proceedings

20.—(1) A party to proceedings under the Hague Convention shall, where he knows that an application relating to the merits of rights of custody is pending in or before a relevant authority, file in the Office a concise statement of the nature of the application which is pending, and of the authority before which it is pending.

(2) A party—

(*a*) to pending proceedings under section 16 of the Act, or

(*b*) to proceedings as a result of which a decision relating to custody has been registered under section 16 of the Act,

shall, where he knows that such an application is as specified in section 20(2) of the Act, [(**a**), Article 21(2) of the Child Abduction and Custody (Jersey) Law 2005] [(**b**) or section 42(2) of the Child Custody Act 1987 (an Act of the Tynwald)] is pending in or before a relevant authority, file a concise statement of the nature of the application which is pending.

(3) The proper officer shall in receipt of such a statement as is mentioned in paragraph (1) or (2) notify the relevant authority in which or before whom the application is pending and shall subsequently notify it or him of the results of the proceedings.

(4) On the Court receiving notification equivalent to that mentioned in paragraph (3) from the Court of Session, [(**b**) the High Court in England and Wales [(**a**), the Royal Court of Jersey] or the High Court of Justice of the Isle of Man]—

(*a*) Where proceedings relating to the merits of the rights of custody (as construed in section 9 of the Act) are pending before the court and the court receives notification equivalent to that mentioned in paragraph (3) from the Court of Session, [(**b**) the High Court in England and Wales [(**a**), the Royal Court of Jersey] or the High Court of Justice of the Isle of Man], those proceedings shall be stayed and the parties to the pending proceedings shall be notified by the proper officer accordingly.

(*b*) Where pending proceedings have been stayed by the Court in accordance with sub-paragraph (*a*) and the Court receives notification from the Court of Session [(**b**) the High Court in England and Wales [(**a**), the Royal Court of Jersey] or the High Court of Justice of the Isle of Man] that an order has been made under Article 12 of the Hague Convention for the return of the child concerned, those pending proceedings shall be dismissed and the proper officer shall notify the parties to those proceedings accordingly.

(**a**) Words inserted by S.R. 2006 No. 486 with effect from 08.01.07
(**b**) Words inserted by S.R. 1995 No. 2 with effect from 2.2.95

(*c*) Where pending proceedings have been stayed by the Court in accordance with sub-paragraph (*a*) and the Court receives notification from the Court of Session [(**a**) the High Court in England and Wales [(**b**), the Royal Court of Jersey] or the High Court of Justice of the Isle of Man] that application under the Hague Convention has been dismissed, the stay on the proceedings shall be removed and the proper officer shall notify the parties to those proceedings accordingly.

(5) Where any proceedings such as are mentioned in section 20(2) of the Act are pending before the Court and the court notification equivalent to that mentioned in paragraph (3) from the Court of Session, [(**a**) the High Court in England and Wales [(**b**), the Royal Court of Jersey] or the High Court of Justice of the Isle of Man] and the condition specified in section 20(1)(*b*) of the Act is satisfied, the proper officer shall notify the parties to the pending proceedings accordingly.

(6) In this rule "relevant authority" includes the High Court, a County Court or a Magistrates' Court in England and Wales, the Court of Session, a Sheriff Court, a Children's Hearing within the meaning of Part III of the Social Work (Scotland) Act 1968, the High Court in Northern Ireland, a county court in Northern Ireland, a court of summary jurisdiction in Northern Ireland [(**b**), the Royal Court of Jersey, a court of summary jurisdiction in Jersey,] [(**a**)the High Court of Justice of the Isle of Man, a court of summary jurisdiction in the Isle of Man] or the Secretary of State.

Transfer of proceedings

21.—(1) At any stage in any proceedings under the Act the Court may, of its own motion or on the application by summons of any party to the proceedings issued on 2 days notice, order that the proceedings be transferred to the Court of Session, [(**a**) the High Court in England and Wales [(**b**), the Royal Court of Jersey] or the High Court of Justice of the Isle of Man].

(2) Where an order is made under paragraph (1) the proper officer shall send a copy of the order, which shall state the grounds therefore, together with the originating summons and the documents annexed thereto, to the Court of Session, [(**a**) the High Court in England and Wales [(**b**), the Royal Court of Jersey] or the High Court of Justice of the Isle of Man], as the case may be.

(3) Where proceedings are transferred to the Court of Session, [(**a**) the High Court in England and Wales [(**b**), the Royal Court of Jersey] or the High Court of Justice of the Isle of Man], the costs of the whole proceedings both before and after the transfer shall be at the discretion of the Court to which the proceedings are transferred.

(4) Where proceedings are transferred to the High Court from the Court of Session [(**a**)the High Court in England and Wales [(**b**), the Royal Court of Jersey] or the High Court of Justice of the Isle of Man] the proper officer shall notify the parties of the transfer and the proceedings shall continue as if they had been begun by originating summons under rule 11.

Interim directions

22. An application for interim directions under section 5 or section 19 of the Act may where the case is one of urgency be made ex parte supported by a statement but shall otherwise be made by summons.

(**a**) Words inserted by S.R. 1995 No. 2 with effect from 2.2.95
(**b**) Words inserted by S.R. 2006 No. 486 with effect from 08.01.07

Obtaining authenticated copies of decisions

23. Without prejudice to the generality of Order 66 rule 5, any person who intends to make an applications under the Hague Convention in a Contracting State other than the United Kingdom shall on satisfying the Court be entitled to obtain an office copy sealed with the seal of the Court of Judicature of any order made in the High Court relating to the child in respect of whom the application is to be made.

Revocation and variation of registered decisions

24.—(1) This rule applies to decisions which have been registered under section 16 of the Act and are subsequently varied or revoked by an authority in the Contracting State in which they were made.

(2) The Court shall, on cancelling the registration of a decision which has been revoked, notify—

(*a*) the person appearing to the Court to have actual custody of the child;

(*b*) the person on whose behalf the application for registration of the decision was made; and

(*c*) any other party to that application of the cancellation.

(3) The Court shall, on being notified of the variation of a decision, notify—

(*a*) the person appearing to the Court to have actual custody of the child; and

(*b*) any party to the application for registration of the decision;

of the variation and any such person may apply by summons in the proceedings for the registration of the decision, for the purpose of making representations to the Court before the registration is varied.

(4) Any person appearing to the Court to have an interest in the matter may apply by summons in the proceedings for the registration of a decision for the cancellation or variation of the registration.

Orders for disclosure of information

25. At any stage in proceedings under the European Convention the Court may, if it has reason to believe that any person may have relevant information about the child who is the subject of those proceedings, order that person to disclose such information and may for that purpose order that the person attend before it or file affidavit evidence.]

[(**a**) *Registration of registered decisions*

25A. There shall be kept in the Office by the proper officer a register of decisions registered under section 16 of the Act together with any variation of those decisions as made under section 17 of the Act.]

[(**b**) IV Family Law Act 1986

Interpretation

26.—(1) In this Part of this Order, unless the context otherwise requires—

"the Act" means the Family Law Act 1986;

"the appropriate court" means, in relation to England and Wales the High Court, and in relation to Scotland, the Court of Session, [(**c**) and in relation to a specified dependant territory, the corresponding court of that territory];

(**a**) Rule inserted by S.R. 2006 No. 486 with effect from 08.01.07
(**b**) Part IV added by S.R. 1988 No. 71 with effect from 4.4.88
(**c**) Definition added by S.R. 1995 No. 2 with effect from 2.2.95

[(**a**) "the appropriate officer" means in relation to the High Court in England and Wales, the Secretary of the Principal Registry of the Family Division, in relation to the Court of Session, the Deputy Principal Clerk of Session and in relation to the appropriate court in a specified dependent territory, the corresponding officer of that court;]

"custody order" means a custody order within the meaning of sections 1, 32, 40, 42(5) and 42(6) of the Act;

[(**b**)...]

"register" means the register kept for the purposes of the Act;

"registration" means registration under Part I of the Act and "registered" shall be construed accordingly;

[(**a**) "specified dependant territory" means a dependent territory specified in column 1 of Schedule 1 to the Family Law Act 1986 (Dependent Territories) Order 1991(**c**)]

(2) The prescribed officer for the purposes of sections 27(4) and 28(1) of the Act shall be the Master, and the jurisdiction of the court under sections 27(3) and 28(1) of the Act shall be exercised by the prescribed officer.

Application to register custody order

27.—(1) An application under section 27 of the Act for the registration of a custody order made by the High Court shall be made by lodging in the Office a certified copy of the order, together with a certified copy of any order which has varied any of the terms of the original order and an affidavit by the applicant and a copy thereof stating—

(*a*) the name and address of the applicant and his interest under the order;

(*b*) the name and date of birth of the child in respect of whom the order was made, his whereabouts or suspected whereabouts and the name of any person with whom he is alleged to be;

(*c*) the name and address of any other person who is known to the applicant to have an interest under the order and whether it has been served on him;

[(**d**)(*d*) in which of the jurisdictions of England, Scotland or a specified dependent territory the order is to be registered;]

(*e*) that, to the best of the applicant's information and belief the order is in force;

(*f*) whether, and if so where, the order is already registered; and

(*g*) details of any order affecting the child which is in force in the jurisdiction in which the custody order is to be registered.

(2) There shall be exhibited to the affidavit any document relevant to the application.

(3) Where the documents referred to in paragraphs (1) and (2) are to be sent to the appropriate court the prescribed officer shall—

(*a*) retain the affidavit and send the copy thereof and the other documents to [(**e**) the appropriate officer], indicating, where the order relates to more than one child, with respect to which child or children it is to be registered, and

(*b*) record the fact of transmission.

(4) On receipt of notice of the registration of a custody order in the appropriate court the prescribed officer shall record particulars of the registration.

(5) If it appears to the prescribed officer that the custody order is no longer in force with respect to a child or more than one child or that a child or more than one child has attained the age of 16, he shall refuse to send the documents referred to in

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(**a**) Definition added by S.R. 1995 No. 2 with effect from 2.2.95
(**b**) Definition omitted by S.R. 1995 No. 2 with effect from 2.2.95
(**c**) S.I. 1991/1723 as amended by S.I.1994/2800
(**d**) Sub-paragraph (*d*) substituted by S.R. 1995 No. 2 with effect from 2.2.95
(**e**) Words substituted by S.R. 1995 No. 2 with effect from 2.2.95

paragraphs (1) and (2) to the appropriate court or shall indicate thereon with respect to which child or children the order is not to be registered and he shall within 14 days give notice to the applicant of his refusal or indication and the reason for it.

(6) If the prescribed officer refuses to send the documents referred to in paragraph (1) and (2) to the appropriate court the applicant may apply by summons to a judge in chambers for an order that the documents be sent to the appropriate court or that they be sent with respect to a particular child or children.

Registration of English and Scottish custody orders

28. On receipt of a certified copy of a custody order made in England and Wales [(**a**), Scotland, or a specified dependant territory] for registration, the prescribed officer shall—

(*a*) register the order in the register by entering particulars of—

(i) the name and address of the applicant and his interest under the order;

(ii) the name and whereabouts or suspected whereabouts of the child, his date of birth, and the date on which he will attain the age of 16; and

(iii) the terms of the order, its date and the court which made it;

(*b*) file the certified copy and accompanying documents; and

(*c*) give notice to the court which sent the certified copy and to the applicant for registration that the order has been registered.

Revocation and variation of Northern Ireland order

29.—(1) Where a custody order which is registered in the appropriate court is revoked or varied by the High Court, the prescribed officer shall—

(*a*) send a certified copy of the subsequent order to [(**a**) the appropriate officer], and to the court which made the custody order if that court is different from the court making the subsequent order;

(*b*) record the fact of transmission; and

(*c*) retain the subsequent order.

(2) On receipt of notice from the appropriate court of the amendment of its register, there shall be entered, in the records of the court which made the custody order and the court which made the subsequent order, if different, particulars of the revocation or variation, as the case may be.

Registration of revoked, recalled or varied English or Scottish orders

30.—(1) On receipt of a certified copy of an order made in England and Wales [(**a**) Scotland, or a specified dependent territory] which revokes, recalls or varies a registered custody order, the prescribed officer shall enter particulars of the revocation, recall or variation, as the case may be, in the register, and give notices of the entry to—

(*a*) the court which sent the certified copy,

(*b*) if different, the court which made the custody order,

(*c*) the applicant for registration, and

(*d*) if different, the applicant for the revocation, recall or variation of the order.

(2) An application under section 28(2) of the Act shall be made by summons and may be heard and determined by the Master.

(3) If the applicant for the custody order is not the applicant under section 28(2) of the Act he shall be made a defendant to the application.

(**a**) Words substituted by S.R. 1995 No. 2 with effect from 2.2.95

(4) Where the Master cancels a registration of his own motion or on an application under paragraph (2), he shall amend the register accordingly and shall give notice of the amendment to the court which made the custody order.

Interim directions

31.—(1) An application for interim directions under section 29 of the Act shall be made by summons and may be heard and determined by the Master.

(2) The parties to the proceedings for enforcement and, if he is not a party thereto, the applicant for the custody order, shall be made parties to the application.

Staying and dismissal of enforcement proceedings

32.—(1) An application under section 30(1) of the Act shall be made by summons and may be heard and determined by the Master.

(2) The parties to the proceedings for enforcement which are sought to be stayed and, if he is not a party thereto, the applicant for the custody order, shall be made parties to an application under either of the said sections.

(3) Where the court makes an order under section 30(2) or (3) or section 31(3) the prescribed officer shall amend the register accordingly and shall give notice of the amendment to the court which made the custody order and to the applicants for registration, for enforcement and for the stay or dismissal of the proceedings for enforcement.

Particulars of other proceedings

33. A party to proceedings for or relating to a custody order who knows of other proceedings (including proceedings out of the jurisdiction and concluded proceedings) which relate to the child concerned shall file an affidavit which shall state—

(*a*) in which jurisdiction and court the other proceedings were instituted;

(*b*) the nature and current state of such proceedings and the relief claimed or granted;

(*c*) the names of the parties to such proceedings and their relationship to the child;

(*d*) if applicable, and if known, the reasons why the relief claimed in the proceedings for or relating to the custody order were not claimed in the other proceedings.

Stay of proceedings

34.—(1) Where under section 22(2) of the Act the High Court stays proceedings on an application for a custody order it shall cause notice of the stay to be given to the parties to the proceedings.

(2) Where under section 22(3) of the Act the High Court removes a stay granted in accordance with section 22(2) it shall cause notice of the removal of the stay to be given to the parties to the proceedings and shall proceed to deal with the application accordingly.

Inspection of Register

35. The following persons:

(*a*) the applicant for registration of a registered custody order,

(*b*) any person who satisfies the Master that he has an interest under the custody order, and

(*c*) any person who obtains the leave of the master

may inspect any entry in the register relating to the order and may bespeak copies of the order and of any document relating thereto''.

ORDER 91

REVENUE PROCEEDINGS IN CHANCERY DIVISION

Assignment to Chancery Division, etc.

1. The following proceedings, namely—

(*a*) any case stated for the opinion of the High Court under section 13 of the Stamp Act 1891(**a**);

(*b*) any appeal to the High Court under section [(**b**)...] 100 of the Taxes Management Act 1970(**c**) or [(**d**) section 222 or 249 of the Inheritance Tax Act 1984] or any application for leave to appeal under the said [(**d**) section 222]

shall be assigned to the Chancery Division.

[*E.r.* 1]

[(**d**) *Appeal under section 222 of the Inheritance Tax Act 1984*]

2.—(1) Order 55 shall not apply in relation to an appeal to the High Court under [(**d**) section 222 of the Inheritance Tax Act 1984.]

(2) Such an appeal must be brought by originating summons which must—

(*a*) state the date on which the Commissioners of Inland Revenue (in this rule referred to as the "Board") gave notice to the appellant under [(**d**) section 221 of the Inheritance Tax Act 1984] of the determination which is the subject of this appeal;

[(**e**)(*b*) state the date on which the appellant gave to the Board notice of appeal under section 222 and, if the notice was not given within the time permitted, whether Her Majesty's Revenue and Customs ("HMRC") have given consent or the tribunal has given permission to the notice being given after the time permitted and where applicable, the date of such consent or permission; and]

(*c*) either state that the appellant and the Board have agreed that the appeal may be to the High Court or contain an application for leave to appeal to the High Court.

(3) At the time of issuing the originating summons the appellant shall lodge in the Chancery Office—

(*a*) two copies of the notice referred to in paragraph (2)(*a*);

(*b*) two copies of the notice of appeal referred to in paragraph (2)(*b*); and

(*c*) where the originating summons contains an application for leave to appeal, an affidavit setting out the grounds on which it is alleged that the matters to be decided on the appeal are likely to be substantially confined to questions of law.

[(**e**) (4) The originating summons must be served on the Board within 30 days of the date on which the appellant gave to the Board notice of appeal under section 222 or, if HMRC have given consent or the tribunal has given permission to the notice being given after the time permitted, within 30 days of the date on which such consent or permission was given.]

(**a**) 1891 c. 39
(**b**) Words omitted by S.R. 2009 No. 230 with effect from 07.09.09
(**c**) 1970 c. 9
(**d**) Words substituted by S.R. 2009 No. 230 with effect from 07.09.09
(**e**) Paragraph substituted by S.R. 2009 No. 230 with effect from 07.09.09

(5) No appearance need be entered to the originating summons, but it must specify a date of hearing being not less than 40 days from the issue of the summons.

(6) Where the originating summons contains an application for leave to appeal to the High Court, a copy of the affidavit lodged pursuant to paragraph (3)(*c*) shall be served on the Board with the originating summons and the Board may, within 30 days after service, lodge in the Chancery Office an affidavit in answer and a copy of any such affidavit shall be served by the Board on the appellant.

(7) Except with the leave of the Court, an appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal not specified in the notice referred to in paragraph (2)(*b*).

[*E.r.* 2]

[(a) (8) In this rule—

"the tribunal" means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

"Tribunal Procedure Rules" means the rules governing the practice and procedure to be followed in the First-tier Tribunal and Upper Tribunal.]

Case stated: notice to be given of certain matters

3. Not less than 10 days before the hearing of such a case as is mentioned in rule 1(*a*) either party must give notice to the other of any point which he intends to take at the hearing and which might take the other party by surprise and leave at the Chancery Office two copies of the notice for the use of the Court.

[*E.r.* 4]

Appeals under ss.53 and 100 of Taxes Management Act 1970 and paragraphs 32(3) and 35(2) of Schedule 4 to the Finance Act 1975

4.—(1) The notice of an originating motion by which an appeal under section 53 or 100 of the Taxes Management Act 1970 or paragraph 32(3) or 35(2) of Schedule 4 to the Finance Act 1975 is brought must be issued out of the Chancery Office.

(2) The persons to be served with the notice are the General or Special Commissioners against whose decision or award the appeal is brought and—

(*a*) in the case of an appeal brought under section 100 of the Taxes Management Act 1970 or paragraph 32(3) of Schedule 4 to the Finance Act 1975 by any party other than the defendant in the proceedings before the Commissioners, that defendant;

(*b*) in any other case, the Commissioners of Inland Revenue.

(3) Order 55, rules 14(2) and 15(1), shall apply in relation to any such appeal as if for the period of 21 days therein specified there were substituted a period of 30 days.

(4) Within 30 days after the service on them of notice of the originating motion by which any such appeal is brought, the General or Special Commissioners, as the case may be, must lodge in the Chancery Office two copies of a note of their findings and of the reasons for their decision or award and must serve a copy of the note on every other party to the appeal.

(5) Any document required or authorised to be served on the General or Special Commissioners in proceedings to which this rule relates may be served by delivering or sending it to their clerk.

[*E.r.* 5]

(a) Paragraph (8) inserted by S.R. 2009 No. 230 with effect from 07.09.09

ORDER 92

LODGMENT, INVESTMENT, ETC. OF FUNDS IN COURT: CHANCERY DIVISION

Payment into court by life assurance company

1.—(1) A company wishing to make a payment into court under the Life Assurance Companies (Payment into Court) Act 1896(**a**) (hereinafter referred to as "the Act of 1896") must file an affidavit, made by its secretary or other authorised officer setting out—

(*a*) a short description of the policy in question and a statement of the persons entitled thereunder with their names and addresses so far as known to the company,

(*b*) a short statement of the notices received by the company claiming an interest in or title to the money assured, or withdrawing any such claim, with the dates of receipt thereof and the names and addresses of the persons by whom they were given,

(*c*) a statement that, in the opinion of the board of directors of the company, no sufficient discharge can be obtained otherwise than by payment into court under the Act of 1896,

(*d*) the submission by the company to pay into court such other sum, if any, as the Court may direct and to pay any costs ordered by the Court to be paid by the company,

(*e*) an undertaking by the company forthwith to send to the Accountant General any notice of claim received by the company after the making of the affidavit with a letter referring to the title of the affidavit, and

(*f*) an address where the company may be served with any summons or order, or notice of any proceeding, relating to the money paid into court.

(2) The company shall not deduct from the money payable by them under the policy any costs of or incidental to the payment into court.

(3) No payment shall be made into court under the Act of 1896 where any action to which the company is a party is pending in relation to the policy or moneys thereby assured except with the leave of the Court to be obtained by summons in the action.

(4) Unless the Court otherwise directs, a summons by which a claim with respect to money paid into court under the Act of 1896 is made shall not, except where the summons includes an application for payment of a further sum of costs by the company who made the payment, be served on that company, but it must be served on every person who appears by the affidavit on which the payment into court was made to be entitled to, or interested in, the money in court or to have a claim upon it or who has given a notice of claim which has been sent to the Accountant General in accordance with the undertaking referred to in rule 1(1)(*e*).

[*E.r.* 1]

(**a**) 1896 c. 8

[*Suppl. No. 50 (June 1998)*]

ORDER 92

Payment into court under Trustee Act (Northern Ireland) 1958

2.—(1) Subject to paragraph (2), any trustee wishing to make a payment into court under section 63 of the Trustee Act (Northern Ireland) 1958(**a**) must make and file an affidavit setting out—

(*a*) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose,

(*b*) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him,

(*c*) his submission to answer all such inquiries relating to the application of such money or securities as the Court may make or direct, and

(*d*) an address where he may be served with any summons or order, or notice of any proceedings, relating to the money or securities paid into court.

(2) Where the money or securities represents a legacy, or residue or any share thereof, to which a minor or a person resident outside the United Kingdom is absolutely entitled, no affidavit need be filed under paragraph (1) and the money or securities may be paid into court in the manner prescribed by court funds rules made under section 82 of the Act.

[*E.r.* 2]

Payment into court under War Damage Act 1943

3. Where the Commissioners of Inland Revenue wish to make a payment into court under section 33(1) of the War Damage Act 1943(**b**) in respect of war damage to a hereditament, they shall cause an affidavit to be made and filed setting out—

(*a*) short particulars of the hereditament;

(*b*) the name and address of any person who has claimed a payment in respect of war damage to the hereditament or a share of such payment, and

(*c*) the grounds on which the Commissioners wish to make the payment into court.

[*E.r.* 3]

[(**c**) *Payments into Court under section 26, Banking Act 1987*

3A. Where the [(**d**) Financial Services Authority], having sold shares in pursuance of an order under section 26 of the Banking Act 1987, pays the proceedings of sale, less the costs of the sale, into court, it shall cause an affidavit to be made and filed setting out the names and, so far as known, the addresses of the persons beneficially entitled to the proceeds of sale and shall lodge a copy of the order.]

[*E.r.* 3.A]

Notice of lodgment

4. Any person who has lodged money or securities in court in accordance with rule 1, 2 [(**e**), 3 or 3A] must forthwith send notice of the lodgment to every person appearing from the affidavit on which the lodgment was made to be entitled to, or to have an interest in, the money or securities lodged.

[*E.r.* 4]

Applications with respect to funds in court

5.—(1) Where an application to the High Court—

(*a*) for the payment or transfer to any person of any funds in court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds;

(**a**) 1958 (N.I.) c. 23
(**b**) 1943 c. 21
(**c**) Rule 3A inserted by S.R. 1992 No. 399 with effect from 1.11.92
(**d**) Words substituted by S.I. 1998 No. 1129 with effect from 1.6.98
(**e**) Words inserted by S.R. 1992 No. 399 with effect from 1.11.92

(*b*) for the investment, or change of investment, of any funds in court;

(*c*) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or

(*d*) for the payment or transfer out of court of any such funds as are mentioned in sub-paragraph (*c*);

is made in the Chancery Division the application may be disposed of in chambers.

(2) Subject to paragraph (3), any such application made in the Chancery Division must be made by summons and, unless the application is made in a pending cause or matter or an application for the same purpose has previously been made by petition or originating summons, the summons must be an originating summons.

(3) Where an application under paragraph 1(*d*) is required to be made by originating summons, then, if the funds to which the application relates do not exceed [(**a**) £5,000] in value the application may be made ex parte to the Master who may dispose of the application or may direct it to be made by originating summons.

Unless otherwise directed, an ex parte application under this paragraph shall be made by affidavit.

(4) This rule does not apply to any application for an order under Order 22.

[*E.r.* 5]

(**a**) Figure substituted by S.R. 1983 No. 114 with effect from 1.6.83

ORDER 93

APPLICATIONS AND APPEALS TO THE HIGH COURT UNDER VARIOUS ENACTMENTS: CHANCERY DIVISION

Appeals, applications etc. under various enactments

1.—(1) Any appeal, application or reference to the High Court under any of the enactments referred to in paragraph (2), whether it is for the decision or opinion of the Court shall be assigned to the Chancery Division.

(2) The enactments are:—

(*a*) section 55 of the National Debt Act 1870(**a**),

(*b*) the Land Purchase Acts,

(*c*) the Vendor and Purchaser Act 1874 (**b**),

(*d*) the Conveyancing Acts 1881 to 1911,

(*e*) section 17 of the Married Women's Property Act 1882(**c**),

(*f*) the Settled Land Acts 1882 to 1890,

(*g*) the Trade Union Act 1913(**d**),

(*h*) the Trustee Act (Northern Ireland) 1958(**e**),

(*i*) the Charities Act (Northern Ireland) 1964(**f**),

(*j*) the Building Societies Act (Northern Ireland) 1967(**g**),

(*k*) the Industrial and Provident Societies Act (Northern Ireland) 1969(**h**),

(*l*) section 7(3) of the Public Order Amendment Act (Northern Ireland) 1970(**i**),

(*m*)the Land Registration Act (Northern Ireland) 1970(**j**),

(*n*) the Friendly Societies Act (Northern Ireland) 1970(**k**),

(*o*) the Industrial Assurance (Northern Ireland) Order 1979(**l**),

[(**m**)(*p*) section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988 (**n**)],

[(**o**)(*q*) regulation 33(6) of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004(**p**),

(*r*) regulation 22(6) of the European Cooperative Society (Involvement of Employees) Regulations 2006(**q**)]

[(**r**)(*s*) The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and the Electricity Regulations (Northern Ireland) 2007.]

[(**s**)(*t*) regulations 6, 9, 11, 16, 53(6) and 54(5) of the Companies (Cross-Border Mergers) Regulations 2007(**t**).]

[(**u**)(*u*) the Transnational Information and Consultation of Employees Regulations 1999.]

(3) At any stage of the proceedings on an appeal under the enactments mentioned in paragraph (2)(*g*) (*j*) (*k*) (*m*) (*n*) and (*o*) the Court may direct that notice of the originating motion by which the appeal is brought be served on any person or may direct that notice be given by advertisement or otherwise of the bringing of the appeal, the nature thereof and the time when it will or is likely to be heard or may give such other directions as it thinks proper for enabling any person interested in

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(**a**) 1870 c. 71
(**b**) 1874 c. 78
(**c**) 1882 c. 75
(**d**) 1913 c. 30
(**e**) 1958 c. 23 (N.I.)
(**f**) 1964 c. 33 (N.I.)
(**g**) 1967 c. 31 (N.I.)
(**h**) 1969 c. 24 (N.I.)
(**i**) 1970 c. 4 (N.I.)
(**j**) 1970 c. 18 (N.I.)
(**k**) 1970 c. 31 (N.I.)
(**l**) S.I. 1979 No. 1574 (N.I. 13)
(**m**) Sub-paragraph added by S.R. 1989 No. 489 with effect from 1.2.90
(**n**) 1988 c. 48
(**o**) Sub-paragraphs added by S.R. 2007 No. 189 with effect from 16.04.07
(**p**) S.R. 2004 No. 417
(**q**) S.I. 2006/2059
(**r**) Sub-paragraph inserted by S.R. 2008 No. 22 with effect from 25.02.08
(**s**) Sub-paragraph inserted by S.R. 2008 No. 401 with effect from 03.11.08
(**t**) S.I. 2007/2974
(**u**) Sub-paragraph inserted by S.R. 2011 No. 229 with effect from 25.07.11

the trade union, alleged trade union, society or industrial insurance company concerned or in the subject matter of the appeal to appear and be heard on the appeal.

(4) An application for directions under paragraph (3) may be made by either party to the appeal by summons to the Judge in Chambers.

[*E.r.* 4, 10 and 12]

Notice of petition under section 55 of National Debt Act 1870

2. Where a petition is presented under section 55 of the National Debt Act 1870 the petitioner must, before the petition is heard, apply to the Chancery Judge in chambers for directions with respect to giving notice of the claim to which the petition relates, and the judge may direct that notice thereof be given by advertisement or in such other manner as he may direct or may dispense with the giving of such notice.

[*E.r.* 1]

Applications under section 57 of the Trustee Act (Northern Ireland) 1958

3. In addition to any other persons who are necessary and proper defendants to the originating summons by which an application under section 57 of the Trustee Act (Northern Ireland) 1958 is made, the settlor and any other person who provided property for the purposes of the trusts to which the application relates must, if still alive and not the plaintiff, be made a defendant unless the Court for some special reason otherwise directs.

[*E.r.* 6(2)]

Application under section 7(3) of Public Order (Amendment) Act (Northern Ireland) 1970

4.—(1) Where an application is made to the High Court under section 7(3) of the Public Order (Amendment) Act (Northern Ireland) 1970 the persons to be made defendants to the originating summons by which such an application is made shall be such persons as the Attorney General may determine.

(2) In the absence of other sufficient representation the Court may appoint the Official Solicitor to represent any interests which in the opinion of the Court ought to be represented on any inquiry directed by the Court under the said section 7(3).

[*E.r.* 5]

Appeal under Article 18 of the Industrial Assurance (Northern Ireland) Order 1979

5.—(1) An application to the Court for leave to appeal under Article 18 of the Industrial Assurance (Northern Ireland) Order 1979 against a direction of the Industrial Assurance Commissioner for Northern Ireland under Article 18(3) of that Order must be made within 21 days after the date of the Commissioner's direction.

(2) An application for the grant of such leave must be made in chambers ex parte by an affidavit stating the material facts, the effect of the Commissioner's direction, the grounds on which the application is made and that the deponent is advised and believes that the applicant has good grounds for appealing.

(3) No order under this rule granting leave to appeal shall be drawn up but the Master shall indorse on the notice of originating motion by which the appeal is brought a note signed by him stating that leave to appeal was granted by the Court and the date on which it was granted.

A copy of such note shall appear on any copy of such notice served on the respondent to the appeal.

(4) Notice of the originating motion by which the appeal is brought must be served, and the appeal entered within 28 days after leave to appeal was granted.

[*E.r.* 11]

[(**a**) *Applications under section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988*

6.—(1) Where an application is made under section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988, the applicant shall serve notice of the application on all persons, so far as reasonably ascertainable, having an interest in the copy, recording or other article which is the subject of the application, including any person in whose favour an order could be made in respect of the copy, recording or other article under any of the said sections of the said Act [(**b**)...].

(2) An application under the said section 114, 204 or 231 shall be made by originating summons or, if it is made in pending action, by summons or motion in that action.]

[(**c**) (3) Order 100, rule 7 shall apply to applications under this rule.]

[*E.r.* 24]

[(**d**) *Proceedings under the Financial Services Act 1986*

7.—(1) In this rule "the Act" means the Financial Services Act 1986 and a section referred to by number means the section so numbered in that Act.

(2) Proceedings in the High Court under the Act (other than applications for mandamus) and actions for damages for breach of a statutory duty under the Act shall be assigned to the Chancery Division.

(3) Such proceedings and actions shall be begun by writ, except for—

(*a*) application by petition by the Secretary of State under section 73, and

(*b*) applications by Inspectors under section 94 or section 178, which shall be begun by originating notice of motion.

(4) No order shall be made under section 6, 61, 71, 91, 104, 131, 184 or paragraph 22 of Schedule 11 against any person unless he is a party to the relevant proceedings or action.

(5) Where there is a question of the construction of any of the rules or regulations referred to in section 61(1)(*a*) of the Act, the Secretary of State, designated agency, or any person referred to in section 61(1)(*a*)(iv) may make representations to the Court.

[*E.r.* 22]

Proceedings under the Banking Act 1987

8.—(1) In this rule "the Act" means the Banking Act 1987 and a section referred to by number means the section so numbered in the Act.

(2) Proceedings in the High Court under the following sections of the Act shall be assigned to the Chancery Division and shall be begun—

(*a*) as to applications under section 26(3), 71(3) and (5) and 77(3) and (5), by originating summons;

(*b*) as to appeals under section 31 (1), by originating motion;

(*c*) as to applications under sections 48(1), 49(1) and 93(1) and (2), by writ.

(3) No order shall be made under section 48(1) against any person unless he is party to the proceedings.

(4) Where an application has been made under section 71(3) or (5) or section 77(3) or (5) the [(**e**) Financial Services Authority] shall within 28 days after service on it of copies of the plaintiff's affidavit evidence cause an affidavit to be made, filed and served on the plaintiff setting out the reasons for its objection to the plaintiff's name.]

[*E.r.* 23]

(**a**) Rule 6 added by S.R. 1989 No. 498 with effect from 1.2.90
(**b**) Words omitted by S.R. 2006 No. 486 with effect from 08.01.07
(**c**) Paragraph inserted by S.R. 2006 No. 486 with effect from 08.01.07
(**d**) Rules 7 and 8 added by S.R. 1992 No. 399 with effect from 1.11.92
(**e**) Words substituted by S.I. 1998 No. 1129 with effect from 1.06.98

ORDER 93

[(a) *Applications under Article 33 of the Wills and Administration Proceedings (Northern Ireland) Order 1994*

9. An application to the Court under Article 33 of the Wills and Administration Proceedings (Northern Ireland) Order 1994 shall be begun by ex parte originating summons.

Applications under Article 35 of the Wills and Administration Proceedings (Northern Ireland) Order 1994

10.—(1) An application to the Court under Article 35 of the Wills and Administration Proceedings (Northern Ireland) Order 1994 for an order appointing a substituted personal representative or terminating the appointment of an existing personal representative shall be made by originating summons or, if made in a pending action, by summons or motion in that action.

(2) All the existing personal representatives and, notwithstanding anything in Order 15, rule 4(2) and subject to any direction of the Court, all persons (other than the plaintiff) having a beneficial interest in the estate must be made parties to the application.

(3) Such an application must be supported by—

(*a*) a sealed or certified copy of the grant of probate or letters of administration;

(*b*) an affidavit containing the grounds of the application and the following particulars so far as the plaintiff can gain information with regard to them—

(i) short particulars of the property comprised in the estate, with an approximate estimate of its income and capital value;

(ii) short particulars of the liabilities of the estate;

(iii) particulars of the persons who are in possession of the documents relating to the estate;

(iv) the names of the beneficiaries and short particulars of their respective interests;

(v) the name, address and occupation of any proposed substituted personal representative;

(*c*) where the application is for the appointment of a substituted personal representative—

(i) a signed or, in the case of a corporation, sealed consent to act; and

(ii) an affidavit as to the fitness of the proposed substituted personal representative, if an individual, to act.

(4) On the hearing of an application under the said Article 35 the personal representative shall produce to the Court the grant of representation to the deceased's estate and, if an order is made under Article 35, the grant (together with the sealed copy of the order) shall be sent to and remain in the custody of the [(b) Chancery Office] until a memorandum of the order has been endorsed on, or permanently annexed to, the grant.]

[(c) *Applications under regulation 33(6) of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004*

11.—(1) An application to the Court under regulation 33(6) of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004 ("the 2004 Regulations") for a penalty notice shall be made by originating summons.

(a) Rule 9 and 10 inserted by S.R. 1999 No. 19 with effect from 15.2.99
(b) Words substituted by S.R. 2008 No. 401 with effect from 03.11.08
(c) Rule 11 and 12 inserted by S.R. 2007 No. 189 with effect from 16.04.07

(2) Such an application must be supported by a copy of the declaration made by the Industrial Court under regulation 33(4) of the 2004 Regulations or an explanation as to why none is included.

Applications under regulation 22(6) of the European Cooperative Society (Involvement of Employees) Regulations 2006

12.—(1) An application to the Court under regulation 22(6) of the European Cooperative Society (Involvement of Employees) Regulations 2006 ("the 2006 Regulations") for a penalty notice shall be made by originating summons.

(2) Such an application must be supported by a copy of the declaration made by the Industrial Court under regulation 22(4) of the 2006 Regulations or an explanation as to why none is included.]

[**(a)***The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and the Electricity Regulations (Northern Ireland) 2007*

13. In rules 14 to 16—

"the 2007 Order" means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007(**b**);

"the 2007 Regulations" means the Electricity Regulations (Northern Ireland) 2007(**c**);

"the Authority" means the Northern Ireland Authority for Utility Regulation; and

"the defendant" means the occupier of the premises to which the warrant relates.

Registration in the High Court of an order under paragraph 16 or 17 of Schedule 1 to the 2007 Order or regulation 33(1) of the 2007 Regulations

14. An order under paragraph 16 or 17 of Schedule 1 to the 2007 Order, or under regulation 33(1) of the 2007 Regulations shall be registered by lodging in the Chancery Office a certified copy of the order.

Application for a warrant under paragraph 2 of Schedule 3 to the 2007 Order

15. The jurisdiction of the Court under paragraph 2 of Schedule 3 to the 2007 Order may be exercised by a judge in chambers.

16—(1) An application for a warrant under paragraph 2 of Schedule 3 to the 2007 Order shall be made by originating summons.

(2) An originating summons under paragraph (1) shall be entitled in the matter of the defendant, naming him, and in the matter of the 2007 Order.

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

(*a*) that a warrant is sought under paragraph 2 of Schedule 3 to the 2007 Order;

(*b*) the address or other identification of the premises to which the warrant relates and the connection between the defendant 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 and the nature of the suspected offences under paragraph 4 of Schedule 3 to the 2007 Order;

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

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

(**a**) New Rules 13-16 inserted by S.R. 2008 No. 22 with effect from 25.02.08
(**b**) S.R. 2007 No. 913
(**c**) S.R. 2007 No. 321

(*g*) the position held by the named officer(s) of the Authority; and

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

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

(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 no less than two clear days before the date fixed for hearing of the summons.

(7) The warrant shall be in Form No. 75.]

[(a) *Applications under the Companies (Cross-Border Mergers) Regulations 2007*

17.—(1) In this rule and in rules 18 to 20 "the 2007 Regulations" means the Companies (Cross-Border Mergers) Regulations 2007.

(2) An application to the Court under regulation 6(1) of the 2007 Regulations (Court approval of pre-merger requirements) shall be made by originating summons in Form 7.

(3) Such an application must be supported by evidence that the requirements of regulations 7 to 10 and 12 to 15 of the 2007 Regulations have been complied with.

(4) Where an application under regulation 11 of the 2007 Regulations to summon a meeting of creditors has been made, the Court will not determine the application under regulation 6 until the result of the meeting is known.

18.—(1) An application to the Court under—

(a) regulation 9(3) (Independent expert's report); or

(b) regulation 11(1) (Power of court to summon meeting of members or creditors) of the 2007 Regulations shall be made by originating summons in Form 7 and be accompanied by evidence in support of the application.

19.—(1) An application to the Court under regulation 16(1) of the 2007 Regulations (Court approval of cross-border merger), shall be made by originating summons in Form 7 and must be accompanied by the documents referred to in regulation 16(1)(b), (c) and (e).

(2) Where appropriate the application should also be accompanied by evidence that regulation 16(f) of the 2007 Regulations has been complied with and such other evidence as may be required to enable the Court to decide the application.

(3) Where the Court makes an order under regulation 16 of the 2007 Regulations approving the merger it will fix a date on which the consequences of the merger are to take effect.

20.—(1) An application to the Court under—

(a) regulation 53(6) (Disputes about operation of an employee participation agreement or the standard rules of employee participation); or

(b) regulation 54(5) (Misuse of procedures)

of the 2007 Regulations for a penalty notice shall be made by originating summons in Form 7 and must be supported by a copy of the declaration made by the Industrial Court under regulation 53(4) or 54(4) of the 2007 Regulations or an explanation as to why none is included.

21. Any document that is lodged with the Court under rules 17 to 20 shall, if not in English, be accompanied by a translation of that document into English—

(a) certified by a notary public or other qualified person; or

(b) accompanied by written evidence that the translation is accurate.]

(a) New Rules inserted by S.R. 2008 No. 401 with effect from 03.11.08

[(a) ORDER 93A

PRESUMPTION OF DEATH ACT (NORTHERN IRELAND) 2009

Interpretation

1. In this Order—

"the 2009 Act" means the Presumption of Death Act (Northern Ireland) 2009 and a section referred to by a number means the section so numbered in the 2009 Act, and expressions used have the same meaning in this Order as in the 2009 Act;

an "application for a declaration of presumed death" means an application for a declaration under section 1;

a "declaration of presumed death" means a declaration under section 1.

Application for a declaration of presumed death

2.—(1) An application for a declaration of presumed death shall be made by originating summons in Form No. 9A, and any further application under this Order, other than an application under rule 7(2), shall be made by summons in Form No. 28, unless the Court otherwise directs.

(2) The applicant, and any other person as the Court may direct, shall be a party to an application for a declaration of presumed death.

(3) An application for a declaration of presumed death shall be supported by an affidavit which shall contain details of the following, where known—

(*a*) the name and address of the applicant;

(*b*) the relationship of the applicant to the missing person;

(*c*) the name of the missing person to whom the application relates, and any other names by which the missing person is known;

(*d*) the address or the last known residence of the missing person;

(*e*) the date of birth of the missing person;

(*f*) the national insurance number of the missing person;

(*g*) the date on which the missing person is—

(i) thought to have died; or

(ii) last known to have been alive;

(*h*) a statement as to which of sections 1(2)(*a*), (*b*) or (*c*) is relied upon to give the Court jurisdiction to entertain the proceedings;

(*i*) where the missing person is married, or is party to a civil partnership and the applicant is neither the spouse nor the civil partner of the missing person, the name and address of the spouse or, as the case may be, the civil partner of the missing person;

(*j*) where the application is made by a person other than the spouse, civil partner, or a close relative of the missing person, details of the applicant's interest in the determination of the application;

(*k*) an estimate of the total value of the assets of the missing person;

(*l*) details of any property owned by the missing person; and

(*m*)details of the interest of any person in the property of the missing person sought to be determined by the Court.

(a) Order 93A inserted by S.R. 2009 No. 345 with effect from 09.11.09

ORDER 93A

Service of notice of application for a declaration of presumed death on Attorney General

3. The applicant shall give notice to the Attorney General of an application for a declaration of presumed death by serving on [(**a**)...] the Attorney General a copy of the application and of the supporting affidavit at least 30 days before the application is issued.

Notice of application

4.—(1) The applicant shall give notice of an application for a declaration of presumed death by serving a copy of the application and of the supporting affidavit, unless the Court otherwise directs, on—

(*a*) the Registrar General;

(*b*) where the missing person is married, or is party to a civil partnership and the applicant is neither the spouse nor the civil partner of the missing person, the spouse or, as the case may be, the civil partner of the missing person;

(*c*) any other person, including any insurance company, who, so far as is known to the applicant, has any interest in the application; and

(*d*) any other person, as the Court may direct.

(2) Notice under paragraph (1)(*a*)-(*c*) shall be served by the applicant upon issue of the application, or as soon thereafter as is reasonably practicable.

(3) Notice under paragraph (1)(*d*) shall be served by the applicant not more than 7 days after such direction is given.

(4) The applicant shall cause notice of an application for a declaration of presumed death to be published, in Form No. 76, at least 21 days before the hearing, in at least one edition of one newspaper circulating in the vicinity of the last known residence of the missing person, unless the Court otherwise directs.

(5) A copy of the page of the newspaper bearing the advertisement of the notice of the application required by paragraph (4), and the date on which it was published, shall be lodged with the Court at least 2 clear days before the hearing of the application.

Declaration of presumed death

5. A declaration of presumed death shall be in Form No. 77, and shall include such finding as is required under section 2(1) and such further direction, determination or order as the Court may make under sections 4, 7(1) or 12.

Application for variation or revocation of a declaration of presumed death

6.—(1) An application for a variation order under section 5(1) shall be supported by an affidavit setting out the grounds for the application, and shall include—

(*a*) the name and address of the person applying for the variation order;

(*b*) the relationship of the person applying for the variation order to the missing person;

(*c*) details of the interest of the person applying for the variation order in the determination of the application;

(*d*) any relevant change of circumstances which has occurred since the making of the declaration; and

(*e*) details of any rights to or in any property acquired as a result of the declaration.

(2) The following shall be parties to an application for a variation order—

(a) Words omitted by S.R. 2013 No. 202 with effect from 05.09.13

(*a*) the applicant for the variation order;

(*b*) the person who applied for the declaration of presumed death to which the application to vary or revoke applies (if other than the applicant for the variation order); and

(*c*) any other person, as the Court may direct.

(3) The applicant shall give notice of an application for a variation order by serving a copy of the application together with a copy of the supporting affidavit, unless the Court otherwise directs, on—

(*a*) the Attorney General;

(*b*) the person who applied for the declaration of presumed death to which the application to vary or revoke applies (if other than the applicant);

(*c*) every person upon whom notice was served under rule 4(1); and

(*d*) any other person, as the Court may direct.

(4)(*a*) Notice under paragraph (3)(*a*) and (*b*) shall be served at the same time as the application issues, or as soon thereafter as is reasonably practicable.

(*b*) Notice under paragraph (3)(*c*) shall be served by the person applying for the variation order not more than 7 days after such direction is given.

(5) The applicant shall cause notice of an application for a variation order to be published, in Form No. 76, at least 21 days before the hearing, in at least one edition of one newspaper circulating in the vicinity of the last known residence of the missing person, unless the Court otherwise directs.

(6) A copy of the page of the newspaper bearing the advertisement of the notice of application required by paragraph (5), and the date on which it was published, shall be lodged with the Court at least 2 clear days before the hearing of the application.

(7) The proper officer shall give notice, in Form No. 78, of the making of a variation order to any person who applied for the declaration under section 1 to which the application to vary or revoke relates, and to the Registrar General, as soon as is reasonably practicable after the making of the order.

(8) Any variation or revocation of a declaration of presumed death shall be in Form No. 79 and shall include such further determination or order as may be made by the Court under sections 5(4), 6(2) or 12.

Interveners

7.—(1) Where a person who is the spouse, civil partner or a close relative of the missing person intervenes under section 10(1), he or she shall file and serve on all parties to the proceedings an affidavit specifying his or her relationship to the missing person, reasons for intervening and particulars of any determination or order sought under section 10(3)(*b*) or (*c*).

(2) An application under section 10(2) for leave to intervene shall be made ex parte by affidavit specifying the applicant's relationship to the missing person, the reasons for intervening, and particulars of any determination or order sought under section 10(3)(*b*) or (*c*).

(3) Where leave is granted under paragraph (2), the intervener shall, as soon as is practicable, serve a copy of the affidavit, together with a copy of the order granting leave to intervene, on all parties to the proceedings to which the application relates.

(4) A person who intervenes under section 10 shall not be a party to the proceedings, unless the Court otherwise directs.

[*Supplt. No. 49 (November 2009)*]

ORDER 93A

Disclosure

8.—(1) An application under section 11(1) for disclosure of information by a person who is not a party to the proceedings shall be supported by an affidavit which shall—

(*a*) specify or describe the information in respect of which the order is sought;

(*b*) set out the reasons why the person making the application believes the person against whom the order is sought is likely to have such information; and

(*c*) include any further details of the missing person, where any are known, which are likely to assist in providing the information sought.

(2) Any party making an application under section 11(1) shall serve a copy of the application, together with a copy of the supporting affidavit, on the person against whom the order is sought, and on every other party to the proceedings, at least 14 days before the date fixed for the hearing of the application.

(3) The proper officer shall serve notice under section 11(3) of the Court's intention to make an order for disclosure of information, in Form No. 80, on any person who is likely to be affected by the order, as directed by the Court, at least 14 days before the hearing at which the order is intended to be made.

(4) An order for disclosure shall be in such terms as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any information specified or described in the order is, or at any time has been, in his or her possession, custody or power and, if no longer in his or her possession, custody or power, when he or she parted with it and what has become of it.

(5) The proper officer shall serve a copy of an order for disclosure, in Form No. 81, on every person upon whom notice of the Court's intention was served under paragraph (3) within 7 days of the order being made, or as soon as is reasonably practicable thereafter.

(6) An application under section 11(4) to discharge or vary an order made under section 11(1) shall be supported by an affidavit which shall specify the reasons relied on.

(7) Any person making an application under section 11(4) shall serve a copy of the application, together with a copy of the supporting affidavit, at the same time as the application issues or as soon thereafter as is reasonably practicable, on every other person upon whom notice of the Court's intention was served under paragraph (3), and on every party to the proceedings.

(8) The proper officer shall serve a copy of an order for the variation or discharge of an order made under section 11(1), in Form No. 82, on every person upon whom notice of the Court's intention was served under paragraph (3) within 7 days of the order being made, or as soon as is reasonably practicable thereafter.

Affidavits

9. Any affidavit in support of an application under these Rules shall exhibit any documentary evidence relied on.

Originating summons procedure

10.—(1) Order 28 does not apply in relation to originating summonses issued under this Order, with the exception of—

(*a*) rule 5; and

(*b*) rule 10(1), which applies subject to the appropriate modification.

(2) Order 32, rule 7, shall apply in relation to an originating summons issued under this Order as it applies in relation to other summonses.]

[(a) ORDER 94

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

[(b) *Appeals to the High Court*

1. Appeals to the High Court under the following statutory provisions shall be brought by way of case stated in accordance with the provisions of Order 56—

(i) section 11(1) of the Tribunals and Inquiries Act 1992(c) (appeals from [(d)...] tribunals in Schedule 1 to the Act);

(ii) Article 34 of the Registered Homes (Northern Ireland) Order 1992(e) (appeals from a Registered Homes Tribunal).]

[(f)[(g)...]]

[(h) (iv) Article 24 of the Education (Northern Ireland) Order 1996(i)].

Appeals to the Court of Appeal

2.—(1) [(j) Subject to [(k) paragraphs (2) to (5)]], 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—

[(l) (i) Article 22 of the Industrial Tribunals (Northern Ireland) Order 1996(m)] (appeals from an industrial tribunal);

(ii) section 14 of the Social Security Act 1980(n) (appeals from Social Security Commissioner);

[(o) (iii) sections 94(3) and 114(5) of the Social Security (Northern Ireland) Act 1975(p) (appeals from the Department of Health and Social Services);

(iv) Article 63(3) of the Social Security Pensions (Northern Ireland) Order 1975(q) (appeals from the Occupational Pensions Board);

(v) Article 13(5) of the Social Security (Northern Ireland) Order 1982(r) (appeals from Department of Health and Social Services).]

[(s) (vi) Article 90 of the Fair Employment and Treatment (Northern Ireland) Order 1998(t)];

[(u)...];

[(v) (viii) Article 18B of the Building Regulations (Northern Ireland) Order 1979 (appeals from the Department of the Environment)(w);

(a) Order 94 inserted by S.R. 1980 No. 433 with effect from 01.01.81
(b) Rule 1 substituted by S.R. 1994 No. 286 with effect from 01.09.94
(c) 1992 c. 53
(d) Words omitted by S.R. 2009 No. 230 with effect from 07.09.09
(e) S.I. 1992/3204 (N.I. 20)
(f) Sub-paragraph (iii) inserted by S.R.1997 No.70 with effect from 17.03.97
(g) Sub-paragraph (iii) revoked by S.R. 2004 No. 108 with effect from 19.04.04
(h) Paragraph (iv) inserted by S.R. 1999 No. 19 with effect from 15.02.99
(i) S.I. 1996/274 (N.I. 1); Article 24 was amended by Article 26 of S.I. 1997/866 (N.I. 5)
(j) Words added by S.R. 1983 No. 407 with effect from 01.01.84
(k) Words substituted by S.R. 2010 No. 49 with effect from 01.04.10
(l) Words substituted by S.R. 2010 No. 49 with effect from 01.04.10
(m) 1996 N.I. 18
(n) 1980 c. 30
(o) Sub-paragraphs (iii), (iv) and (v) added by S.R. 1983 No. 183 with effect from 01.09.83
(p) 1975 c. 15
(q) S.I. 1975/1503 (N.I. 15)
(r) S.I. 1982/1084 (N.I. 16)
(s) Sub-paragraph (vi) substituted by S.R. 2010 No. 49 with effect from 01.04.10
(t) 1998 N.I. 21
(u) Sub-paragraph (vii) omitted by S.R. 2010 No. 49 with effect from 01.04.10
(v) Sub-paragraphs (viii) and (ix) added by S.R. 1993 No. 143 with effect from 19.04.93
(w) S.I. 1979/1709 (N.I. 16) the relevant amending instrument is S.I. 1990/1510 (N.I. 14)

(ix) Article 26 of the Child Support (Northern Ireland) Order 1991 (appeals from Child Support Commissioner)(**a**)];

[(**b**)...]

[(**c**) (xi) sections 103B and 103E of the Nationality, Asylum and Immigration Act 2002(**d**) (appeals from the Asylum and Immigration Tribunal).]

[(**e**) (xii) section 7 of the Special Immigration Appeals Commission Act 1997(**f**)];

[(**g**) (xiii) section 92(1) of the Northern Ireland Act 1998 (**h**);

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

[(**i**) (xv) Article 30(4)(*b*) of the County Courts (Northern Ireland) Order 1980 (appeals from small claims arbitrations)[(**j**) ;]]

[(**k**)[(**l**)...]]

[(**m**) (2) On an appeal under section 14 of the Social Security Act 1980 the requisition to state a case must be lodged in the Office of the Social Security Commissioners within 6 weeks commencing on the date leave to appeal was granted].

[(**n**) (3) An appeal under paragraph (1)(i) or (1)(vi) may only be brought with the leave of the Court of Appeal.

(4) The application for leave under paragraph (3) must—

(*a*) state the grounds for the appeal to be brought by way of case stated rather than the appeal procedure prescribed in Order 60B; and

(*b*) be lodged together with a certified copy of the tribunal's decision in the Central Office within 14 days of the date of the tribunal's decision.

(5) Where under paragraph (3) leave is granted, the time limit specified in Order 61 rule 1(2)(*a*) for lodging the requisition to state the case shall be calculated from the date leave was so granted.]

[(**o**) *Case stated by tribunal, etc. in course of proceedings*]

3.—(1) This rule applies to—

(i) any tribunal mentioned in [(**p**) section 11(1) of the Tribunals and Inquiries Act 1992];

(ii) the tribunal mentioned in [(**q**) Article 31 of the Industrial Training (Northern Ireland) Order 1984].

[(**r**) (iii) the Department mentioned in section 94(1) of the Social Security (Northern Ireland) Act 1975;

(iv) the Occupational Pensions Board mentioned in Article 63(1) of the Social

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(**a**) S.I. 1991/2628 (N.I. 23)
(**b**) Paragraph omitted by S.R. 2009 No. 230 with effect from 07.09.09
(**c**) Sub-paragraph (xi) substituted by S.R. 2005 No. 146 with effect from 18.04.05
(**d**) 2002 c. 41
(**e**) Sub-paragraph inserted by S.R. 1999 No. 333 with effect from 06.09.99
(**f**) 1997 c. 68
(**g**) Sub-paragraphs (xiii) and (xiv) added by S.R. 2000 No. 393 with effect from 08.01.01
(**h**) 1998 c. 47
(**i**) Sub-paragraph (xv) added by S.R. 2004 No. 108 with effect from 19.04.04
(**j**) Punctuation mark substituted by S.R. 2009 No. 230 with effect from 07.09.09
(**k**) Sub-paragraph (xvi) inserted by S.R. 2009 No. 230 with effect from 07.09.09
(**l**) Sub-paragraph (xvi) omitted by S.R. 2013 No. 202 with effect from 05.09.13
(**m**) Paragraph (2) added to rule 2 by S.R. 1983 No. 407 with effect from 01.01.84
(**n**) Paragraphs inserted by S.R. 2010 No. 49 with effect from 01.04.10
(**o**) Heading substituted by S.R. 1983 No. 183 with effect from 01.09.83
(**p**) Words substituted by S.R. 1994 No. 286 with effect from 01.09. 94
(**q**) Words substituted by S.R. 1990 No. 267 with effect from 03.09.90
(**r**) Sub-paragraph (iii), (iv) and (v) added by S.R. 1983 No. 183 with effect from 01.09.83

Security Pensions (Northern Ireland) Order 1975;

(v) the Department mentioned in Article 13(4) of the Social Security (Northern Ireland) Order 1982.]

[(a) (vi) the tribunal mentioned in sections 18 and 40 of the Fair Employment (Northern Ireland) Act 1989.]

[(b) (vii) the Department mentioned in Article 18B(8) of the Building Regulations (Northern Ireland) Order 1979]

(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.

[(c) (3) Any party to proceedings before any tribunal mentioned in paragraph (1) (i) or (ii) who is aggrieved by the tribunal's failure or 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.

[(d) (5) The bodies [(e) mentioned in rule 3(1)(iii), (iv), (v) and (vii)] shall be deemed to be tribunals for the purposes of paragraphs (2) and (4).]

(a) Sub-paragraph (vi) added by S.R. 1990 No. 267 with effect from 3.9.90
(b) Sub-paragraph (vii) added by S.R. 1993 No. 143 with effect from 19.4.93
(c) Paragraph (3) substituted by S.R. 1983 No. 183 with effect from 1.9.83
(d) Paragraph (5) added by S.R. 1983 No. 183 with effect from 1.9.83
(e) Words substituted by S.R. 1993 No. 143 with effect from 19.4.93

ORDER 95

THE BILLS OF SALE (IRELAND) ACTS 1879 AND 1883 AND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT (NORTHERN IRELAND) 1969

Rectification of register

1.—(1) Every application to the Court under section 14 of the Bills of Sale (Ireland) Act 1879(**a**) for an order—

(*a*) that any omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by that Act be rectified by extending the time for such registration, or

(*b*) that any omission or mis-statement of the name, residence or occupation of any person be rectified by the insertion in the register of his true name, residence or occupation,

must be made by affidavit ex parte to the Master.

(2) Every application for such an order as is described in paragraph (1) shall be supported by an affidavit setting out particulars of the bill of sale and of the omission or mis-statement in question and stating the grounds on which the application is made.

[*E.r.* 1]

Entry of satisfaction

2.—(1) Every application under section 15 of the Bills of Sale (Ireland) Act 1879 to the Master for an order that a memorandum of satisfaction be written on a registered copy of a bill of sale must—

(*a*) if a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale can be obtained, be made ex parte;

(*b*) in all other cases, be made by originating summons.

(2) An ex parte application under paragraph (1)(*a*) must be supported by—

(*a*) particulars of the consent referred to in that paragraph; and

(*b*) an affidavit by a witness who attested the consent certifying the signature on it.

(3) An originating summons under paragraph (1)(*b*) must be served on the person entitled to the benefit of the bill of sale and must be supported by evidence that the debt (if any) for which the bill of sale was made has been satisfied or discharged.

(4) No appearance need be entered to an originating summons under paragraph (1)(*b*).

[*E.r.* 2]

Restraining removal on sale of goods seized

3. No appearance need be entered to an originating summons by which an application to the Court under the proviso to section 7 of the Bills of Sale (Ireland) Act (1879) (Amendment) Act 1883 (**b**) must be made.

[*E.r.* 3]

(**a**) 1879 c. 50
(**b**) 1883 c. 7

ORDER 95

Search of register

4. Any person shall be entitled to search the register of bills of sale on payment of the prescribed fee and to inspect, examine and make extracts from any registered bill of sale, without being required to make a written application, or to specify any particulars in reference thereto, such extracts not to exceed date of execution, registration, renewal of registration, satisfaction, names, addresses and occupation of parties, and amount of consideration.

Transmission of abstract etc. to county court

5.—(1) The abstract of the contents of any bill of sale required by section 11 of the Bills of Sale (Ireland) Act (1879) Amendment Act 1883 to be transferred to the chief clerk [(**a**) . . .] shall be in Form No. 42 in Appendix A.

(2) Where a bill of sale is re-registered under section 11 of the Bills of Sale (Ireland) Act 1879, an abstract of the re-registration shall be transmitted by post to the chief clerk to whom such abstract would have been transmitted had the bill of sale been registered under the Bills of Sale (Ireland) Act (1879) Amendment Act 1883.

(3) Where a memorandum of satisfaction is written under section 15 of the Bills of Sale (Ireland) Act 1879 upon any registered or re-registered copy of a bill of sale, an abstract of which has been transmitted to any chief clerk, a notice of such satisfaction, in Form No. 43 in Appendix A, shall be transmitted to each clerk to whom an abstract of such bill of sale has been transmitted.

Local registration

6.—(1) The chief clerk [(**a**) . . .] (hereinafter called "the clerk") shall number the abstracts and notices of satisfaction in the order in which they shall respectively be received by him and shall file and keep them in his office.

(2) The clerk shall keep an index, alphabetically arranged, in which he shall enter under the first letter of the surname of the mortgagor or assignor, such surname with the forenames, address and description, and the number which has been affixed to the abstract.

(3) Upon receipt of a notice of satisfaction, the clerk shall enter the notice of satisfaction on the abstract of the bill to which it relates and shall note in the index against the name of the mortgagor or assignor the fact of the satisfaction having been entered.

(4) The clerk shall allow any person to search the index at any time during which he is required for the time being to keep his office open, upon payment by such person of a fee of 50 pence, and to make extracts from the abstract and notice of satisfaction (if any), upon payment of 50 pence for each abstract inspected.

(5) The clerk shall also, if required, cause an office copy to be made of any abstract or notice of satisfaction and shall be entitled for making and marking the same to the same fee as is payable to the Central Office

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(**a**) Words omitted by S.R. 2016 No. 299 with effect from 31.10.16

Application under section 29(5) *of the Industrial and Provident Societies Act (Northern Ireland)* 1969

7. Every application to the Court under section 29(5) of the Industrial and Provident Societies Act (Northern Ireland) 1969(**a**) for an order—

(*a*) that the period for making an application for recording a charge be extended, or

(*b*) that any omission from or mis-statement in such an application be rectified,

must be made to the Master ex parte by affidavit setting out particulars of the charge and of the omissions or mis-statement in question and stating the grounds of the application.

[*E.r.* 5]

Interpretation

8. In this Order, "the Master" means the Master (Queen's Bench and Appeals) or such other officer serving in the Supreme Court as the Lord Chief Justice may designate to be the registrar for the purposes of the Bills of Sale (Ireland) Act 1879.

(**a**) 1969 c. 24 (N.I.)

[(a) ORDER 96

Access to Health Records (Northern Ireland) Order 1993

Interpretation

1. In this Order—

''the 1993 Order'' means the Access to Health Records (Northern Ireland) Order 1993(**b**);

''the Regulations'' means the Access to Health Records (Steps to Secure Compliance and Complaints Procedures) Regulations (Northern Ireland) 1994(**c**);

''the holder of the health record'' has the same meaning as in the 1993 Order;

''complaint'' means a complaint made in accordance with the Regulations;

''date of the complaint'' has the same meaning as in the Regulations;

''the report'' means a report made in accordance with the Regulations in response to a complaint.

Assignment of proceedings

2. Any proceedings under Article 10 of the 1993 Order shall be assigned to the Queen's Bench Division.

Application

3.—(1) An application under Article 10 of the 1993 Order shall be made by originating summons and may be brought—

(*a*) where the applicant has received a report in accordance with regulation 5 of the Regulations, within one year of the date of the report;

(*b*) where the applicant has not received such a report, within 18 months of the date of the complaint.

(2) An affidavit shall be filed in support of the summons setting out the steps taken in accordance with the Regulations to secure compliance with any requirement of the 1993 Order and there shall be exhibited to the affidavit—

(*a*) a copy of the application under Article 5 or Article 8 of the 1993 Order as appropriate;

(*b*) a copy of the complaint made in accordance with the Regulations;

(*c*) a copy of any report given by the holder of the health record if applicable.

(3) A copy of the said affidavit shall be served on the defendant together with the summons.]

(**a**) New Order 96 inserted by S.R. 1995 No. 2 with effect from 2.2.95
(**b**) S.I. 1993/1250 (N.I. 4)
(**c**) S.R. 1994 No. 158

ORDER 97

NON-CONTENTIOUS PROBATE PROCEEDINGS

Interpretation

1.—(1) In this Order unless the context otherwise required—

"the Order" means the Administration of Estates (Northern Ireland) Order1979(**a**);

"authorised officer" means any officer of the Office or a branch office who is for the time being authorised by the Lord Chief Justice to administer any oath or take any affidavit required for any purpose connected with his duties;

"grant" means a grant of probate or administration;

"the Judge" means the Judge for the time being to whom the business of the [(**b**) Chancery Division] is assigned under section 17 of the Act and any judge of the High Court exercising jurisdiction in probate causes and matters;

"the Office" means the [(**b**) Chancery Office] of the [(**b**) Chancery Division];

"Master" in rules 3, 4, 5, 7, 8, 9(1) and (2), 10, 11, 12, 13, 14, 15, 17, 18, 20(6), 26(1), 31, 32, 37, 38, 58, and 60 includes a circuit registrar in relation to an applicant for a grant made or proposed to be made at a branch office;

"personal applicant" means a person other than a trust corporation who seeks to obtain a grant without employing a solicitor, and

"personal application" has a corresponding meaning.

(2) A form referred to by number means the form so numbered in Appendix C; and such forms shall be used whenever applicable, with such variations as the Master may in any particular case direct or approve.

[*E. Non-Contentious Probate Rules: r.*2]

Applications for grants through solicitors

2.—[(**c**) (1) A person applying for a grant through a solicitor may apply by post or otherwise at the Office or any branch office.]

(2) Every solicitor through whom an application for a grant is made shall give the address of his place of business within the jurisdiction [(**d**) or any other EEA state].

[*E.r.* 3]

Personal Applications

3.—(1) A personal applicant may apply for a grant otherwise than by post at the Office or any branch office.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with if—

(**a**) S.I. 1979 No. 1575 (N.I. 14)
(**b**) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07
(**c**) Paragraph (1) substituted by S.R. 1991 No. 335 with effect from 30.8.91
(**d**) Words inserted by S.R. 2010 No. 381 with effect from 20.12.10

(*a*) it becomes necessary to bring the matter before the Court on motion or by action;

(*b*) an application has already been made by a solicitor on behalf of the applicant and has not been withdrawn;

(*c*) the Master otherwise directs.

(4) After a will has been deposited in the Office or any branch office by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Master so directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the Master may approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the Office or branch office as the case may be, or may himself prepare such papers and lodge them unsworn.

(7) Unless the Master otherwise directs, every oath, affidavit or guarantee required on a personal application (other than a guarantee given by a corporation in accordance with rule 38), shall be sworn or executed by all the deponents or sureties before an authorised officer.

(8) No legal advice shall be given to a personal applicant by any officer of the Office or branch office and every such officer shall be responsible only for embodying in proper form the applicant's instructions for the grant.

[*E.r.* 4]

Duty of Master on receiving application for grant

4.—(1) The Master shall not allow any grant to issue until all inquiries which he may see fit to make have been answered to his satisfaction.

(2) The Master may require proof of the identity of the deceased or of the applicant for the grant beyond that contained in the oath.

(3) Except with the leave of the Master, no grant of probate or of administration with the will annexed shall issue within seven days of the death of the deceased and no grant of administration shall issue within [(**a**) twenty-eight days] thereof.

[*E.r.* 5]

Oath in support of grant

5.—(1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case, which shall be contained in an affidavit sworn by the applicant, and by such other papers as the Master may require.

(2) On an application for a grant of administration the oath shall state whether, and if so, in what manner, all persons having a prior right to a grant have been cleared off.

(3) Unless otherwise directed by the Master, the oath shall state where the deceased died domiciled.

[*E.r.* 6]

(**a**) Words substituted by S.R. 1999 No. 19 with effect from 15.2.99

Grant in additional name

6. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name, or as to any other reason that there may be for the inclusion of the other name in the grant.

[*E.r.* 7]

Marking of wills

7. Every will in respect of which an application for a grant is made shall be marked by the signatures of the applicant and the person before whom the oath is sworn, and shall be exhibited to any affidavit which may be required under this Order as to the validity, terms, conditions or date of execution of the will;

Provided that where the Master is satisfied that compliance with this rule might result in the loss of the will, he may allow a photographic copy thereof to be marked or exhibited in lieu of the original document.

[*E.r.* 8]

Engrossment for purposes of record

8.—(1) Where the Master considers that in any particular case a photographic copy of the original will would not be satisfactory for purposes of record, he may require an engrossment suitable for photographic reproduction to be lodged.

(2) Where a will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the will in the form in which it is to be proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the will and, if it is one to which paragraph (2) of this rule applies, it shall be made book-wise on durable paper following continuously from page to page on both sides of the paper.

(4) Where any pencil writing appears on a will, there shall be lodged a copy of the will or of the pages or sheets containing the pencil writing, in which there shall be underlined in red ink those portions which appear in pencil in the original.

[*E.r.* 9]

Evidence as to due execution of will

9.—(1) Where a will contains no attestation clause or the attestation clause is insufficient or where it appears to the Master that there is some doubt about the due execution of the will, he shall, before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed.

(2) If no affidavit can be obtained in accordance with the last foregoing paragraph, the Master may, if he thinks fit having regard to the desirability of protecting the interests of any person who may be prejudiced by the will, accept evidence on affidavit from any person he may think fit to show that the signature on the will is in the handwriting of the deceased, or of any other

matter which may raise a presumption in favour of the due execution of the will.

(3) If the Master, after considering the evidence—

(*a*) is satisfied that the will was not duly executed, he shall refuse probate and shall mark the will accordingly;

(*b*) is doubtful whether the will was duly executed, he may refer the matter to the court on motion.

[*E.r.* 10]

Execution of will of blind or illiterate testator

10. Before admitting to proof a will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the Master shall satisfy himself that the testator had such knowledge.

[*E.r.* 11]

Evidence as to terms, conditions and date of execution of will

11.—(1) Where there appears in a will any obliteration, interlineation, or other alteration which is not authenticated in the manner prescribed by section 21 of the Wills Act, 1837(**a**), or by the re-execution of the will or by the execution of a codicil, the Master shall require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the will is to be proved:

Provided that this paragraph shall not apply to any alteration which appears to the Master to be of no practical importance.

(2) If from any mark on the will it appears to the Master that some other document has been attached to the will, or if a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will, the Master may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may think fit.

(3) Where there is doubt as to the date on which a will was executed, the Master may require such evidence as he thinks necessary to establish the date.

[*E.r.* 12]

Attempted revocation of will

12. Any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the Master's satisfaction.

[*E.r.* 13]

Affidavit as to due execution, terms, etc. of will

13. The Master may require an affidavit from any person he may think fit for the purpose of satisfying himself as to any of the matters referred to in rules 10, 11 and 12, and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a will the deponent shall depose to the manner in which the will was executed.

[*E.r.* 14]

(**a**) 1837 c. 26

Wills not proved under section 9 of the Wills Act, 1837

14. Nothing in rule 9, 10, 11 or 12 shall apply to any will which it is sought to establish otherwise than by reference to section 9 of the Wills Act 1837, as explained by the Wills Act Amendment Act, 1852(**a**), but the terms and validity of any such will shall be established to the Master's satisfaction.

[*E.r.* 15]

Wills of persons on military service and seamen

15. If it appears to the Master that there is prima facie evidence that a will is one to which section 11 of the Wills Act, 1937, as amended by any subsequent statutory provision applies, the will may be admitted to proof if the Master is satisfied that it was signed by the testator or, if unsigned, that it is in the testator's handwriting,

[*E.r.* 16]

Wills of naval personnel

16. Every application for a grant in respect of the estate of a person who has at any time served in the capacity to which the Navy and Marines (Wills) Act 1865(**b**) applies shall be supported by a certificate of the Inspector of Seamen's Wills as to the existence of any will in his custody:

Provided that no such certificate shall be required where—

(*a*) the application relates to a will made after the deceased had ceased to serve in such capacity as aforesaid which revokes all previous will made by him, or

(*b*) the deceased was at the date of his death in receipt of a pension in respect of his service.

[*E.r.* 17]

Evidence of foreign law

17. Where evidence as to the law of any country or territory outside Northern Ireland is required on any application for a grant, the Master may accept an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question.

[*E.r.* 18]

Order of priority for grant where deceased left a will

18. Where the deceased died on or after the 1st January 1956 domiciled in Northern Ireland, the person or persons entitled to a grant of probate or administration with the will annexed shall be determined in accordance with the following order of priority, namely;—

(i) The executor;

(ii) Any residuary legatee or divisee holding in trust for any other person;

(**a**) 1852 c. 24
(**b**) 1865 c. 72

(iii) Any residuary legatee or devisee for life;

(iv) The ultimate residuary legatee or devisee, or subject to paragraph (3) of rule 22 the personal representative of any such person; .or where the residue is not wholly disposed of by the will, any person (other than a creditor) entitled to a grant in the event of a total intestacy according to the priority set out in rule 20 if such person has an interest in the undisposed of residue (including the nominee of Her Majesty under Article 10 of the Order when claiming bona vacantia on behalf of the Crown)

Provided that where the residue is not in terms wholly disposed of, the Master may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject however to rule 37) to any legatee or devisee entitled to, or to a share in, the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the will;

(v) Any specific legatee or devisee or any creditor or, subject to paragraph (3) of rule 22, the personal representative of any such person or, where the estate is not wholly disposed of by will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion thereto;

(vi) Any legatee or devisee whether residuary or specific entitled on the happening of any contingency, or any person having no interest under the will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

[*E.r.* 19]

Grants to attesting witnesses, etc.

19. Where a gift to any person fails by reason of section 15 of the Wills Act, 1837 (which provides that gifts to attesting witnesses or their spouses shall be void), such person shall not have any right to a grant as a beneficiary named in the will, without prejudice to his right to a grant in any other capacity.

[*E.r.* 20]

Order of priority for grant in case of intestacy

20.—(1) Where the deceased died on or after the 1st January 1956, wholly intestate and domiciled in Northern Ireland, the persons having a beneficial interest in the estate of the deceased shall be entitled to a grant of administration in the following order of priority, namely—

(i) The surviving spouse [(**a**) or civil partner];

(ii) The children of the deceased (including any persons entitled by virtue of any enactment to be treated as if they were the children of the deceased born in lawful wedlock); or the issue (taking per stirpes) of any child who has died during the lifetime of the deceased;

(iii) The father or mother of the deceased or, in the case of an illegitimate person who died before 1st January 1978 without having been legitimated, the mother;

(**a**) Words inserted by S.R. 2007 No. 189 with effect from 16.04.07

(iv) Brothers and sisters of the deceased (whether of the whole or half-blood); or the issue (taking per stirpes) of any deceased brother or sister (whether of the whole or half-blood) who has died during the lifetime of the deceased.

(2) If the deceased died wholly intestate leaving no spouse [(**a**) or civil partner] and if no person in any of the classes mentioned in sub-paragraphs (ii) to (iv) of paragraph (1) has survived the deceased the persons hereinafter described shall, if they have a beneficial interest in the estate of the deceased, be entitled to a grant in the following order of priority, namely—

(i) Grandparents;

(ii) Uncles and aunts (whether of the whole or half-blood); or the issue (taking per stirpes) of any uncle or aunt (whether of the whole or half-blood) who has died during the lifetime of the deceased;

(iii) Great-grandparents;

(iv) Grand-uncles and grand-aunts (whether of the whole or half-blood);

(v) Great-great-grandparents;

(vi) Great-grand-uncles and great-grand-aunts (whether of the whole or half-blood); or children of grand-uncles and of grand-aunts (whether of the whole or half-blood);

(vii) Great-great-great-grandparents; .

(viii) Children of the children of grand-uncles and of grand-aunts (whether of the whole or half-blood); or children of great-grand-uncles and of great-grand-aunts (whether of the whole or half-blood); or uncles or aunts (whether of the whole or half-blood) or great-grandparents;

(ix) Other next of kin of nearest degree (whether of the whole or half-blood).

(3) The personal representative of any of the persons hereinbefore mentioned shall have the same right to a grant as the person whom he represents, subject to paragraph (3) of rule 22 which provides that live interests be preferred to dead interests.

(4) Where there are conflicting claims for a grant among the members of a class entitled to administration, the nearer in kin to the deceased of that class shall be preferred to the more remore unless the Master otherwise directs.

(5) In default of any person having a beneficial interest in the estate of the deceased, the nominee of Her Majesty, under Article 10 of the Order shall be entitled to a grant.

(6) If all persons entitled to a grant under the foregoing provisions of this rule have been cleared off, a grant may be made to a creditor of the deceased, or, subject to paragraph (3) of rule 22, the personal representative of a creditor, or, if the Master so directs, to any person who, notwithstanding that he has no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto.

(7) The provisions of the Adoption of Children Act (Northern Ireland) 1967(**b**) shall apply in determining the title to a grant as they apply to the devolution of property on intestacy.

(**a**) Words inserted by S.R. 2007 No. 189 with effect from 16.04.07
(**b**) 1967 c. 35 (N.I.)

(8) In this rule where the deceased died on or after the 1st January 1978 illegitimate the reference to father or mother of the deceased shall have effect as if it were a reference to the natural father or mother of the deceased.

[*E.r.* 21]

Right of assignee to a grant

21.—(1) Where all the persons entitled to the estate of the deceased (whether under a will or on intestacy) have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace, in the order of priority for a grant of administration, the assignor or, if there are two or more assignors, the assignor with the highest priority.

(2) Where there are two or more assignees, administration may be granted with the consent of the others to any one or more (not exceeding four) of them.

(3) In any case where administration is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Office or branch office as the case may be.

[*E.r.* 22]

Grants where two or more persons entitled in the same class

22.—(1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same class.

(2) A dispute between the members of a class entitled to a grant shall be brought by summons before the Master.

(3) Unless the Master otherwise directs, administration shall be granted to a living member of a class entitled thereto in preference to the personal representative of a member of such class who has died after the deceased and to a person not under disability in preference to an infant entitled in the same class.

(4) If the issue of a summons under this rule is known to the Master he shall not allow any grant to be sealed until such summons is finally disposed of.

[*E.r.* 25]

Exceptions to rules as to priority

23.—(1) Nothing in rule 18, 20 or 22 shall operate to prevent a grant being made to any person to whom a grant may or may require to be made under any statutory provision.

(2) The rules mentioned in the last foregoing paragraph shall not apply where the deceased died domiciled outside Northern Ireland, except in a case to which the proviso to rule 25 applies.

[*E.r.* 26]

Grants to persons having spes successions

24. When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant and has consented to administration being granted to the person or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more (not exceeding four) of such persons;

Provided that a surviving spouse [(**a**) or civil partner] shall not be regarded as a person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

[*E.r.* 27]

Grants where the deceased died domiciled outside Northern Ireland

25. Where the deceased died on or after the 1st January 1956, domiciled outside Northern Ireland, a grant of administration with or without the will annexed may be made by the Master—

(*a*) to the person entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled,

(*b*) to the person entitled to administer the estate by the law of the place where the deceased died domiciled,

(*c*) if there is no such person as is mentioned in paragraph (a) or(b) of this rule or if in the opinion of the Master the circumstances so require, to such person as the Master may direct;

Provided that:

(*a*) probate of any will which is admissible to proof may be granted—

(i) if the will is in the English language, to the executor named therein;

(ii) if the will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the will, to that person;

(*b*) where the whole of the estate in Northern Ireland consists of immovable property, a grant limited thereto may be made in accordance with the law which would have been applicable if the deceased had died domiciled in Northern Ireland.

[*E.r.* 29]

Grants to attorneys

26.—(1) Where a person entitled to a grant resides outside Northern Ireland, administration may be granted to his lawfully constituted attorney for his use and benefit, limited until such person shall obtain a grant or in such other way as the Master may direct;

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any, unless such notice is dispensed with by the Master.

(2) Where the Master is satisfied by affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant of administration and resident in Northern Ireland, he may direct that administration be granted to such attorney for the use and benefit of such person, limited until such person shall obtain a grant or in such other way as the Master may direct.

[*E.r.* 30]

Grants on behalf of minors

27.—(1) Where the person to whom a grant would otherwise be made is a minor, administration for his use and benefit until he attains the age of eighteen years shall, subject to paragraphs (3) and (4) of this rule, be granted—

(**a**) Words inserted by S.R. 2007 No. 189 with effect from 16.04.07

(*a*) to the testamentary guardian of the minor or to any guardian appointed by a court of competent jurisdiction, or by or under the provisions of the Guardianship of Infants Act, 1886(**a**), or,

(*b*) if there is no such guardian able and willing to act and the minor has attained the age of sixteen years, to any next of kin nominated by the minor or, where the minor is a married woman, to any such next of kin or to her husband if nominated by her.

(2) Any person nominated under sub-paragraph (b) of the last foregoing paragraph may represent any other minor whose next of kin he is, being a minor below the age of sixteen years entitled in the same class as the minor who made the nomination.

(3) Notwithstanding anything in this rule, administration for the use and benefit of the minor until he attains the age of eighteen years may be granted to any person assigned as guardian by order of the Master in default of, or jointly with, or to the exclusion of, any such person as is mentioned in paragraph (1) of this rule; and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Master, an affidavit of fitness sworn by a responsible person.

(4) Where a minor who is sole executor has no interest in the residuary estate of the deceased, administration for the use and benefit of the minor until he attains the age of eighteen years and applies for and attains a grant shall, unless the Master otherwise directs, be granted to the person entitled to the residuary estate.

(5) A minor's right to administration may be renounced only by a person assigned as guardian under paragraph (3) of this rule and authorised to renounce by the Master.

(6) A grant to a guardian on behalf of a minor shall be made for his use and benefit until he shall attain the age of eighteen years and shall apply for and obtain a grant, and a grant on behalf of more than one minor shall be made for their use and benefit until one of them shall attain the age of eighteen years and shall apply for and obtain a grant.

(7) If under paragraph (3) of rule 22 the Master directs a grant to be given for the use and benefit of a minor notwithstanding that there is a person of full age not under disability entitled to apply for a grant, he may also direct that the grant to the guardian of the minor be further limited until such person applies for and obtains a grant.

(8) Where a grant is given for the use and benefit of a minor and there is any other minor entitled to apply for a grant for whose use and benefit a grant has not been obtained, the Master may direct that the grant be further limited until such other minor attains the age of eighteen years and applies for and obtains a grant.

(9) Before giving a grant to any guardian of a minor the Master may require to be satisfied as to his fitness to act.

[*E.r.* 31]

(**a**) 1886 c. 27

Grants where minor co-executor

28.—(1) Where one of two or more executors is a minor, probate may be granted to the other executor or executors not under disability, with power reserved of making the like grant to the minor on his attaining the age of eighteen years, and administration for the use and benefit of the minor until he attains the age of eighteen years and applies for and obtains a grant may be granted under rule 27 if and only if the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefor.

(2) A minor executor's right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

[*E.r.* 32]

Grants in case of mental or physical incapacity

29.—(1) Where the Master is satisfied that a person entitled to a grant is by reason of mental or physical incapacity incapable of managing his affairs, administration for his use and benefit, limited during his incapacity or in such other way as such Master may direct, may be granted—

(*a*) in the case of mental incapacity, to the person authorised by an order of the Master of the Office of Care and Protection to apply for the grant, or

(*b*) where there is no person so authorised, or in the case of physical incapacity—

(i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person entitled to such estate;

(ii) if the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate;

or to such other person as the Master may by order direct.

(2) Unless the Master otherwise directs, no grant of administration shall be made under this rule unless all persons entitled in the same class as the person incapable having been cleared off.

(3) In the case of mental incapacity, notice of intended application for a grant under this rule shall be given to the Office of Care and Protection except where the person incapable is an executor with no beneficial interest in the estate.

(4) In the case of physical incapacity, notice of intended application for a grant under this rule shall, unless the Master otherwise directs, be given to the person alleged to be so incapable.

[*E.r.* 33]

Grants to trust corporations

30.—(1) Where a trust corporation applies for a grant through one of its officers, such officer shall lodge a certified copy of the resolution authorising him to make the application and shall depose in the oath that the corporation is a trust corporation within the meaning of Article 9 of the Order, and that it has power to accept a grant.

(2) Subject to the provisions of the succeeding paragraphs, where a trust corporation applies for a grant of administration with or without will annexed (otherwise than as attorney for some person) there shall be lodged with the application for a grant the consents of all persons entitled to a grant and of all persons interested in the residuary or undisposed-of estate of the deceased, unless the Master directs that such consents, or any of them, be dispensed with on such terms (if any) as he may think fit.

(3) Where an executor who has renounced his right to probate of a will is entitled to share in the residuary or undisposed-of estate of the deceased his consent to a trust corporation obtaining a grant must be expressly given (as such consent may not be inferred from his renunciation) unless the Master directs that such consent be dispensed with on such terms (if any) as he may think fit.

(4) To enable a grant of administration to be made to a trust corporation, all the executors named in the will must be cleared off by death, renunciation or citation: Provided, however, that if the only persons entitled to probate of the will as executors are under the age of eighteen years, a grant of administration with will annexed may be made to a trust corporation on the consent of the persons entitled to the residuary or undisposed-of estate of the deceased, unless the Master directs that such consents be dispensed with on such terms, if any, as he may think fit. Such a grant shall be limited until the executor or one of the executors attains the age of eighteen years. Where any such minor executor is entitled to share in the residuary or undisposed-of estate, consent on his behalf may be given by his statutory, testamentary or other lawfully appointed guardian.

(5) Where all the persons entitled to a grant of administration with or without will annexed and all those interested in the residuary or undisposed-of estate of a deceased are under the age of eighteen years, a grant of administration with or without will annexed may issue as of right to a trust corporation on consent of the statutory, testamentary or other already lawfully appointed guardians, but an order shall not be made by the Master assigning a guardian for the purpose of consenting to an application of a trust corporation for a grant, nor shall an election of a guardian by a minor be accepted for that purpose. If there are no guardians so qualified the issue of a grant to a trust corporation shall lie in the discretion of the Master.

Where, however, some of the persons entitled to a grant of administration with or without will annexed, or who are interested in the residuary or undisposed-of estate of a deceased are of full age (others being minors) the consents and renunciations of those of full age will be required unless the Master directs that any such consents or renunciations be dispensed with.

A grant to a trust corporation given under this paragraph shall be limited until one of the minors entitled to apply for a grant attains the age of eighteen years and applies for and obtains a grant.

[*E.r.* 34]

Grants to corporations other than trust corporations

31. Where a corporation (not being a trust corporation) would, if an individual, be entitled to a grant, administration for its use and benefit, limited until further representation is granted, may be granted to its nominee or, if the corporation has its principal place of business outside Northern Ireland, its nominee or lawfully constituted attorney, and a copy of the resolution

appointing the nominee or, as the case may be, the power of attorney, sealed by the corporation or otherwise authenticated to the Master's satisfaction, shall be lodged with the application for the grant, and the oath shall state that the corporation is not a trust corporation.

[*E.r.* 34]

Grants to nominees of certain legatees, devisees and creditors

32. Where any legatee or devisee under the will of a deceased, or any creditor of a deceased — not being a corporation — is an association, society, institution, community, order or other body of persons (whether private or public), the Master may, if all persons entitled in priority to a grant have been cleared off, give a grant to the nominee of such legatee, devisee, or creditor, for the use and benefit of such legatee, devisee or creditor. The nomination of the applicant for the grant shall be made in such manner as the Master shall require.

Nil estate grants

33. Where a grant is given in respect of a deceased person by virtue of the provisions of Article 4(4) of the Order, it shall

(*a*) in the case of an original grant be given to such person as would have been entitled thereto had the deceased died leaving assets nominal in amount in Northern Ireland; and

(*b*) in the case of a de bonis non or other form of grant in respect of unadministered estate, to such person as would have been entitled thereto if there has been assets of the deceased nominal in amount unadministered in Northern Ireland at the time of making such grant.

Number of administrators

34. No grant of administration shall be made jointly to more than four persons unless the Master otherwise orders.

Administration de bonis non

35. Where on the death of a personal representative of a deceased without having fully administered the estate, it is necessary to grant administration of the unadministered estate of the deceased, the provisions of this Order that shall apply to the ascertainment of the new grantee shall be those that apply on an application for an original grant.

Renunciation of probate and adminstration

36.—(1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to a grant of administration in some other capacity unless he expressly renounces such right.

(2) Unless the Master otherwise directs, no person who has renounced administration in one capacity may obtain a grant thereof in some other capacity.

(3) A renunciation of probate or administration may be retracted at any time on the order of the Master;

Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower class.

[*E.r.* 35]

ORDER 97

Notice to Crown of intended application for grant

37. In any case in which it appears that the Crown is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Crown Solicitor, and the Master may direct that no grant shall issue within a specified time after the notice has been given.

[*E.r.* 37]

Guarantee

38.—(1) The Master shall not require a guarantee under Article 17 of the Order as a condition of granting administration except where it is proposed to grant it—

(*a*) by virtue of rule 18(v) or rule 20(6) to a creditor of the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;

(*b*) under rule 24 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;

(*c*) under rule 26 to the attorney of a person entitled to a grant;

(*d*) under rule 27 for the use and benefit of a minor;

(*e*) under rule 29 for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his affairs;

(*f*) to an applicant who appears to the Master to be resident elsewhere than in the United Kingdom;

or except where the Master considers that there are special circumstances making it desirable to require a guarantee.

(2) Notwithstanding that it is proposed to grant administration as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is—

(*a*) a trust corporation;

(*b*) a solicitor holding a current practising certificate under the Solicitors (Northern Ireland) Order 1976(**a**);

(*c*) a servant of the Crown acting in his official capacity.

(3) Where the master considers there are special circumstances under paragraphs (1) or (2) he shall give the applicant or his solicitor (where the application for a grant is made through a solicitor) an opportunity of being heard with respect to the requirement.

(4) Every guarantee entered into by a surety for the purposes of Article 17 of the Order shall be in Form No. 1.

(5) Except where the surety is a corporation the signature of the surety on every such guarantee shall be attested by an authorised officer, commissioner for oaths or other person authorised by law to administer an oath.

(6) Unless the Master otherwise directs—

(*a*) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed £500 or a corporation is a proposed surety, and in those cases one will suffice;

(**a**) S.I. 1976 No. 582 (N.I. 12)

(*b*) no person shall be accepted as a surety unless he is resident in the United Kingdom;

(*c*) No officer of the Office or a branch office shall become a surety, nor in any case in which a person is solicitor for the applicant for a grant shall he or his clerk or apprentice become a surety without the leave of the Master;

(*d*) the limit of the liability of the surety or sureties under a guarantee given for the purposes of Article 17 of the Order shall be the gross amount of the estate as sworn on the application for the grant;

(*e*) every surety, other than a corporation, shall justify;

(*f*) no corporation shall be accepted as a surety unless it has been approved by the Court.

[*E.r.* 38]

Resealing under Colonial Probate Acts, 1892 *and* 1927

39.—(1) An application under the Colonial Probates Acts, 1892 and 1927, for the resealing of probate or administration granted by the court of a country to which those Acts apply shall be made in the Office by the person to whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On any such application—

(*a*) an Inland Revenue affidavit or account shall be lodged as if the application were one for a grant in Northern Ireland;

(*b*) if the Master so requires, the application shall be advertised in such manner as he may direct and shall be supported by an oath sworn by the person making the application.

(3) On an application for the resealing of a grant of administration—

(*a*) the Master shall not require sureties under section 4 of the Administration of Estates Act (Northern Ireland) 1971(**a**) as a condition of resealing the grant except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraphs (*a*) to (*f*) of rule 38(1) or except where he considers that there are special circumstances making it desirable to require sureties;

(*b*) rule 38(2), (3), (5) and (6) shall apply with any necessary modifications; and

(*c*) a guarantee entered into by a surety for the purposes of the said section 4 shall be in Form No. 2.

(4) Except by leave of the Master, no grant shall be resealed unless it was made to such a person as is mentioned in paragraph (*a*) or (*b*) of rule 25 or to a person to whom a grant could be made under the proviso to that rule.

(5) No limited or temporary grant shall be resealed except by leave of the Master.

(6) Every grant lodged for resealing shall include a copy of any will to which the grant relates or shall be accompanied by a copy thereof certified as

(**a**) 1971 c. 31 (N.I.)

correct by or under the authority of the court by which the grant was made, and where the copy of the grant required to be deposited under subsection (1) of section 2 of the Colonial Probates Act, 1892(**a**), does not include a copy of the will, a copy thereof shall be deposited in the Office at the same time as the copy of the grant.

(7) The Master shall send notice of the resealing to the Court which made the grant.

(8) Where notice is received in the Office of the resealing of a Northern Ireland grant, notice of any amendment or revocation of the grant shall be sent to the court by which it was resealed.

[*E.r.* 41]

Application for leave to sue on guarantee

40. An application for leave under Article 17(3) of the Order or under section 4(5) of the Administration of Estates Act (Northern Ireland) 1971 to sue a surety on a guarantee given for the purpose of Article 17 or section 4 shall, unless the Master otherwise directs under rule 55, be made by summons to the Master, and notice of the application shall in any event be served on the adminstrator, the surety and any co-surety.

[*E.r.* 41A]

Amendment and revocation of grant

41. If the Master is satisfied that a grant should be amended or revoked he may make an order accordingly:

Provided that except in special circumstances no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

[*E.r.* 42]

Certificate of delivery of Inland Revenue affidavit

42. Where the deceased died before March 13, 1975, the certificate of delivery of an Inland Revenue affidavit required by section 30 of the Customs and Inland Revenue Act 1881(**b**), to be borne by every grant shall be in Form No. 3.

[*E.r.* 43]

Caveats

43.—(1) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat either personally or by his solicitor in the Office or where the lodging of caveats is branch office business at the appropriate branch office.

(2) A caveat shall be in Form No. 4 and where the caveat is entered by a solicitor on the caveator's behalf, the name of the caveator shall be stated.

(3) Except as otherwise provided by this rule, a caveat shall remain in force for six months, beginning with the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(**a**) 1892 c. 6
(**b**) 1881 c. 12

(4) Where a caveator within the last month of a period of six months prescribed by paragraph (3) of this rule or of any additional period of six months prescribed by this paragraph, lodges at the Office or branch office in which the caveat was entered a written application for its extension, the caveat shall (except as otherwise provided by paragraphs (9), (12) and (14) of this rule) remain in force for an additional period of six months.

(5) (*a*) The Master shall, immediately upon a caveat being lodged in the Office, send notice thereof to the appropriate circuit registrar if it is alleged that the deceased resided at the time of his death, or if he is known to have had a fixed place of abode at the time of his death, within the jurisdiction of the branch office;

(*b*) The circuit registrar shall, immediately upon a caveat being lodged in a branch office, send a copy thereof to the Master and shall state the day on which the same was lodged.

(6) The Master shall maintain an index of caveats entered in the Office or any branch office and on receiving an application for a grant in the Office, or a notice of an application for a grant made in a branch office he shall cause the index to be searched and shall notify the appropriate circuit registrar in the event of a caveat having been entered against the sealing of a grant for which application has been made in a branch office.

(7) The Master or circuit registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof:

Provided that no caveat shall affect any grant sealed on the day on which the caveat has been lodged.

(8) A caveat may be warned by the issue from the Office of a warning in Form No. 5 at the instance of any person intersted (in this rule called "the person warning") which shall state his interest and, if he claims under a will, the date of the will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof shall be served on the caveator.

(9) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the Office or branch office at which it was entered and the caveat shall thereupon cease to have effect and, if it has been warned, the caveator shall forthwith give notice of withdrawal of the caveat to the person warning.

(10) A caveator having an interest contrary to that of the person warning may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if a certificate of non-appearance has not been issued under paragraph 12 of this rule, enter an appearance in Form No. 6 in the Office and make an entry in the appropriate book, and shall forthwith thereafter serve on the person warning a copy of the form of appearance.

(11) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if a certificate of non-appearance has not been issued under paragraph (12) of this rule, issue and serve a summons for directions, which shall be returnable before the Master.

(12) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the Office an affidavit showing that the warning was duly served and obtain a certificate of non-appearance and thereupon the caveat shall cease to have effect.

(13) Upon the commencement of a probate action the Master shall, in respect of each caveat then in force (other than a caveat entered by the plaintiff), give to the caveator notice of the commencement of the aciton and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(14) Unless the Master by order made on summons otherwise directs—

(*a*) any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to paragraph (9) of this rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect;

(*b*) any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;

(*c*) the commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant (other than a grant under Article 6 of the Order) until application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under paragraph (13) of this rule, shall cease to have effect.

(15) Except with the leave of the Master, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under paragraph (12) or (14) of this rule.

(16) In this rule "grant" includes a grant made by any Court outside Northern Ireland which is produced for resealing by the High Court.

[*E.r.* 44]

Citation

44.—(1) Every citation shall issue from the Office and shall be settled by the Master before being issued.

(2) Every averment in a citation, and such other information as the Master may require, shall be verified by an affidavit sworn by the person issuing the citation (hereinafter called "the citor") or, if there are two or more citors, by one of them:

Provided that the Master may in special circumstances accept an affidavit sworn by the citor's solicitor.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the Master, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(5) Every will referred to in a citation shall be lodged in the Office or a branch office before the citation is issued, except where the will is not in the citor's possession and the Master is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within eight days of service of the citation upon him inclusive of the day of such service, or at any time therafter if no application has been made by the citor under paragraph (5) of rule 45 or paragraph (2)(*a*) of rule 46, enter an appearance in the Ofifce in form 5 and make an entry in the appropriate book, and shall forthwith thereafter serve on the citor a copy of the form of appearance.

[*E.r.* 45]

Citation to accept or refuse to take a grant

45.—(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or of the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased;

Provided that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.

(4) A person cited who is willing to accept or take a grant may apply ex parte to the master for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may—

(*a*) in the case of a citation under paragraph (1) of this rule apply to the Master for an order for a grant to himself;

(*b*) in the case of a citation under paragraph (2) of this rule, apply to the Master for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;

(*c*) in the case of a citation under paragraph (3) of this rule, apply to the Master by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to himself or some other person specified in the summons.

(6) An application under the last foregoing paragraph shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance, but has not applied for a grant under paragraph (4) of this rule, or has failed to prosecute his application with reasonable diligence, the citor may—

(*a*) in the case of a citation under paragraph (1) of this rule, apply by summons to the Master for an order for a grant to himself;

(*b*) in the case of a citation under paragraph (2) of this rule, apply by summons to the Master for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in sub-paragraph (*b*) of paragraph (5) of this rule;

(*c*) in the case of a citation under paragraph (3) of this rule, apply by summons to the Master for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons;

and the summons shall be served on the person cited.

[*E.r.* 46]

Citation to propound a will

46.—(1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired, the citor may—

(*a*) in the case where no person cited has entered an appearance, apply to the Master for an order for a grant as if the will were invalid;

(*b*) in the case where no person who has entered an appearance proceeds with reasonable diligence to propound the will, apply to the Master by summons (which shall be served on every person cited who has entered an appearance) for such an order as is mentioned in paragraph (*a*) above.

[*E.r.* 47]

Citation to bring in a grant

47. A citation against the person to whom probate or letters of administration, as the case may be, was or were granted requiring him to bring into and leave at the Office the probate or letters of administration, as the case may be, may be issued on the application of any person applying for the revocation or amendment of the grant or who desires to compel proof of the will in solemn form. Service out of jurisdiction of a citation under this rule is permissible but only with the leave of the Court.

Address for service

48. All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

[*E.r.* 48]

Application for order to bring in a will or to attend for examination

49.—(1) An application under Article 15 of the Order—

(*a*) for the issue by the Master of a subpoena to bring a will or other testamentary paper into the Office shall be supported by an affidavit setting out the grounds of the application, or

(*b*) for an order requiring any person to bring a will or other testamentary paper into the Office shall be made by summons which must be served on the person against whom the order is sought.

(2) An application under Article 16 of the Order for an order requiring any person to attend before the Court for examination shall be made by summons which must be served on the person against whom the order is sought.

(3) Any person against whom a subpoena is issued under the said Article 15, and who denies that the will or other testamentary paper referred to in the subpoena is in his possession or under his control may file an affidavit to that effect.

[*E.r.* 49]

Limited grants under section 1(2) *of the Administration of Estates Act (Northern Ireland)* 1955

50. An application for an order for a grant under section 1(2) of the Administration of Estates Act (Northern Ireland) 1955(**a**) limited to part of an estate may be made to the Master and shall be supported by an affidavit stating—

(*a*) whether the application is made in respect of the real estate only or personal estate only, or real estate together with personal estate, or in respect of a trust estate only;

(*b*) whether the estate of the deceased is known to be insolvent;

(*c*) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been cleared off.

[*E.r.* 50]

Grants of administration under discretionary powers of court, and grant ad colligenda bona

51. An application for an order for—

(*a*) a grant of administration under Article 5 of the Order, or

(*b*) a grant of administration ad colligenda bona.

may be made to the Master and shall be supported by an affidavit setting out the grounds of the application.

[*E.r.* 51]

Applications for leave to swear to death

52. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to the Master and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased.

[*E.r.* 52]

Grants in respect of nuncupative wills and of copies of wills

53.—(1) An application for an order admitting to proof a nuncupative will, or a will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original will is not available, may be made to the Master:

(**a**) 1955 c. 24 (N.I.)

Provided that where a will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the will may be admitted to proof without any such order as aforesaid.

(2) The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to—

(*a*) the due execution of the will;

(*b*) its existence after the death of the testator, and

(*c*) the accuracy of the copy or other evidence of the contents of the will,

together with any consents in writing to the application given by any persons not under disability who would be prejudiced by the grant.

[*E.r.* 53]

Grants durante absentia

54. An application for an order for a grant of special administration under Article 8 of the Order where a personal representative is residing outside Northern Ireland shall be made to the Court on motion.

[*E.r.* 54]

Power to require application to be made by summons or motion

55. The Master may require any application to be made by summons to the Master or the Judge, or to the Court on motion.

[*E.r.* 60]

Notice of motion

56. The notice of a motion must issue out of the Office.

Application by summons

57.—(1) A summons must issue out of the Office.

(2) A summons must be served not less than two clear days before the day appointed for the hearing, unless the Judge or Master, at or before the hearing, dispenses with service on such terms, if any, as he may think fit.

[*E.r.* 60]

Issue of copies of original wills and other documents

58.—(1) Office copies of wills and other documents kept in the Office and branch offices under Article 23 of the Order will not be examined against the documents of which they purport to be copies unless so required. Every copy so required to be examined, shall be certified under the hand of the Master to be a true copy.

(2) The seal of the Court shall not be affixed to an office copy of a will or other document unless the same has been certified to be a true copy.

[*E.r.* 58]

Attendances with documents

59. If a will or other document filed in the Office or any branch office is required to be produced by a clerk of the Office or branch office at any place application must be made for that purpose (unless the Judge or Master gives

leave to the contrary) at least twenty-four hours before the clerk, in whose charge the will or other document is to be placed, will be required to set off; provided that any such will or document required for production before the Court of Appeal or any Judge of the Supreme Court sitting in Belfast shall be transmitted to the proper officer of such Court or Judge who will give a receipt therefor and return the same to the Office as soon as may be after such production. If a will or other document so filed is required to be posted to a circuit registrar application must be made for that purpose in sufficient time to allow for making and examining a copy of such will or other document to be deposited in its place.

Notices of applications for grants made to a branch office

60.—(1) A circuit registrar shall send to the Office a notice of every application made in the branch office for a grant as soon as may be after the application has been made, and no grant shall be made by him until he has received from the Office a certificate that no other application appears to have been made in respect of the estate of the testator or intestate.

(2) Notices of applications for grants of probate or administration, with the will annexed, transmitted by the circuit registrar to the Office, shall contain an extract of the words of the will or codicil by which the applicant has been appointed executor, or of the words (if any) upon which he founds his claim to such administration; and shall show the day on which the application was made.

(3) Notices of application shall set forth the names and interests of all persons who would have a prior right to the applicant, and show how such prior rights is cleared off. In case the persons, or any of them, have renounced, the date of his or her renunciation must be stated. If the applicant claims as the representative of another person, the date and particulars of the grant to him must appear.

(4) Where any such notice is received from any branch office the Master shall examine all notices of applications for grants received from the other branch offices and all applications for grants made at the Office, so far as may be necessary for the purpose of ascertaining whether application for a grant in respect of the estate of the same deceased person has been made, and shall communicate with the circuit registrar as occasion may require in relation thereto.

(5) The certificate sent under paragraph (1) shall be forwarded as soon as may be to the circuit registrar, and may be issued from the Office under a stamp provided for that purpose.

(6) All notices transmitted to the Office under paragraph (1) shall be filed in the Office.

[*E.r.* 57]

List of grants made in a branch office

61.—(1) A circuit registrar shall on the first and every other Thursday in the month transmit to the Office a list of the grants made by him and not included in a previous return, and also copies of the wills to which the grants relate certified by him to be correct under a stamp provided for the purpose.

(2) Every such list of grants furnished by the circuit registrar shall include the full name of every person in respect of whose estate a grant has been made, and the name of the county or town in which he resided.

[*E.r.* 57]

Amendment of grants in branch office

62.—(1) No grants of probate or letters of administration shall be amended by the circuit registrar, without an order of the Judge or Master having been previously obtained. In case the name of the testator or intestate requires amendment notice of an application to amend must be given, and the amendment ordered is not to be made by the circuit registrar until the usual certificate on such notice has been received from the Office.

(2) Whenever in the branch office any amendment is made in a grant, or a renunciation is filed, notice of such amendment or renunciation shall, without delay, be forwarded by the circuit registrar to the Master.

(3) Where any alteration is made in a grant which was issued from a branch office, or where any such grant is revoked, and the volume of the printed calendar containing the entry of such grant has been forwarded to the circuit registrar, notice of such alteration or revocation shall without delay be forwarded by the Master to the circuit registrar.

Order of priority for grant where the deceased died before the 1st day of January 1956

63. Where the deceased died before the 1st January 1956, the right to a grant shall, subject to any statutory provision, be determined by the principles and rules in accordance with which the Court would have acted at the date of the death.

[*E.r.* 67]

[(a) ORDER 98

THE MATRIMONIAL AND FAMILY PROCEEDINGS (NORTHERN IRELAND) ORDER 1989

PART I

PRELIMINARY

Definitions

1. In this Order—

"the Order of 1989" means the Matrimonial and Family Proceedings (Northern Ireland) Order 1989(**b**);

"the Judge" means the Judge for the time being to whom the business of the Family Division is assigned under section 17 of the Act and any judge of the High Court exercising jurisdiction in matrimonial causes and matters.

PART II

[(**c**) DECLARATIONS AS TO PARENTAGE, LEGITIMACY OR LEGITIMATION]

[(**d**) **2.** . . .]

[(**d**) **3.** . . .]

[(**d**) **3A**. . .]

PART III

DECLARATIONS AS TO ADOPTIONS EFFECTED OVERSEAS

Heading of Petition

4. An application under Article 33 of the Order of 1989 for a declaration as to an adoption effected overseas shall be commenced by petition which shall be headed:—

"In the High Court of Justice in Northern Ireland

Family Division

Office of Care and Protection"

and shall be addressed to Her Majesty's High Court of Justice in Northern Ireland.

Contents of Petition

5.—(1) A petition by which proceedings are begun under Article 33 of the Order of 1989 shall state—

(*a*) the name of the petitioner;

(*b*) the date and place of birth of the petitioner;

(*c*) the names of those persons who are to be respondents pursuant to paragraph (5) and the residential address of each of them at the date of the presentation of the petition;

(*d*) the date and place of the adoption order and the court or other tribunal or authority which made it;

(**a**) New Order substituted by S.R. 1989 No. 287 with effect from 1.9.89
(**b**) S.I. 1989/667 (N.I. 4)
(**c**) New heading substituted by S.R. 1996 No. 321 with effect from 4.11.96
(**d**) Rule 2 to 3A revoked by S.R. 2002 No. 202 with effect from 21.6.02

(*e*) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which the application is made; and

(*f*) either that the petitioner is domiciled in Northern Ireland on the date of the presentation of the petition or that he has been habitually resident in Northern Ireland throughout the period of one year ending with that date.

(2) Where the jurisdiction of the court to entertain the petition is based on the petitioner's habitual residence, the petition shall include a statement of the addresses of the places of residence of the petitioner and the length of residence at each place during the period of one year ending with the date of presentation of the petition.

(3) There shall be annexed to the petition a copy of the petitioner's birth certificate (if it is available, this certificate should be the one made after the adoption referred to in the petition) and, unless otherwise directed, a certified copy of the adoption order effected under the law of any country outside the United Kingdom, the Channel Islands and the Isle of Man.

(4) Where a document produced by virtue of paragraph (3) is not in English it shall, unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(5) The following persons shall, if alive, be respondents to the application—

(*a*) those whom the petitioner claims are his adoptive parents for the purposes of Article 40 of the Adoption (Northern Ireland) Order 1987(**a**); or

(*b*) those whom the petitioner claims are not his adoptive parents for the purposes of that Article.

PART IV

GENERAL PROVISIONS AS TO PROCEEDINGS UNDER PART II AND III

Interpretation

6. In this Part "Master" means—

[(**b**) 6(*a*) . . .]

(*b*) where the proceedings are brought under Article 33 (Declarations as to adoptions effected overseas) of the Order of 1989, the Master (Care and Protection),

and "the Office" means the Probate and Matrimonial Office or the Office of Care and Protection accordingly.

Affidavit in support of Petition

7.—(1) The petition shall be supported by an affidavit by the petitioner verifying the petition and giving particulars of every person whose interest may be affected by the proceedings and his relationship to the petitioner:

Provided that if the petitioner is under the age of 18 the affidavit shall, unless otherwise directed, be made by his next friend.

(2) An affidavit for the purpose of paragraph (1) may contain statements of information and belief with the sources and grounds thereof.

(**a**) S.I. 1987/2203 (N.I. 22)
(**b**) Rule 6(*a*) revoked by S.R. 2002 No. 202 with effect from 21.6.02

Notice of the Petition to be given to the Attorney General

8.—(1) A copy of the petition and every document accompanying it shall be given by the petitioner to the Crown Solicitor on behalf of the Attorney General at least one month before the petition is filed and it shall not be necessary thereafter to serve these documents upon him.

(2) On filing the petition notice of filing shall be given by the petitioner to the Crown Solicitor on behalf of the Attorney General who may enter an appearance to the petition within 14 days from such notice.

(3) The Attorney General, in deciding whether it is necessary or expedient to intervene in the proceedings, may have a search made for, and may inspect and bespeak a copy of, any document filed or lodged in the court offices which relates to any other matrimonial proceedings referred to in the proceedings.

Service of Petition

9. The petitioner shall serve personally or by post every respondent, other than the Attorney General, with a copy of the petition indorsed with a notice to appear in accordance with Form 48 in Appendix A.

Appearance by Respondent

10. A respondent may enter an appearance within the time limited by the notice indorsed on the petition.

Answer by Respondent

11.—(1) A respondent who has entered an appearance may within 14 days thereafter file an answer to the petition.

(2) The respondent shall within 4 days of filing an answer deliver a copy of it to the petitioner and to the Crown Solicitor and any other party to the proceedings.

Application for Directions

12.—(1) After the expiration of the time limited for the filing of an answer under rule 11(1), the petitioner shall issue and serve on all respondents, and on the Crown Solicitor, an application for directions as to any other persons who should be made respondents to the petition or given notice of the proceedings.

(2) When giving directions in accordance with paragraph (1) the court shall consider whether it is necessary that the Attorney General should argue before it any question relating to the proceedings, and, if it does so consider, the Attorney General need not file an answer and the court shall give directions requiring him to serve on all parties to the proceedings a summary of his argument.

Answer by Attorney General

13. Subject to paragraph (2) of rule 12, the Attorney Gneral shall file an answer to the petition within 21 days after directions have been given under that rule and shall deliver a copy thereof to the petitioner and any other party to the proceedings.

Joining of Parties

14. Persons given notice of proceedings pursuant to directions given in accordance with rule 12 shall within 21 days after service of the notice upon them be entitled to apply to the Master to be joined as parties, and the cause shall not be set down for hearing until that period and the period referred to in rule 13 have expired.

ORDER 98

Consolidation of suits

15. Where it appears that more than one petition has been filed on behalf of petitioners claiming to be children of the same father and mother, the Attorney General may, on giving notice to the petitioner in each suit which it is sought to consolidate, apply at any time after he has entered an appearance for an order that the suits be consolidated.

Setting down for hearing

16.—(1) The petitioner shall request the Master to enter the cause for hearing by lodging in the Office a certificate of readiness in Form 48A.

(2) At the same time as lodging the certificate of readiness the petitioner shall deliver to the Office one bundle for the use of the Judge consisting of one indexed copy of the following documents:—

(*a*) the certificate of readiness,

(*b*) the petition,

(*c*) any other pleadings,

(*d*) affidavit of service,

(*e*) interlocutory orders,

(*f*) the requisite legal aid documents,

fastened together in the order shown and having endorsed thereon the names and addresses of the solicitors for the parties.

(3) Within 4 days of lodging the certificate of readiness the petitioner shall give notice of having done so to the Crown Solicitor on behalf of the Attorney General and to each party in the cause who has entered an appearance.

(4) The Master shall, subject to paragraph (5), fix a date for the hearing and give notice thereof to every party in the cause.

(5) Save with the consent of all parties or by leave of the Judge no cause shall be placed in the list for hearing until after the expiration of 10 days from the date on which the certificate of readiness was lodged.

Mode of making applications

17. Unless this Order otherwise provides, every application under this Order shall be made by summons.

Form of Delcaration

18. [(**a**) 18—(1) . . .]

(2) A declaration made in accordance with Article 33 of the Order of 1989 shall be in Form 48C in Appendix A.]

(a) Rule 18(1) revoked by S.R. 2002 No. 202 with effect from 21.6.02

ORDER 99

INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) (NORTHERN IRELAND) ORDER 1979

Interpretation

1. In this Order "the Order" means the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979(**a**) and an Article referred to by number means the Article so numbered in that Order.

[*E.r.* 1]

Assignment to Chancery Division

2. Proceedings in the High Court under the Order shall be assigned to the Chancery Division.

[*E.r.* 2]

Application for financial provision

3.—(1) Any originating summons by which an application under Article 3 is made shall be issued out of the Chancery Office.

(2) No appearance need be entered to the summons.

(3) An affidavit shall be filed by the applicant in support of the summons, exhibiting an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof, and a copy of the affidavit shall be served on every defendant with the summons.

[*E.r.* 3]

Powers of Court as to parties

4.—(1) Without prejudice to its powers under Order 15, the Court may at any stage of proceedings under the Order direct that any person be added as a party to the proceedings or that notice of the proceedings be served on any person.

(2) Order 15, rule 13, shall apply to proceedings under the Order as it applies to the proceedings mentioned in paragraph (1) of that rule.

[*E.r.* 4]

Affidavit in answer

5.—(1) A defendant to an application under Article 3 who is a personal representative of the deceased shall and any other defendant may, within 21 days after service of the summons on him, inclusive of the day of service, file in the Chancery Office an affidavit in answer to the application.

(2) The affidavit filed by a personal representative pursuant to paragraph (1) shall state to the best of the deponent's ability—

(*a*) full particulars of the value of the deceased's net estate, as defined by Article 2;

(**a**) S.I. 1979 No. 924 (N.I. 8)

(*b*) the person or classes of persons beneficially interested in the estate, giving the names and (in the case of those who are not already parties) the addresses of all living beneficiaries, and the value of their interests so far as ascertained;

(*c*) if such be the case, that any living beneficiary (naming him) is a minor or a patient within the meaning of Order 80, rule 1; and

(*d*) any facts known to the deponent which might affect the exercise of the Court's powers under the Order.

(3) Every defendant who files an affidavit shall at the same time serve a copy on the plaintiff and on every other defendant who is not represented by the same solicitor.

[*E.r.* 5]

Separate representation

6. Where an application under Article 3 is made jointly by two or more applicants and the originating summons is accordingly issued by one solicitor on behalf of all of them, they may, if they have conflicting interests, appear on any hearing of the summons by separate solicitors or counsel or in person; and where at any stage of the proceedings it appears to the Court that one of the applicants is not but ought to be separately represented, the Court may adjourn the proceedings until he is.

[*E.r.* 6]

Endorsement of memorandum on grant

7. On the hearing of an application under Article 3 the personal representative shall produce to the Court the grant of representation to the deceased's estate and, if an order is made under the Order, the grant shall remain in the custody of the Court until a memorandum of the order has been endorsed on or permanently annexed to the grant in accordance with Article 21.

[*E.r.* 7]

Disposal of proceedings in chambers

8. Any proceedings under the Order may, if the Court so directs, be disposed of in chambers.

[*E.r.* 8]

Subsequent applications in proceedings under Article 3

9. Where an order has been made on an application under Article 3, any subsequent application under the Order, whether made by a party to the proceedings or by any other person, shall be made by summons in those proceedings.

[*E.r.* 9]

Remittal to county court

10.—(1) Where an application to which Article 24(1) relates is within the jurisdiction of a county court, the Court may, if the parties consent or it appears to the Court to be desirable, order the remittal of the application to such county court as appears to the Court to be most convenient to the parties.

(2) An order under paragraph (1) may be made by the court of its own motion or on the application of any party, but before making an order of its own motion otherwise than by consent the Court shall give the parties an opportunity of being heard on the question of remittal and for that purpose the Master may give the parties notice of a date, time and place at which the question will be considered.

[*E.r.* 11]

[(a) ORDER 100

[(b) ...] The Trade Marks Act 1994 and the Olympic Symbol Etc. (Protection) Act 1995

Interpretation

1. In this Order—

[(b)...]

"the 1994 Act" means the Trade Marks Act1994 (c);

"the Olympic Symbol Act" means the Olympic Symbol etc. (Protection) Act 1995(d);

"the Olympic Symbol Regulations" means the Olympic Association Right (Infringement Proceedings) Regulations 1995(e);

"the Registrar" means the Comptroller General of Patents, Designs and Trade Marks;

"the register" means the register or trade marks maintained by the Registrar pursuant to section 63 of the 1994 Act.

Assignment to Chancery Division

2. Proceedings in the High Court under [(b)...] the 1994 Act, the Olympic Symbol Act or the Olympic Symbol Regulations shall be assigned to the Chancery Division.

Appeals and applications under [(b)...] *the 1994 Act and the Olympic Symbol Act*

3.—(1) Subject to rule 4 and paragraph (6) below every application to the High Court under [(b)...] the 1994 Act, the Olympic Symbol Act and the Olympic Symbol Regulations must be begun by originating motion.

(2) Notice of the motion by which any application is made under [(b)...] the 1994 Act must be served on the Registrar.

(3) Where—

(*a*) the Registrar refers to the High Court an application made to him under [(b)...] the 1994 Act;

(*b*) [(b)...] an appointed person under section 76 of the 1994 Act refers to that Court an appeal,

then unless within one month after receiving notification of the decision to refer, the applicant or the appellant, as the case may be, makes to that court the application or appeal referred, he shall be deemed to have abandoned it.

(4) The period prescribed by Order 55, rule 14(2), or by paragraph (3) in relation to an application or appeal to which that paragraph applies may be extended by the Registrar on the application of any party interested and may be so extended although

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(a) Order 100 substituted by S.R. 1996 No. 283 with effect from 1.9.96
(b) Words omitted by S.R. 2006 No. 486 with effect from 08.01.07
(c) 1994 c. 26
(d) 1995 c. 32
(e) S.I. 1995/3325

the application is not made until after the expiration of that period, but the foregoing provision shall not be taken to affect the power of the Court under Order 3, rule 5, to extend that period.

(5) [(a)...]

(6) An application under section 16 or section 19 of the 1994 Act or regulation 3 or regulation 5 of the Olympic Symbol Regulations shall be made by originating summons or, if it is made in a pending action by summons or motion in that action.

(7) Where an application is made under section 19 of the 1994 Act or regulation 5 of the Olympic Symbol Regulations the applicant shall serve notice of the application on all persons so far as reasonably ascertainable having an interest in the goods, material or articles which are the subject of the application including any person in whose favour an order could be made in respect of the goods, material or articles under the said section of the 1994 Act or the said regulation of the Olympic Symbol Regulations or under section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988.

Proceedings for infringement or registered trade mark; validity of registration disputed or revocation or rectification sought

4.—(1) Where in any proceedings a claim is made for relief for infringement of the rights conferred on the proprietor of a registered trade mark by section 9 of the 1994 Act, the party against whom the claim is made may in his defence put in issue the validity of the registration of that trade mark or may counterclaim for an order for revocation of the registration or for a declaration of invalidity of the registration or for rectification of the register, or may do any or all of those things.

(2) A party to any such proceedings who in his pleading (whether a defence or counterclaim) disputes the validity of the registration of a registered trade mark or seeks a declaration of invalidity or an order for revocation of the registration, or rectification of the register, must serve with his pleading particulars of the objections to the validity of the registration or of any grounds for revocation or rectification, on which he relies.

(3) A party to any such proceedings who counterclaims for an order for revocation of the registration or for a declaration of invalidity of the registration or for rectification of the register must serve on the Registrar a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2) and the Registrar shall be entitled to take such part in the proceedings as he may think fit but need not serve a defence or other unless ordered to do so by the Court.

Service of documents

5.—(1) This rule applies to the service of any document (including originating process) on a party until such time as that party has provided an address for service within the meaning of Order 6 rule 4(2) or Order 12 rule 3(3).

(2) Subject to paragraph (3) for the purposes of any proceedings relating to a registered trade mark (including proceedings for revocation, declaration of invalidity or non-infringement or groundless threats of infringement proceedings or any other proceedings under [(b)...] the 1994 Act), where any document is served in the manner prescribed by Order 10 or Order 65 at an address for service given in the register kept under section 63 of the 1994 Act—

(a) Paragraph 5 omitted by S.R. 2006 No. 486 with effect from 08.01.07
(b) Words omitted by S.R. 2006 No. 486 with effect from 08.01.07

(*a*) service shall be deemed to have been effected on the registered proprietor of the trade mark on the date on which the document was served at the said address:

(*b*) the party on whom service is deemed to have been effected under sub-paragraph (*a*), shall be treated, for the purposes of any provision of these rules which specifies a time-limit for responding to the document so served (whether by acknowledging service, giving notice of intention to defend or otherwise), as having been served on the seventh day after the date on which the document was served at the said address.

(3) Nothing in this rule shall prevent service being effected on the proprietor in accordance with the provisions of these rules.

Service of orders on the Registrar

6. Where an order is made by the Court in any case under [(**a**)...] the 1994 Act, the person in whose favour the order is made or, if there is more than one, such one of them as the Court shall direct, shall serve an office copy of the order on the Registrar.]

[(**b**) *Forfeiture, Destruction etc:*

7. Where the Court makes an order for delivery up, forfeiture or destruction of infringing goods, or articles designed or adapted to make such goods, the defendant shall pay the costs of complying with the order unless the court orders otherwise.

Publication of Judgments

8. Without prejudice to any other provisions of these Rules, the Court may, where it finds that an intellectual property right has been infringed, order appropriate measures for the dissemination and publication of the judgment to be made at the expense of the defendant.]

(**a**) Words omitted by S.R. 2006 No. 486 with effect from 08.01.07
(**b**) Rules 7 and 8 inserted by S.R. 2006 No. 486 with effect from 08.01.07

ORDER 101

THE PENSIONS APPEAL TRIBUNALS ACT 1943

Interpretation

1. In this Order:

"the Court" means the Court of Appeal

Application for leave to appeal

2.—(1) An application to the Court for leave to appeal against the decision of a Pensions Appeal Tribunal may not be made unless an application for such leave was made to the Tribunal and was refused and must be made within 28 days after the date of the Tribunal's refusal.

(2) The application to the Court, which may be made ex parte, must be made by filing in the Central Office a written statement of—

(*a*) the name and description of the applicant,

(*b*) the point of law as respects which the applicant alleges that the Tribunal's decision was erroneous, and

(*c*) the date of the Tribunal's decision refusing leave to appeal.

(3) If the application is made with the consent of the other party to the proceedings before the Tribunal, that fact shall be included in the statement.

(4) On the making of the application the proper officer shall request the chairman of the Tribunal to give the Court a written statement of the reasons for the Tribunal's decision to refuse leave to appeal, and within 7 days after receiving the request the chairman shall give the Court such a statement.

(5) The Court may determine the application without a hearing or may direct that the application be set down for hearing.

(6) Where the application is determined without a hearing, a copy of the Court's order shall be sent from the Central Office to the applicant and to the other party to the proceedings before the Tribunal; and where the application is to be set down for hearing, notice of the day and time fixed for the hearing shall be sent from that Office to the applicant.

[*E.r.* 3]

Appeal

3.—(1) Without prejudice to Order 59, rule 3(2), the notice of the originating motion by which an appeal against the decision of a Pensions Appeal Tribunal is brought must state the question of law on which the appeal is brought, the date on which leave to appeal was granted and whether such leave was granted by the [(**a**) Court] or the Tribunal.

(2) Order 59, rules 5 and 13, shall not apply in relation to such an appeal, but notice must be served and the appeal entered within 28 days after leave to appeal was granted.

(3) Within 28 days after service of the notice of motion on him, the chairman of the Tribunal must state a case setting out the facts on which the decision appealed against was based and must file the case in the Central Office and serve a copy thereof on the appellant and on the respondent.

(**a**) Word substituted by S.R. 1983 No. 114 with effect from 1.6.83

(4) At the hearing of the appeal the Court may order the case to be returned to the chairman for amendment.

(5) Order 59, rule 10(2), shall not apply in relation to the appeal.

(6) A copy of the Court's order on the appeal must be sent by the proper officer of the appellant, the respondent and the chairman of the Tribunal.

[*E.r.* 4]

ORDER 102

[(a) **The Companies (Northern Ireland) Order 1986**]

[(b) *Definitions*

1. In this Order—

"the 1986 Order" means the Companies (Northern Ireland) Order 1986(c);

"the court", without prejudice to Order 1 rule 3(2), includes the Master (Bankruptcy).

Applications to be made by originating summons

2.—(1) Except in the case of the applications mentioned in rules 3 and 4, every application under the 1986 Order must, in accordance with Order 5, rule 3, be made by originating summons, except that references in that Order, and in Forms 6, 7 and 8 in Appendix A, to "plaintiff" and "defendant" shall be construed as references to "applicant" and "respondent" respectively.

(2) Subject to paragraphs (3) and (4) an originating summons under this rule shall be in Form 7.

(3) An originating summons under this rule shall be in Form 6 where the application made by summons is—

(*a*) an application under Article 224(1) of the 1986 Order for an order directing that any shares in a company shall be subject to the restrictions imposed by Part XVI of that Order;

(*b*) an application under Article 250(3) of the 1986 Order for an order directing the directors of a company or any of them to make good any such default as is mentioned in paragraph (1) of that Article;

(*c*) an application under Article 253B(1) of the 1986 Order for a declaration that the annual accounts of a company do not comply with the requirement of that Order and for any order requiring the preparation of revised accounts;

(*d*) an application under Article 420 of the 1986 Order for an order to make provision for all or any of the matters mentioned in paragraph (3) of that Article where an order sanctioning the compromise or arrangement to which the application relates has previously been made;

(*e*) an application under Article 465 of the 1986 Order for an order directing a receiver or manager of a company to make good any such default as is mentioned in paragraph (1) of that Article;

(*f*) an application under Article 662(1) of the 1986 Order for an order directing a company and any officer thereof to make good any such default as is mentioned in paragraph (1) of that Article.

(4) An application under Article 670 of the 1986 Order may be made by ex parte originating summons in Form 8 in Appendix A.

[*E.r.* 2]

Applications to be made by originating motion

3. The following applications under the 1986 Order must be made by originating motion, namely, applications—

(*a*) under Article 98(6) for an order extending the time for delivery to the registrar of companies of any documents required by that Article to be delivered;

(a) New title substituted by S.R. 1991 No. 231 with effect from 1.9.91
(b) Rules 1 to 6 substituted by S.R. No. 231 with effect from 1.9.91
(c) S.I. 1986/1032 (N.I. 6) as amended by S.I. 1990/593 (N.I. 5)

(*b*) under Article 225(5) for amendment of the register of interests in shares of a company;

(*c*) under Article 367(1) for rectification of the register of members of a company;

(*d*) under Article 425(1) for an order declaring that the affairs of a company ought to be investigated by an inspector appointed by the Department of Economic Development;

(*e*) under Article 429 for an inquiry into any such case as is therein mentioned;

(*f*) under Article 449(1) for an order directing that any shares in or debentures of a company shall cease to be subject to the restrictions imposed by Part XVI of the 1986 Order;

(*g*) under Article 449(4) for an order directing that any shares in or debentures of a company shall, on a sale, cease to be subject to the restrictions imposed by Part XVI of the 1986 Order;

(*h*) under Article 602(1) for an order declaring a dissolution of a company which has not been wound up to have been void.

[*E.r.* 3]

Applications to be made by petition

4.—(1) The following applications under the 1986 Order must be made by petition, namely applications—

(*a*) under Article 16(1) to cancel the alteration of a company's objects;

(*b*) under Article 28(1) to cancel the alteration of a condition contained in a company's memorandum;

(*c*) under Article 64(1) to cancel a special resolution to which that section applies;

(*d*) under Article 137(2) to cancel any variation or abrogation of the rights attached to any class of shares in a company;

(*e*) under Article 140(3) to confirm a reduction of the share premium account of a company;

(*f*) under Article 146(1) to confirm a reduction of the share capital of a company;

(*g*) under Article 167(2) or Article 186(1) to cancel a special resolution to which either of those Articles applies;

(*h*) under Article 180(4) in relation to the reduction of capital redemption reserve;

(*i*) under Article 418(1) to sanction a compromise or arrangement between a company and its creditors or any class of them or between a company and its members or any class of them;

(*j*) under Article 604(2) for an order restoring the name of a company to the register where the application is made in conjunction with an application for the winding up of the company;

(*k*) under Article 639(2) to cancel the alteration of the form of a company's constitution;

(*l*) under Article 675(2) for relief from liability of an officer of a company or a person employed by a company as auditor.

(2) A petition by which any such application is made shall be presented in the Bankruptcy and Companies Office.

[*E.r.* 4]

Entitlement of proceedings

5. Every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings must be entitled in the matter of the company in question and in the matter of the Companies (Northern Ireland) Order 1986.

[*E.r.* 5]

Summons for directions

6.—(1) After presentation of a petition by which any such application as is mentioned in rule 4 is made, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a summons for directions under this rule.

(2) The applications referred to in paragraph (1) are—

(*a*) an application under Article 64(1) of the 1986 Order for an order cancelling a special resolution to which that Article applies;

(*b*) an application under Article 167(2) or Article 186(1) of the 1986 Order for an order cancelling a special resolution to which those Articles apply;

(*c*) an application under Article 418(1) of the 1986 Order to sanction a compromise or arrangement unless there is included in the petition for such sanction an application for an order under Article 420 of that Order;

(*d*) an application under Article 604(2) of the 1986 Order for an order restoring the name of a company to the register.

(3) On the hearing of the summons the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.

(4) Where the application made by the petition is to confirm a reduction of the share capital, the share premium account, or the capital redemption reserve of a company, then, without prejudice to the generality of paragraph (3), the Court may give directions—

(*a*) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;

(*b*) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made;.

and the power of the court under Article 146(6) of the 1986 Order to direct that Article 146(3) to (5) thereof shall not apply as regards any class of creditors may be exercised on any hearing of the summons.

(5) Rules 7 to 12 shall have effect subject to any directions given by the Court under this rule.]

[*E.r.* 6]

Inquiry as to debts: company to make list of creditors

7.—(1) Where under rule 6 the Court orders such an inquiry as is mentioned in paragraph (4) thereof, the company in question must, within 7 days after the making of the order, file an affidavit made by an officer of the company competent to make it verifying a list containing—

(*a*) the name and address of every creditor entitled to any debt or claim to which the inquiry extends,

(*b*) the amount due to each creditor in respect of such debt or claim or, in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof, and

(*c*) the total of those amounts and values.

(2) The deponent must state in the affidavit his belief that at the date fixed by the Court as the date by reference to which the list is to be made there is no debt or claim which, if the date were the commencement of the winding up of the company, would be admissible in proof against the company, other than the debts or claims set out in the list and any debts or claims to which the inquiry does not extend, and must also state his means of knowledge of the matters deposed to.

(3) The list must be left at the Bankruptcy and Companies Office not later than one day after the affidavit is filed.

[*E.r.* 7]

Inspection of list of creditors

8.—(1) Copies of the list made under rule 7 with the omission, unless the Court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered office of the company and at the office of that company's solicitor.

(2) Any person shall be entitled during ordinary business hours, on payment of a fee of 50 pence, to inspect the said list at any such office and to take extracts therefrom.

[*E.r.* 8]

Notice to creditors

9. Within 7 days after filing the affidavit required by rule 7 the company must send by post to each creditor named in the list exhibited to the affidavit, at his last known address, a notice stating—

(*a*) the amount of the reduction sought to be confirmed,

(*b*) the effect of the order directing an inquiry as to debts and claims,

(*c*) the amount or value specified in the list as due or estimated to be due to that creditor, and

(*d*) the time fixed by the Court within which, if claims to be entitled to a larger amount, he must send particulars of his debt or claim and the name and address of the solicitor, if any, to the company's solicitor.

[*E.r.* 9]

Advertisement of petition and list of creditors

10. After filing the affidavit required by rule 7 the company must insert, in such newspapers and at such times as the Court directs, a notice stating—

(*a*) the date of presentation of the petition and the amount of the reduction thereby sought to be confirmed,

(*b*) the inquiry ordered by the Court under rule 6,

(*c*) the places where the list of creditors may be inspected in accordance with rule 8, and

(*d*) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends must send his name and address, the name and address of his solicitor, if any, and particulars of his debt or claim to the company's solicitor.

[*E.r.* 10]

Affidavit as to claims made by creditors

11. Within such time as the Court directs the company must file an affidavit made by the company's solicitor and an officer of the company competent to make it—

(*a*) proving service of the notices mentioned in rule 9 and advertisements of the notice mentioned in rule 10,

(*b*) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notices sent in particulars of debts of claims, specifying the amount of each debt or claim,

(*c*) distinguishing in such list those debts or claims which are wholly, or as to any and what part thereof, admitted by the company, disputed by the company or alleged by the company to be outside the scope of the enquiry, and

(*d*) stating which of the persons named in the list made under rule 7, and which of the persons named in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

[*E.r.* 11]

Adjudication of disputed claims

12. If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim or in respect of the full amount claimed by him in respect of any debt or claim, than, unless the company is willing to secure payment of that debt or claim by appropriating the full amount of thedebt or claim, the company must, if the Court so directs, send to that person by post at his last known address a notice requiring him—

(*a*) within such time as may be specified in the notice, being not less than 4 clear days after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company, and

(*b*) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the Court for the adjudication of debts and claims.

[*E.r.* 12]

Certifying lists of creditors entitled to object to reduction

13. The list of creditors entitled to object to such reduction as is mentioned in rule 6(4), as settled by the Court under [(**a**) Article 146(4) of the 1986 Order] shall be certified and filed by the Master (Bankruptcy) and his certificate shall—

(*a*) specify the debts or claims (if any) disallowed by the Court,

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(**a**) Words substituted by S.R. 1991 No. 231 with effect from 1.9.91

(*b*) distinguish the debts or claims (if any) the full amount of which is admitted by the company, the debts or claims (if any) the full amount of which, though not admitted by the company, the company is willing to appropriate, the debts or claims (if any) the amount of which has been fixed by adjudication of the Court under [(**a**) Article 146(4) of the 1986 Order] of the Act and other debts or claims;

(*c*) specify the total amount of the debts or claims payment of which has been secured by appropriation under the said [(**a**) Article 146(4) of the 1986 Order];

(*d*) show which creditors consent to the reduction and the total amount of their debts or claims;

(*e*) specify the creditors who sought to prove their debts or claims under rule 12 and state which of such debts or claims were allowed.

[*E.r.* 13]

Evidence of consent of creditor

14. The consent of a creditor to such reduction as is mentioned in rule 6(4) may be proved in such manner as the Court thinks sufficient.

[*E.r.* 14]

Time, etc. of hearing of petition for confirmation or reduction

15.—(1) A petition for the confirmation of any such reduction as is mentioned in rule 6(4) shall not, where the Court has directed an inquiry pursuant to that rule, be heard before the expiration of at least 8 clear days after the filing of the certificate mentioned in rule 13.

(2) Before the hearing of such a petition, a notice specifying the day appointed for the hearing must be published at such times and in such newspapers as the Court may direct.

[*E.r.* 15]

[(**b**)**16.** . . .]

(**a**) Words substituted by S.R. 1991 No. 231 with effect from 1.9.91
(**b**) Rule 16 revoked by S.R. 1983 No. 407 with effect from 1.1.84

[(a) ORDER 103

Proceedings under section 7 of the Elected Authorities (Northern Ireland) Act 1989

Application

1. An application for a determination under section 7(1) of the Elected Authorities (Northern Ireland) Act 1989(b) shall be commenced by originating motion.

Assignment to Queen's Bench Division

2. Proceedings under this Order shall be assigned to the Queen's Bench Division.

Notice of motion and supporting documents

3. The notice of motion must be supported by a statement setting out the grounds on which relief is sought and the capacity in which the applicant applies under section 7, and by an affidavit verifying the facts relied on.

Service of notice of motion

4.—(1) The notice of motion and statement and affidavit must be served on the person to whom the application relates.

(2) Unless the court otherwise directs, there must be at least 10 days between the service of the notice of motion and the day named in the notice for hearing of the motion.

(3) An affidavit giving the name and address of and the place and date of service on the person who has been served with the notice of motion must be filed before the motion is entered for hearing and the affidavit shall be before the Court on the hearing of the motion.

(4) If on the hearing of the motion the Court is of opinion that any other person should be served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice may be served on that person.

Hearing of application

5.—(1) On the hearing of any motion any person who desires to be heard in opposition to the motion, and appears to the court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion.

(2) The Court may authorise or require oral evidence to be given when it appears to be necessary or desirable.

Consolidation and joinder of parties

6. Order 4, rule 5, and Order 15, rules 4 and 5, shall apply to applications under this Order as they apply to actions.

Time for bringing proceedings

7. An application under rule 1 shall not be made after the expiration of more than 2 months from the date of the alleged breach of the terms of the declaration against terrorism.]

(a) New Order inserted by S.R. 1989 No. 210 with effect from 1.7.89
(b) 1989 c. 3

ORDER 104

THE PATENTS ACTS 1949 TO 1961 AND 1977; THE REGISTERED DESIGNS ACTS 1949 TO 1971; THE DEFENCE CONTRACTS ACT 1958

Definitions

1. In this Order—

"the 1949 Act" means the Patents Act 1949(**a**);

"the 1977 Act" means the Patents Act 1977(**b**);

"the Comptroller" means the Comptroller-General of Patents, Designs and Trade Marks;

"existing patent" means a patent mentioned in section 127(2)(*a*) or (*c*) of the 1977 Act;

"the Journal" means the journal published pursuant to rules made under section 123(6) of the 1977 Act;

"1977 Act patent" means a patent under the 1977 Act;

"patent" means an existing patent or a 1977 Act patent.

[*E.r.* 1]

Assignment of proceedings

2. All proceedings in the High Court under the Patents Acts 1949 to 1961 and 1977, the Registered Designs Acts 1949 to 1961 and the Defence Contracts Act 1958(**c**), and all proceedings for the determination of a question or the making of a declaration relating to a patent under the inherent jurisdiction of the High Court, shall be assigned to the Chancery Division.

[*E.r.* 2]

Application for leave to amend specification under section 30 *of the* 1949 *Act or section* 75 *of the* 1977 *Act*

3.—(1) A patentee or the proprietor of a patent intending to apply under section 30 of the 1949 Act or under section 75 of the 1977 Act for leave to amend his specification must give notice of his intention to the Comptroller accompanied by a copy of an advertisement—

(*a*) identifying the proceedings pending before the Court in which it is intended to apply for such leave;

(*b*) giving particulars of the amendment sought;

(*c*) stating the applicant's address for service within the United Kingdom, and

(*d*) stating that any person intending to oppose the amendment who is not a party to the proceedings must within 28 days after the appearance of the advertisement give written notice of his intention to the applicant:

and the Comptroller shall insert the advertisement once in the Journal.

A person who gives notice in accordance with the advertisement shall be entitled to be heard on the application subject to any direction of the Court as to costs.

(**a**) 1949 c. 87
(**b**) 1977 c. 37
(**c**) 1958 c. 38

(2) As soon as may be after the expiration of 35 days from the appearance of the advertisement the applicant must make his application under the said section 30 or 75, as the case may be, by motion in the proceedings pending before the Court; and notice of the motion, together with a copy of the specification certified by the Comptroller and showing in coloured ink the amendment sought, must be served on the Comptroller, the parties to the proceedings and any person who has given notice of his intention to oppose the amendment.

(3) On the hearing of the motion the Court shall give such directions for the further conduct of the proceedings on the motion as it thinks necessary or expedient and, in particular, directions—

(*a*) requiring the applicant and any party or person opposing the amendment sought to exchange statements of the grounds for allowing the amendment and of objections to the amendment;

(*b*) determining whether the motion shall be heard with the other proceedings relating to the patent in question or separately and, if separately, fixing the date of hearing thereof;

(*c*) as to the manner in which the evidence shall be given and, if the evidence is to be given by affidavit, fixing the times within which the affidavits must be filed.

(4) Where the Court allows a specification to be amended, the applicant must forthwith lodge with the Comptroller an office copy of the order made by the Court and, if so required by the Court or Comptroller, leave at the Patent Office a new specification and drawings as amended, prepared in compliance with the 1949 or 1977 Act, whichever is applicable, and the rules made under those Acts respectively.

The Comptroller shall cause a copy of the order to be inserted at least once in the Journal.

[*E.r.* 3]

Application for revocation of patent

4.—(1) An application under section 72 of the 1977 Act for the revocation of a patent shall be made by petition.

This paragraph does not apply to an application made in pending proceedings.

(2) The respondent to a petition under section 32 of the 1949 Act or section 72 of the 1977 Act must serve an answer on the petitioner within 21 days after service of the petition on him.

[*E.r.* 4]

Action for infringement

5.—(1) Notwithstanding anything in Order 5, rule 4, proceedings in which a claim is made by the plaintiff in respect of the infringement of a patent shall be begun by writ.

(2) The plaintiff in such an action must serve with his statement of claim particulars of the infringement relied on, showing which of the claims in the specification of the patent are alleged to be infringed and giving at least one instance of each type of infringement alleged.

(3) If a defendant in such an action alleges, as a defence to the action, that at the time of the infringement there was in force a contract or licence relating to the patent made by or with the consent of the plaintiff and containing a condition or term void by virtue of section 44 of the 1977 Act, he must serve on the plaintiff particulars of the date of, and parties to, each such contract or licence and particulars of each such condition or term.

[*E.r.* 5]

Objection to validity of patent

6.—(1) A person who—

(*a*) presents a petition under section 32 of the 1949 Act or section 72 of the 1977 Act for the revocation of a patent, or

(*b*) being party to an action concerning a patent, either questions the validity of the patent or applies by counterclaim in the action for revocation of the patent,

must serve with his petition or other pleading particulars of the objections to the validity of the patent on which he relies.

(2) Particulars given pursuant to paragraph (1) must state every ground on which the validity of the patent is questioned and must include such particulars as will clearly define every issue which it is intended to raise.

(3) If the grounds stated in the particulars of objections include want of novelty or want of any inventive step, the particulars must state the manner, time and place of every prior publication or user relied upon and, if prior user is alleged, must—

(*a*) specify the name of every person alleged to have made such user,

(*b*) state whether such user is alleged to have continued until the priority date of the claim in question or of the invention, as may be appropriate, and, if not, the earliest and latest date on which such user is alleged to have taken place,

(*c*) contain a description accompanied by drawings, if necessary, sufficient to identify such user, and

(*d*) if such user relates to machinery or apparatus, state whether the machinery or apparatus is in existence and where it can be inspected.

(4) If in the case of an existing patent—

(*a*) one of the grounds stated in the particulars of objections is that the invention, so far as claimed in any claim of the complete specification, is not useful, and

(*b*) it is intended, in connection with that ground, to rely on the fact that an example of the invention which is the subject of any such claim cannot be made to work, either at all or as described in the specification,

the particulars must state that fact and identify each such claim and must include particulars of each such example, specifying the respects in which it is alleged that it does not work or does not work as described.

[*E.r.* 6]

Amendment of particulars

7. Without prejudice to Order 20, rule 5, the Court may at any stage of the proceedings allow a party to amend any particulars served by him under

the foregoing provisions of this Order on such terms as to costs or otherwise as may be just.

[*E.r.* 7]

Further particulars

8. The Court may at any stage of the proceedings order a party to serve on any other party further or better particulars of infringements or of objections.

[*E.r.* 8]

Restrictions on admission of evidence

9.—(1) Except with the leave of the judge hearing any action or other proceeding relating to a patent, no evidence shall be admissible in proof of any alleged infringement, or of any objection to the validity, of the patent, if the infringement or objection was not raised in the particulars of infringements or objections, as the case may be.

(2) In any case or other proceeding relating to a patent, evidence which is not in accordance with a statement contained in particulars of objections to the validity of the patent shall not be admissible in support of such an objection unless the judge hearing the proceeding allows the evidence to be admitted.

(3) If any machinery or apparatus alleged to have been used before the priority date mentioned in rule 6(3)(*b*) is in existence at the date of service of the particulars of objections, no evidence of its user before that date shall be admissible unless it is proved that the party relying on such user offered, where the machinery or apparatus is in his possession, inspection of it to the other parties to the proceedings or, where it is not, used all reasonable endeavours to obtain inspection of it for those parties.

[*E.r.* 9]

Proceedings for infringement or revocation: summons for directions

10.—(1) In an action for infringement of a patent (whether or not any other relief is claimed) and in proceedings by petition for the revocation of a patent the plaintiff or petitioner must, within one month after service thereof, take out a summons for directions as to the place and mode of trial returnable in not less than 21 days, and if the plaintiff or petitioner does not take out such a summons in accordance with this paragraph, the defendant or respondent as the case may be, may do so.

The summons may be heard in chambers or in court as the Court thinks fit.

(2) The Court hearing a summons under this rule may give such directions—

(*a*) for the service of further pleadings or particulars,

(*b*) for the discovery of documents,

(*c*) for securing the making of admissions,

(*d*) for the service of interrogatories and of answers thereto,

(*e*) for the taking by affidavit of evidence relating to matters requiring expert knowledge, and for the filing of such affidavits and the service of copies thereof on the other parties.

(*f*) for the service on the other parties, by any party desiring to submit experimental proof, of full and precise particulars of the experiments proposed and of the facts which he claims to be able to establish thereby.

(*g*) for the making of experiments, tests, inspections or reports,

(*h*) for the hearing, as a preliminary issue, of any question that may arise (including any question as to the construction of the specification or other documents),

and otherwise as the Court thinks necessary or expedient for the purpose of defining and limiting the issues to be tried, restricting the number of witnesses to be called at the trial of any particular issue and otherwise securing that the case shall be disposed of, consistently with adequate hearing, in the most expeditious manner.

Where the evidence is directed to be given by affidavit, the deponents must attend at the trial for cross-examination unless, with the concurrence of the Court, the parties otherwise agree.

(3) On the hearing of a summons under this rule the Court shall consider, if necessary of its own motion, whether an independent scientific adviser should be appointed under rule 11 to assist the Court.

(4) No action for infringement of a patent or petition for the revocation of a patent shall be set down for trial unless and until a summons under this rule in the action or proceedings has been taken out and the directions given on the summons have been carried out or the time fixed by the Court for carrying them out has expired.

[*E.r.* 10]

Appointment of a scientific adviser

11.—(1) In any proceedings under the 1949 or 1977 Act the Court may at any time, and on or without the application of any party, appoint an independent scientific adviser to assist the Court, either—

(*a*) by sitting with the judge at the trial or hearing of the proceedings; or

(*b*) by inquiring and reporting on any question of fact or of opinion not involving a question of law or construction,

according as the Court may direct.

(2) The Court may nominate the scientific adviser and, where appropriate, settle any question or instructions to be submitted or given to him.

[*E.r.* 11]

Determination of question or application where Comptroller declines to deal with it

12. Where the Comptroller—

(*a*) declines to deal with a question under section 8(7), 12(2), 37(8) or 61(5) of the 1977 Act;

(*b*) declines to deal with an application under section 40(5) of that Act, or

(*c*) certifies under section 72(7)(*b*) of that Act that the question whether a patent should be revoked is one which would more properly be determined by the court,

any person entitled to do so may, within 28 days after the Comptroller's decision, apply to the Court by originating summons to determine the question or application.

[*E.r.* 12]

Application by employee for compensation under section 40 *of the* 1977 *Act*

13.—(1) An application by an employee for compensation under section 40(1) or (2) of the 1977 Act shall be made by originating summons issued within the period which begins when the relevant patent is granted and which expires one year after it has ceased to have effect:

Provided that, where a patent has ceased to have effect by reason of a failure to pay any renewal fee within the period prescribed for the payment thereof and an application for restoration is made to the Comptroller under section 28 of the said Act, the said period shall—

(*a*) if restoration is ordered, continue as if the patent had remained continuously in effect, or

(*b*) if restoration is refused, be treated as expiring one year after the patent ceased to have effect or six months after the refusal, whichever is the later.

(2) On the day fixed for the hearing of the originating summons under Order 28, rule 2, the Court shall, without prejudice to the generality of Order 28, rule 4, give directions as to the manner in which the evidence (including any accounts of expenditure and receipts relating to the claim) shall be given at the hearing of the summons and, if the evidence is to be given by affidavit, specify the period within which the affidavit must be filed.

(3) The Court shall also give directions as to the provision by the defendant to the plaintiff, or a person deputed by him for the purpose, of reasonable facilities for inspecting and taking extracts from the books of account by which the defendant proposes to verify the accounts mentioned in paragraph (2) or from which those accounts have been derived.

[*E.r.* 13]

Communication of information to European Patent Office

14.—(1) The Court may authorise the communication to the European Patent Office or the competent authority of any country which is a party to the European Patent Convention of any such information in the files of the court as the Court thinks fit.

(2) Before complying with a request for the disclosure of information under paragraph (1) the Court shall afford to any party appearing to be affected by the request the opportunity of making representations, in writing or otherwise, on the question whether the information should be disclosed.

[*E.r.* 15]

Proceedings for determination of certain disputes

15.—(1) The following proceedings must be begun by originating motion, that is to say—

(*a*) proceedings for the determination of any dispute referred to the Court under—

(i) section 48 of the 1949 Act or section 58 of the 1977 Act;

(ii) paragraph 3 of Schedule I to the Registered Designs Act 1949(**a**); or

(iii) section 4 of the Defence Contracts Act 1958;

[(**b**)...]

(2) There must be at least 10 clear days between the serving of notice of a motion under this rule and the day named in the notice for hearing the motion.

(3) On the hearing of a motion under this rule the Court shall give such directions for the further conduct of the proceedings as it thinks necessary or expedient and, in particular, directions for the service of particulars and as to the manner in which the evidence shall be given and as to the date of the hearing.

[*E.r.* 16]

Application for rectification of register of patents or designs

16.—(1) An application to the Court for an order that the register of patents or the register of designs be rectified must be made by originating motion, except where it is made in a petition for the revocation of a patent or by way of counterclaim in proceedings for infringement or by originating summons in proceedings for an order under section 51 of the Trustee Act (Northern Ireland) 1958(**c**).

(2) Where the application relates to the register of patents, the applicant shall forthwith serve an office copy of the application on the comptroller, who shall be entitled to appear and to be heard on the application.

[*E.r.* 17]

Counterclaim for rectification of register of designs

17.—(1) Where in any proceedings a claim is made for relief for infringement of the copyright in a registered design, the party against whom the claim is made may in his defence put in issue the validity of the registration of that design or may counterclaim for an order that the register of designs be rectified by cancelling or varying the registration or may do both those things.

(2) A party to any such proceedings who in his pleading (whether a defence or counterclaim) disputes the validity of the registration of a registered design must serve with the pleading particulars of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.

(3) A party to any such proceedings who counterclaims for an order that the register of designs be rectified must serve on the Comptroller a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Comptroller shall be entitled to take such part in the proceedings as he thinks fit but need not serve a defence or other pleading unless ordered to do so by the Court.

[*E.r.* 18]

[(**d**) *Publication of Judgments*

18. Order 100, rule 8 shall apply to proceedings under this Order.]

(**a**) 1949 c. 88
(**b**) Sub-paragraph omitted by S.R. 2006 No. 486 with effect from 08.01.07
(**c**) 1958 c. 23 (N.I.)
(**d**) Rule 18 inserted by S.R. 2006 No. 486 with effect from 08.01.07

ORDER 105

REGISTRATION OF MAINTENANCE ORDERS: ATTACHMENT OF EARNINGS ORDERS FOR THE ENFORCEMENT OF MAINTENANCE ORDERS

I. INTERPRETATION

Definitions

1. In this Order—

"the Act of 1920" means the Maintenance Orders (Facilities for Enforcement) Act, 1920(**a**);

the Act of 1950" means the Maintenance Orders Act, 1950(**b**);

"the Act of 1958" means the Maintenance Orders Act, 1958(**c**);

"the Act of 1966" means the Maintenance and Affiliation Orders Act (Northern Ireland) 1966(**d**);

"the Act of 1972" means the Maintenance Orders (Reciprocal Enforcement) Act 1972(**e**);

"the Office" means the Probate and Matrimonial Office.

II. PROCEEDINGS UNDER THE ACT OF 1920

Registration, etc., of orders under Act of 1920

2.—(1) The prescribed officer for the purposes of section 1(1) of the Act of 1920 shall be the Master, and on receiving from the Secretary of State a copy of a maintenance order made by a court in any part of Her Majesty's dominions outside the United Kingdom to which the Act of 1920 extends he shall cause the order to be registered in the register kept for the purpose of that Act (in this rule referred to as "the register").

The copy of the order received from the Secretary of State shall be filed in the Office.

(2) An application for the transmission of a Northern Ireland maintenance order under section 2 of the Act of 1920 shall be made to the Master by lodging in the Office a certified copy of the order and an affidavit by the applicant stating the applicant's reasons for believing that the person liable to make payments under the order is resident in some part of Her Majesty's dominions outside the United Kingdom to which the Act of 1920 extends, together with full particulars, so far as known to the applicant, of that person's address and occupation and any other information which may be required by the law of that part of Her Majesty's dominions for the purpose of the enforcement to the order.

(3) If it appears to the Master that the person liable to make payments under the Northern Ireland maintenance order is resident in some part of Her Majesty's dominions outside the United Kingdom to which the Act of 1920 extends, he shall send the certified copy of the order to the Secretary of State for transmission to the Governor of that part of Her Majesty's dominions.

(**a**) 1920 c. 33
(**b**) 1950 c. 37
(**c**) 1958 c. 39
(**d**) 1966 c. 36 (N.I.)
(**e**) 1972 c. 18

Particulars of any Northern Ireland maintenance order sent to the Secretary of State under the said section 2 shall be entered in the register and the fact that this has been done shall be noted in the court minutes.

(4) Any person who satisfies the Master that he is entitled to or liable to make payments under a Northern Ireland maintenance order or a maintenance order made by a court in any part of Her Majesty's dominions outside the United Kingdom to which the Act of 1920 extends, or a solicitor acting on behalf of any such person or, with the leave of the Master, any other person, may inspect the register and bespeak copies of any order which has been registered and of any document filed therewith.

(5) In this rule "Northern Ireland maintenance order" means a maintenance order made by the High Court.

[*E.r.* 2]

III. Proceedings under Part II of the Act of 1950 and Part I of the Act of 1958

Interpretation of Part III

3. In this Part of this Order—

"Deputy Principal Clerk" means the Deputy Principal Clerk of Session;

"Senior Registrar" means the Senior Registrar of the Principal Registry of the Family Division of the High Court of Justice in England and Wales;

"Northern Ireland Order" means a maintenance order made by the High Court;

"English order" means a maintenance order made by the High Court of Judicature in England and Wales;

"Scottish order" means a maintenance order made by the Court of Session;

"Maintenance order" means a maintenance order to which section 16 of the Act of 1950 applies;

"the register" means the register kept for the purpose of the Act of 1950 and the Act of 1958;

"a magistrates' court" means a magistrates' court in England and Wales;

Registration, etc., of Northern Ireland Order under the Act of 1950

4.—(1) An application for the registration of a Northern Ireland order under Part II of the Act of 1950 may be made by lodging with the master—

(*a*) a letter of application;

(*b*) an affidavit by the applicant;

(*c*) a copy of that affidavit; and

(*d*) a certified copy of the order.

(2) The affidavit lodged under paragraph (1) shall state—

(*a*) the address in the United Kingdom, and the occupation of the person liable to make payments under the order;

(*b*) the date of service of the order on the person liable to make payments thereunder or, if the order has not been served, the reason why service has not been effected;

(*c*) the reason why it is convenient that the order should be enforceable in England and Wales or Scotland as the case may be;

(*d*) the amount of any arrears due to the applicant under the order, and

(*e*) that the order is not already registered.

(3) If it appears to the Master that the person liable to make payments under the order resides in England and Wales or Scotland and that it is convenient that the order should be enforceable there, he shall send a certified copy of the order and the applicant's affidavit to the Senior Registrar or the Deputy Principal Clerk as the case may be.

(4) The prescribed officer for the purposes of the Act of 1950 and the Act of 1958 shall be the Master.

(5) On receipt of notice of the registration of a Northern Ireland order in the Supreme Court of Judicature in England and Wales or the Court of Session the Master shall cause particulars of the notice to be entered in Part I of the register.

(6) The fact that the order has been registered in the Supreme Court of Judicature in England and Wales or the Court of Session shall be noted in the court minutes.

Re-registration of a Northern Ireland Order in a Magistrates' Court under Part I of the Act of 1958

5.—(1) Where a Northern Ireland order has been registered in the Supreme Court of Judicature in England and Wales under Part II of the Act of 1950 an application under Part I of the Act of 1958 for the registration of that order in a magistrates' court shall be made by lodging with the Master—

(*a*) a letter of application;

(*b*) an affidavit by the applicant;

(*c*) a copy of the affidavit; and

(*d*) a certified copy of the order.

(2) The affidavit lodged under paragraph (1) shall state—

(*a*) the date of the registration of the order in the Supreme Court of Judicature in England and Wales under Part II of the Act of 1950;

(*b*) the address and occupation of the person liable to make payments under the order;

(*c*) the reason why registration of the order in a magistrates' court is desired;

(*d*) the amount of any arrears due under the order, the date to which those arrears have been calculated and the date on which the next payment under the order falls due;

(*e*) the date of birth of each child named in the Order;

(*f*) whether any proceedings are pending for the enforcement of the order; and

(*g*) that the order is not already registered under the Act of 1958 or if the order has been registered under that Act, whether the registration has been cancelled.

(3) The period required to be subscribed by rules of court for the purpose of section 2(2) of the Act of 1958 shall be 14 days.

(4) If the application is granted the Master shall send to the clerk of the appropriate magistrates' court—

(*a*) the copy of the affidavit;

(*b*) a certified copy of the Northern Ireland order; and

(*c*) a copy of the order granting the application.

(5) On receiving notice that the order has been registered in a magistrates' court the Master shall enter particulars of the registration in Part I of the register and in the Court minutes.

Discharge or variation of registered order

6. Where the High Court makes an order varying or discharging a Northern Ireland order registered under the Act of 1950 the Master shall send to the Senior Registrar or the Deputy Principal Clerk, as the case may be, and where the order is re-registered in a magistrates' court under the Act of 1958 to the clerk of that court, a certified copy of the order varying or discharging the registered order.

Cancellation of registration

7. Where the registration of a Northern Ireland order registered in the Supreme Court of Judicature in England and Wales or the Court of Session under the Act of 1950 is cancelled under section 24(1) of the Act of 1950, and where the order is registered in a magistrates' court under the Act of 1958 the registration in that court is cancelled under section 5 of the Act of 1958 the Master on receipt of notice of cancellation shall cause particulars of it to be entered in Part I of the register.

Registration, etc. of English and Scottish Orders

8.—(1) In relation to an English or Scottish order the prescribed officer for the purposes of section 17(2) of the Act of 1950 shall be the Master.

(2) On receipt of a certified copy of an English or Scottish order for registration, the Master shall—

(*a*) cause the order to be registered in Part II of the register and notify the Senior Registrar or Deputy Principal Clerk as the case may be, that this has been done;

(*b*) file the certified copy and any statutory declaration or affidavit as to the amount of any arrears due under the order.

(3) An application under section 21(2) of the Act of 1950 by a person liable to make payments under a Scottish order registered in the High Court to adduce before the Court such evidence as is mentioned in that section shall be made by lodging a request for an appointment before the Master; and notice of the day and time fixed for hearing shall be sent by post to the applicant and to the person entitled to payments under the order.

(4) The prescribed officer to whom notice of the discharge or variation of an English or Scottish order registered in the High Court is to be given under section 23(1)(*a*) of the Act of 1950 shall be the Master to whom a certified copy of the order was sent for registration, and on receipt of the notice he shall cause particulars of it to be registered in Part II of the register.

(5) An application under section 24(1) of the Act of 1950 for the cancellation of the registration of an English or Scottish order shall be made ex parte by affidavit to the Master, and the Master, if he cancels the registration, shall note the cancellation in Part II of the register and send notice of the cancellation to the Senior Registrar or Deputy Principal Clerk, as the case may be.

[*E.r.* 5]

Inspection of register

9. Any person who satisfies the Master that he is entitled to or liable to make payments under a maintenance order of a superior court or a solicitor acting on behalf of any such person or, with the leave of the Master any other person, may inspect the register and bespeak copies of any such order which is registered in the High Court under Part II of the Act of 1950 and of any statutory declaration or affidavit filed therewith.

[*E.r.* 6]

IV. Registration, etc. of certain Orders under the Act of 1966

Interpretation of Part IV

10.—(1) In this Part of this Order—

"maintenance order" has the meaning assigned to it by section 10(2) of the Act of 1966;

"proper officer" means the Master;

"the register" means any register kept for the purposes of the Act of 1966.

[*E.r.* 7]

Application for registration

11.—(1) An application under section 11 of the Act of 1966 for the registration in a court of summary jurisdiction of a maintenance order made by the High Court may be made—

(*a*) on the making of the maintenance order or an order varying the maintenance order; or

(*b*) at any other time by lodging with the proper officer a certified copy of the maintenance order and an affidavit by the applicant, together with a copy thereof, stating—

(i) the address and occupation of the person liable to make payments under the maintenance order;

(ii) the reason why registration of the maintenance order in a court of summary jurisdiction is desired;

(iii) the amount of any arrears due to the applicant under the maintenance order, the date to which those arrears have been calculated and the date on which the next payment under the maintenance order falls due;

(iv) the date of birth of each child named in the maintenance order;

(v) that the maintenance order is not already registered under the Act of 1966; and

(vi) whether any proceedings are pending for the enforcement of the maintenance order.

ORDER 105

(2) Where such application is granted, the applicant must, if he has not already done so, lodge with the proper officer a certified copy of the maintenance order and, where the application was granted on the making of the maintenance order or any order varying the maintenance order, a statement signed by the applicant or his solicitor, and a copy thereof, giving the address of the person entitled to receive payments under the maintenance order and the particulars mentioned in paragraph (1)(*b*)(i),(iii) and (iv).

(3) The period required to be prescribed by rules of Court for the purpose of section 11(2) of the Act of 1966 shall be 14 days.

(4) The proper officer shall cause the certified copy of a maintenance order required by the said section 11(2) to be sent to the clerk of petty sessions [**(a)** . . .] indorsed with a note that the application for registration of the maintenance order has been granted and to be accompanied by a copy of the affidavit or statement lodged under paragraph (1) or (2), as the case may be.

(5) On receipt of notice that a maintenance order made by the High Court has been registered in a court of summary jurisdiction in accordance with section 11(5) of the Act of 1966, the proper officer shall enter particulars of the registration in the Court minutes.

[*E.r.* 8]

Registration of order made by a court of summary jurisdiction

12. On receipt of a certified copy of a maintenance order made by a court of summary jurisdiction sent to him pursuant to section 11(4)(*c*) of the Act of 1966, the Master, who is the prescribed officer for the purpose of that section, shall cause the order to be registered in the High Court by filing the copy and making an entry in the register and shall notify the clerk of petty sessions that the maintenance order has been duly registered.

[*E.r.* 9]

Variation or discharge of registered order

13.—(1) Where the High Court makes an order varying or discharging a maintenance order registered in a court of summary jurisdiction under Part II of the Act of 1966, the proper officer shall send a certified copy of the first-mentioned order to the clerk of petty sessions concerned.

(2) Where a certified copy of an order varying a maintenance order made by the High Court and registered in a court of summary jurisdiction under Part II of the Act of 1966 is received from the clerk of petty sessions, the proper officer shall file the copy and enter particulars of the variation in the Court minutes.

(3) Where a certified copy of an order varying or discharging a maintenance order made by a court of summary jurisdiction and registered in the High Court under Part II of the Act of 1966 is received from a clerk of petty sessions the proper officer shall—

(*a*) file the copy; and

(*b*) enter particulars of the variation or discharge in the register.

[*E.r.* 10]

(a) Words omitted by S.R. 2016 No. 299 with effect from 31.10.16

Appeal from variation, etc. of order by court of summary jurisdiction

14. Order 55 shall apply to an appeal which lies to a Judge of the High Court under section 13(8) of the Act of 1966.

[*E.r.* 11]

Cancellation of registration

15.—(1) A notice under section 14 of the Act of 1966 by a person entitled to receive payments under a maintenance order registered in the High Court must be given to the proper officer.

(2) Where the High Court gives notice under the said section 14, the proper officer shall endorse the notice on the certified copy mentioned in rule 13(1).

(3) Where notice under section 14 of the Act of 1966 is given in respect of a maintenance order registered in the High Court, the proper officer, on being satisfied by an affidavit by the person entitled to receive payments under the order that no proceedings for the enforcement of the order are pending, shall—

(*a*) cancel the registration by entering particulars of the notice in the register; and

(*b*) send notice of the cancellation to the clerk of petty sessions [(**a**) . . .] stating, if such be the case, that the cancellation is in consequence of a notice given under subsection (1) of section 14 of the Act of 1966.

(4) On receipt of notice from a clerk of petty sessions that the registration in a court of summary jurisdiction under the Act of 1966 of a maintenance order made by the High Court has been cancelled, the proper officer shall enter particulars of the cancellation in the Court minutes.

[*E.r.* 12]

V. Proceedings under the Act of 1972

Interpretation of Part V

16. In this Part of this Order—

(*a*) any reference to a provision of the Act of 1972 (c.18) in relation to a country or territory with respect to which an Order in Council has been made under section 40 of that Act is a reference to that provision as applied by the Order in Council;

(*b*) for the purposes of sections 2(3), 5(4) and 14 of the Act of 1972 the prescribed officer shall be the Master.

[*E.r.* 21]

Application for transmission of maintenance order to reciprocating country

17. An application for a maintenance order to be sent to a reciprocating country under section 2 of the Act of 1972 shall be made by lodging in the Office—

(*a*) an affidavit by the applicant stating—

(i) the applicant's reason for believing that the payer under the maintenance order is residing in that country, and

(**a**) Words omitted by S.R. 2016 No. 299 with effect from 31.10.16

(ii) the amount of any arrears due to the applicant under the order, the date to which those arrears have been calculated and the date on which the next payment under the order falls due;

(*b*) a certified copy of the maintenance order;

(*c*) a statement giving such information as the applicant possesses as to the whereabouts of the payer;

(*d*) a statement giving such information as the applicant possesses for facilitating the identification of the payer (including, if known to the applicant, the name and address of any employer of the payer, his occupation and the date and place of issue of any passport of the payer), and

(*e*) if available to the applicant, a photograph of the payer.

[*E.r.* 22]

Certification of evidence given on provisional order

18. Where the High Court makes a provisional order under section 5 of the Act of 1972, the document required by subsection (4) of that section to set out or summarise the evidence given in the proceedings shall be authenticated by a certificate signed by the Master.

[*E.r.* 23]

Confirmation of provisional order

19.—(1) On receipt by the High Court of a certified copy of a provisional order made in a reciprocating country, together with the document mentioned in section 5(5) of the Act of 1972, the master shall fix a time and place for the Court to consider whether or not the provisional order should be confirmed, and shall send to the payee under the maintenance order notice of the time and place so fixed together with a copy of the provisional order and of that document.

(2) The Master shall send to the court which made the provisional order a certified copy of any order confirming or refusing to confirm that order.

[*E.r.* 24]

Taking of evidence for court in reciprocating country

20.—(1) The High Court shall be the prescribed court for the purposes of taking evidence pursuant to a request by a court in a reciprocating country under section 14 of the Act of 1971 where—

(*a*) the request for evidence relates to a maintenance order made by a superior court in the United Kingdom, and

(*b*) the witness resides in Northern Ireland.

(2) The evidence may be taken before a judge or officer of the High Court as the court thinks fit and the appropriate provisions of these Rules relating to the examination on oath before a Judge, an officer or examiner of the court or some other person, of any witness or person shall apply with the necessary modifications.

[*E.r.* 25]

Notification of variation or revocation

21. Where the High Court makes an order (other than a provisional order) varying or revoking a maintenance order a copy of which has been sent to a reciprocating country in pursuance of section 2 of the Act of 1972, the Master shall send a certified copy of the order to the court in the reciprocating country.

[*E.r.* 26]

Transmission of documents

22. Any document required to be sent to a court in a reciprocating country under section 5(4) or section 14(1) of the Act of 1972 or by rule 19(2) or 21 shall be sent to the Secretary of State for transmission to that court unless the Master is satisfied that, in accordance with the law of the country, the document may properly be sent by him direct to that court.

[*E.r.* 27]

Application of Part V to the Republic of Ireland

23.—(1) In relation to the Republic of Ireland rules 16 to 22 shall have effect subject to the provisions of this rule.

(2) For the words "a reciprocating country" wherever they occur there shall be substituted the words "the Republic of Ireland".

(3) In rule 16(2) for the reference to section 5(4) there shall be substituted a reference to section 5(2).

(4) the following paragraphs shall be added to rule 17;

"(*f*) a statement as to whether or not the payer appeared in the proceedings in which the maintenance order was made and, if he did not, the original or a copy certified by the applicant or his soliditor to be a true copy of a document which establishes that notice of the institution of the proceedings was served on the payer:

(*g*) a document which establishes that notice of the order was sent to the payer; and

(*h*) if the payee received legal aid in the proceedings in which the order was made, a copy certified by the applicant or his solicitor to be a true copy of the legal aid certificate".

(5) For rule 18 there shall be substituted the following rule:

"*Certification of evidence given on application for variation or revocation*

18. Where an application is made to the High Court for the variation or revocation of an order to which section 5 of the Act of 1972 applies, the certified copy of the application and the documents required by subsection (2) of that section to set out or summarise the evidence in support of the application shall be authenticated by a certificate signed by the Master".

(6) Rule 19 shall not apply.

(7) For rule 21 there thall be substituted the following rule:

"*Notification of variation or revocation*

21. Where the High Court makes an order varying or revoking a maintenance order to which section 5 of the Act of 1972 applies, the Master shall send a certified copy of the order and a statement as to the service on the payer of the documents mentioned in subsection (2) of that section to the court in the Republic of Ireland by which the maintenance order is being enforced".

(8) Rule 22 shall not apply.

[*E.r.* 28]

VI. [(**a**) ATTACHMENT OF EARNINGS ORDERS UNDER THE JUDGMENTS ENFORCEMENT (NORTHERN IRELAND) ORDER 1981]

Interpretation

24. In this part of this Order—

[(**a**) "the Order of 1981" means the Judgments Enforcement (Northern Ireland) Order 1981(**b**);

"the Order of 1978" means the Matrimonial Causes (Northern Ireland) Order 1978(**c**);

"maintenance order" means any order specified in [(**a**) Article 98(*a*) of the Order of 1981];

Application for attachment of earnings order by the person entitled to payments

25.—(1) Where the person to whom payments are required to be made under a maintenance order desires to apply to the High Court under [(**a**) Article 99 of the Order of 1981] for an attachment of earnings order to secure those payments the application must be made by summons, issued out of the Office.

The defendant or respondent to the summons (in this order referred to as "the defendant") shall be the person liable to make payments under themaintenance order and any application under Article 34 of the Order of 1978 [(**d**) or paragraph 56 of Schedule 15 to the Civil Partnership Act 2004] for leave to enforce payment of any arrears which become due more than 12 months before the issue of the summons shall be made by the summons.

(2) The summons must be supported by an affidavit by the applicant stating—

(*a*) particulars of the maintenance order;

(*b*) the date of service of the maintenance order on the defendant or, if the order has not been served, the reason why service has not been effected;

(*c*) the amount of any arrears due to the applicant under the maintenance order, the date to which those arrears have been calculated and the date on which the next payment under the order falls due;

(*d*) particulars of any proceedings which have been taken for the enforcement of the maintenance order;

(*e*) the name and address of any person believed to be the defendant's employer;

(*f*) such of the following particulars relating to the defendant as are known to the applicant, that is to say—

(i) his full name and address,

(ii) his place of work,

(iii) the nature of his work and his works number, if any;

(*g*) such other facts relevant to the names of the defendant as are known to the applicant and in particular details of any other attachment of earnings order made by any other court must be given.

(3) Unless the Court otherwise directs, the summons, together with a copy of the affidavit in support, must be served on the defendant personally or by post at least 14 days before the return day and the defendant may, within 10 days after the service, file an affidavit in answer and in that case must serve a copy of his affidavit on the applicant within 3 days after filing it.

[*E.r.* 13]

(**a**) Words substituted by S.R. 1981 No. 224 with effect from 1.9.81

(**b**) S.I. 1982/226 (N.I. 6)

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

(**d**) Words inserted by S.R. 2007 No. 189 with effect from 16.04.07

Notice to employer

26. Without prejudice to the powers conferred by [(**a**) Article 103 of the Order of 1981], the Court may at any stage of the proceedings send to any person appearing to have the debtor in his employment a notice requesting him to give to the Court within such period as may be specified in the notice a statement of the debtor's earnings and anticipated earnings with such other particulars as may be so specified.

Exercise of power to obtain statement of earnings

27. An order under [(**a**) Article 103 of the Order of 1981] shall be endorsed with or incorporate a notice warning the person to whom it is directed of the consequences of disobedience to the order and shall be served on him personally.

Application for attachment of earnings order by person liable to make payments

28. An application by the person liable to make payment under a maintenance order of the High Court for an attachment of earnings order to secure those payments may be made on the making of the maintenance order or an order of the High Court varying the maintenance order.

[*E.r.* 14]

Form and service of order

29.—(1) An attachment of earnings order must be made in Form No. 49 in Appendix A and the particulars of the defendant required to be given in the first paragraph of that form shall, so far as they are known to the Court, be the prescribed particulars for the purposes of [(**a**) Article 99(4) of the Order for 1981].

(2) The Court shall cause a copy of an attachment of earnings order and of any order varying or discharging such an order to be served on the defendants and on the person to whom the attachment of earnings order is directed.

(3) Notwithstanding any provision of these Rules relating to the service of documents, service under this rule of a copy of an order on a person other than a corporation shall be effected by sending the copy to him at his last known place of residence or, where he is the person to whom the attachment of earnings order is directed, as his place of business.

(4) Service under this rule of a copy of an order on a corporation shall be effected by sending the copy to it at—

(*a*) such address, if any, as the corporation may in a written request to the Court have specified for the purpose of this rule in relation to the defendant or to the class or description of persons to which he belongs, or

(*b*) the registered office of the corporation or, if the corporation has no registered office, any place where it resides or carries on business.

(5) A copy of [(**a**) Schedule 1 to the Order of 1981] shall be served with or annexed to the attachment of earnings order.

[*E.r.* 15]

Application to revive an attachment of earnings order

30.—(1) An application to revive an attachment of earnings order shall be treated as if it were an application for such an order under rule 25.

(2) A copy of the order for the revival of which the application is made shall be lodged with the application.

(3) Upon making an order under this role the original attachment of earnings order may be varied as the Court may think fit.

(**a**) Words substituted by S.R. 1981 No. 224 with effect from 1.9.81

Notice of cessation of order

31. Where an attachment of earnings order ceases to have effect by virtue of [(**a**) Article 102(7) or (8) of the Order of 1981], the notice of the cessation required by [(**a**) Article 102(9) of that Order] to be given to the person to whom the order was directed shall be given by the Master if the related maintenance order—

(*a*) was made by the High Court and is not registered in a court of summary jurisdiction under Part II of the Act of 1966, or

(*b*) was made by a court of summary jurisdiction and is registered in the High Court under the said Part II, or

(*c*) has ceased to be registered in the High Court under Part II of the Act of 1950.

[*E.r.* 16]

Discharge or variation by court of own motion

32.—(1) Subject to paragraph 5, the powers conferred by [(**a**) Article 102(1) of the Order of 1981] may be exercised by the Court of its own motion in the circumstances mentioned in the following paragraphs.

(2) Where it appears to the Court that a person served with an attachment of earnings order directed to him has not the defendant in his employment, the Court may discharge the order.

(3) Where an attachment of earnings order which has lapsed under [(**a**) Article 102(5) of the Order of 1981] is again directed to a person who appears to the Court to have the defendant in his employment, the Court may make such consequential variations in the order as it thinks fit.

(4) Where, after an attachment of earnings order has been made, it appears to the Court that the related maintenance order has ceased to have effect, whether by virtue of the terms of the maintenance order or under paragraph 2 of Schedule 3 to the Order of 1978 or otherwise, the Court may discharge or vary the attachment of earnings order.

(5) Before discharging or varying an order of its own motion under any of the foregoing paragraphs, the Court shall, unless it thinks it unnecessary in the circumstances to do so, give the defendant and the person entitled to payment under the related maintenance order an opportunity of being heard on the question whether the order should be varied or discharged, and for that purpose the Master may give them notice of a date, time and place at which the question will be considered.

[*E.r.* 18]

Application to determine whether payments are earnings

33. An application to the High Court under [(**a**) Article 105(1) of the Order of 1981] must be made by summons returnable not less than 4 days after service thereof on the person (other than the applicant) who is also entitled to make the application.

[*E.r.* 19]

Notification of making an attachment of earnings order

34.—(1) The proper officer of the court shall notify the Enforcement of Judgments Office when at attachment of earnings order has been made.

(2) The notification under paragraph (1) shall specify the amount of earnings attached under the order.

(**a**) Words substituted by S.R. 1981 No. 223 with effect from 1.9.81

ORDER 106

PROCEEDINGS RELATING TO SOLICITORS: THE SOLICITORS (NORTHERN IRELAND) ORDER 1976

Interpretation

1. In this Order—

"the Order" means the Solicitors (Northern Ireland) Order 1976(**a**) and an Article referred to by number means the Article so numbered in that order;

"Law Society" means the [(**b**)...] Law Society of Northern Ireland;

[(**c**) "the Tribunal" means the Solicitors Disciplinary Tribunal appointed under Article 43;]

[(**d**) In rules 10 to 15 "appeal" means an appeal to the High Court under Article 53(2) against an order made by the Tribunal.]

[*E.r.* 1]

[(**e**) *Jurisdiction under Part V of and Schedule 1A to the Order exercisable by a judge in chambers*

2. Any application to the High Court under Part V of or Schedule 1A to the Order may be made to a judge in chambers.]

[*E.r.* 2]

[(**f**) *Application to the Master (Taxing Office) for order for taxation*

2A.—(1) An application to the Master (Taxing Office) under Article 71F(2) shall be made by originating summons and shall be served, together with an affidavit of facts, on every other party at least 4 days before the date of hearing.

(2) An appeal shall lie to a judge in chambers from any order of the Master (Taxing Office) under the said Article 71F(2) and Order 58 rule 1 shall apply to such appeal.

Application to the Master (Taxing Office) for examination of contentious business agreement

2B.—(1) An application to the Master (Taxing Office) for the examination of a contentious business agreement under Article 66(3) or 67 shall be made in Form No.49A in Appendix A and shall be served, together with an affidavit of facts, on every other party at least 4 days before the date specified for the hearing of the application.

(2) A copy of the agreement shall be lodged in the Supreme Court Taxing Office at the time the notice of application is issued.]

Power to order solicitor to deliver cash account, etc.

3.—(1) Where the relationship of solicitor and client exists or has existed, the Court may, on the application of the client or his personal representatives, make an order for—

(*a*) the delivery by the solicitor of a cash account;

(*b*) the payment or delivery up by the solicitor of money or securities;

(**a**) S.I. 1976 No. 582 (N.I. 12), as amended by S.I. 1989/1343 (N.I. 14)
(**b**) Word deleted by S.R. 1983 No. 114 with effect from 1.6.83
(**c**) Definition as substituted by S.R. 1989 No. 498 with effect from 1.2.90
(**d**) Definition of "appeal" substituted by S.R. 1989 No. 498 with effect from 1.2.90
(**e**) Rule 2 substituted by S.R 1989 No. 498 with effect from 1.2.90
(**f**) Rules 2A and 2B inserted by S.R. 1989 No. 498 with effect from 1.2.90

(*c*) the delivery to the plaintiff of a list of the moneys or securities which the solicitor has in his possession or control on behalf of the plaintiff;

(*d*) the payment into or lodging in court of any such moneys or securities.

(2) An application for an order under this rule must be made by originating summons.

(3) If the defendant alleges that he has a claim for costs, the Court may make such order for the taxation and payment, or securing the payment thereof and the protection of the defendant's lien, if any, as the Court thinks fit.

[*E.r.* 3]

Appearance to originating summons unnecessary

4. No appearance need be entered to an originating summons under this Order.

[*E.r.* 5]

Application under rule 3 and, Schedule 1 to the Order

5.—(1) Proceedings in the High Court under rule 3 and Schedule 1 to the Order shall be assigned to the Chancery Division.

(2) The originating summons by which an application for an order under the said rule or Schedule is made must be entitled in the matter of a solicitor or a deceased solicitor, as the case may be, [(**a**)...] and in the matter of the Order;

(3) Where an order has been made under paragraph 3(1)(*b*), 9 or 15(1) of the said Schedule an application for an order under paragraph 5, 13(1) or 19 may be made by summons in the proceedings in which the first mentioned order was made.

[*E.r.* 6]

Defendants to applications under Schedule 1 to the Order

6. The defendant to an originating summons by which an application for an order under Schedule 1 to the Order is made shall be—

(*a*) if the application is for an order under paragraph 9 thereof, the solicitor or, as the case may be, every member of the firm, on whose behalf the money in respect of which the order is sought is held;

(*b*) if the application is for an order under paragraph 5 or 11 thereof, the Law Society;

(*c*) if the application is for an order under paragraph 3(1)(*b*) thereof, the person against whom the order is sought;

(*d*) if the application is for an order under paragraph 15 thereof for the re-direction of postal packets addressed to a solicitor or his firm, the solicitor or, as the case may be, every member of the firm;

(*e*) if the application is for an order under paragraph 16 thereof, the solicitor or personal representative in substitution for whom the appointment of a new trustee is sought and, if he is a co-trustee, the other trustee or trustees.

[*E.r.* 7]

Interim order restricting payment out of banking account

7. At any time after the issue of an originating summons by which an application for an order under paragraph 9 of Schedule 1 to the Order is made, the Court may, on the ex parte application of the plaintiff, make an interim order under that paragraph to have effect until the hearing of the summons and include therein a further order requiring the defendant to show cause at the hearing why an order under that paragraph should not be made.

[*E.r.* 8]

(**a**) Words omitted by S.R. 2015 No. 235 with effect from 19.05.15

Adding parties etc.

8. Without prejudice to its power under Order 15, the Court may at any stage of proceedings under Schedule 1 to the Order, order any person to be added as a party to the proceedings or to be given notice thereof.

[*E.r.* 9]

Service of documents

9.—(1) Any document required to be served on the Law Society in proceedings under this Order shall be served by sending it by prepaid post to the Secretary of the Law Society.

(2) Subject to paragraph (1) an originating summons by which an application under Schedule 1 to the Order is made, an order under paragraph 9 of that Schedule or rule 7 and any other document not required to be served personally which is to be served on a defendant to proceedings under the said Schedule shall, unless the Court otherwise directs, be deemed to be properly served by sending it by prepaid post to the defendant at his last known address.

[*E.r.* 10]

Title, service, etc. of notice of motion

10.—(1) The notice of the originating motion by which an appeal from the [(**a**) Tribunal] is brought must be entitled in the matter of a solicitor [(**b**)...] and in the matter of the Order.

(2) Unless the Court otherwise orders, the persons to be served with such notice are every party to the proceedings before the [(**a**) Tribunal] and the Law Society.

[(**c**)...]

[*E.r.* 12]

Law Society to produce certain documents

11.—(1) Within 14 days after being served with notice of the originating motion by which an appeal is brought the Law Society must lodge in the Central Office three copies of each of the following documents:—

(*a*) the order appealed against together with the statement of the [(**a**) Tribunal] findings required by Article 52;

(*b*) any document lodged by a party with the [(**a**) Tribunal] findings which is relevant to a matter in issue on the appeal; and

(*c*) the transcript of the shorthand note, or as the case may be, the copy taken by the chairman of the [(**a**) Tribunal] of the evidence in the proceedings before them.

(2) At the hearing of the appeal the Court shall direct by whom the costs incurred in complying with paragraph (1) are to be borne and may order them to be paid to the Law Society by one of the parties notwithstanding that the Law Society does not appear at the hearing.

[*E.r.* 13]

(**a**) Word substituted by S.R. 1989 No. 498 with effect from 01.02.90
(**b**) Words omitted by S.R. 2015 No. 235 with effect from 19.05.15
(**c**) Paragraph (3) revoked by S.R. 1989 No. 498 with effect from 01.02.90

ORDER 106

Restriction on requiring security for costs

12. No person other than an appellant who was the applicant in the proceedings before the [(a) Tribunal] shall be ordered to give security for the costs of an appeal.

[*E.r.* 14]

Power to require statement of [(a) *Tribunal*]

13. The Court may direct the [(a) Tribunal] to furnish the Court with a written statement of their opinion on the case which is the subject-matter of an appeal or on any question arising therein, and where such a direction is given, the secretary of the [(a) Tribunal] must, as soon as may be lodge three copies of such statement in the Central Office and at the same time send a copy to each of the parties to the appeal and the Secretary of the Law Society.

[*E.r.* 15]

Persons entitled to be heard on appeal

14. A person who has not been served with notice of the originating motion by which an appeal is brought but who desires to be heard in opposition to the appeal shall, if he appears to the Court be a proper person to be so heard, be entitled to be so heard.

[*E.r.* 16]

Discontinuance of appeal

15.—(1) An appellant may at any time discontinue his appeal by serving notice of discontinuance on the secretary of the [(a) Tribunal] and every other party to the appeal, and if the appeal has been entered, by lodging a copy of the notice in the Central Office.

(2) Where an appeal has been discontinued in accordance with paragraph (1) it shall be treated as having been dismissed with an order for payment by the appellant of the costs of and incidental to the appeal, including any costs incurred by the Law Society in complying with rule 11(1).

[*E.r.* 17]

[(b) *Appeals to the Lord Chief Justice*

16. A person who appeals to the Lord Chief Justice—

(*a*) in respect of the refusal of the Law Society to issue a certificate pursuant to Article 5(2);

(*b*) under Article 6(4) from a decision of the Law Society in respect of an application relating to regulations made under Article 6;

(*c*) under Article 14(2) from a decision of the Council of the Law Society refusing the issue of a practising certificate or imposing terms or conditions on such a certificate or subsequent certificate;

(*d*) under Article 14A(6) from a decision of the Council of the Law Society to impose terms or conditions on a practising certificate or any subsequent certificate;

(*e*) under Article 15(4) from a decision of the Council suspending a practising certificate;

(a) Word substituted by S.R. 1989 No. 498 with effect from 01.02.90
(b) Rule 16 substituted by S.R. 1989 No. 498 with effect from 01.02.90

(*f*) under Article 16(7) from a decision of the Council of the Law Society not to terminate the suspension of a practising certificate or imposing terms or conditions on such a certificate or any subsequent certificate;

(*g*) under Article 17A(2) from a decision of the Council of the Law Society refusing to issue a subsequent practising certificate freed from terms and conditions;

(*h*) under Article 29(2) from a decision of the Council of the Law Society refusing to grant its consent or as to the terms and conditions attached to such consent under paragraph (1) of that Article;

(*i*) under Article 41A(6) from a determination or direction of the Council of the Law Society;

(*j*) under Article 53(1) from an order of the Tribunal;

(*k*) under paragraph 2(1) of Schedule 1A from a decision of the Council of the Law Society to refuse an application for recognition of a body corporate; or

(*l*) under paragraph 2(3) of Schedule 1A from a decision of the Council to revoke the recognition of a body corporate

shall lodge in the Central Office—

(i) a petition under the hand or seal of the applicant praying for the appropriate relief and setting out the circumstances in which the application is made and' the matters of fact upon which the applicant relies in support of his application; and

(ii) an affidavit verifying the facts stated in the petition;

and shall within 2 days after lodging the said document in the Central Office lodge copies thereof at the Law Society's Office.]

Complaints to the Lord Chief Justice

17.—(1) A complaint to the Lord Chief Justice under Article 20 (which relates to a solicitor practising without a certificate) or under Article 27(1) (which relates to a solicitor acting as agent for an unqualified person) must be made by originating summons grounded on an affidavit setting out the nature of the complaint, the circumstances in which that complaint arose and the matters of fact upon which the complainant relies.

(2) The summons and a copy of the grounding affidavit must be served on the solicitor against whom the complaint is made and on the Law Society at least 14 days before the date of hearing.

ORDER 107

COMMISSIONERS FOR OATHS AND NOTARIES PUBLIC

I. GENERAL

Interpretation

1. In this Order—

[(**a**) "district" means a local government district within the meaning of Article 2 of and Schedule 1 to the Local Government (Boundaries) Order (Northern Ireland) 2012(**b**)] and any order made thereunder.

"Principal Secretary" means the Principal Secretary to the Lord Chief Justice.

II. COMMISSIONERS FOR OATHS

Application for appointment

2.—(1) An application for appointment as a commissioner for oaths shall be made by sending to the Principal Secretary a memorial in Form No.50 in Appendix A, together with two certificates in Form No. 51 in Appendix A, signed respectively by—

(*a*) at least 6 solicitors practising in the district for which the appointment is sought, and

(*b*) [(**c**) District Judges (Magistrates' Courts)], traders and residents in such district.

(2) The applicant shall send a copy of his memorial to every commissioner for oaths for such district.

[(**d**) (3) Service under paragraph (2) shall be proved by an affidavit of service exhibiting a certificate of posting by recorded delivery service.]

Objection to appointment

3. A commissioner for oaths for the district to which the application relates may object to the appointment sought in a letter to the Principal Secretary, setting forth the grounds of his objection and, before making any appointment, the Lord Chief Justice shall have regard to any such objection.

Other considerations affecting appointment

4. The Lord Chief Justice shall in any case, before making any appointment, have regard to—

(*a*) the population of the district to which the application relates,

(*b*) the number of commissioners for oaths already in office for such district, and

(*c*) any other circumstances which he considers to be relevant.

Warrant of appointment

5.—(1) A warrant of appointment as a commissioner for oaths shall be in Form No. 52 in Appendix A hereto, and shall issue from the Lord Chief Justice's Office.

(2) A person appointed a commissioner for oaths shall not enter upon the duties of his office until his warrant of appointment has issued.

(**a**) Words substituted by S.R. 2016 No. 299 with effect from 31.10.16
(**b**) S.R. 2012 No. 421
(**c**) Word substituted by S.R. 2014 No. 220 with effect from 05.09.14
(**d**) Paragraph (3) added by S.R. 1992 No. 399 with effect from 01.11.92

ORDER 107

Conditions of appointment

6. Subject to the right of the Lord Chief Justice to specify the conditions, territory, duration or purpose of an appointment in a particular case, appointment as a commissioner for oaths shall be made in accordance with the following rules in this Part.

Revocation and variation of appointment

7.—(1) The Lord Chief Justice may at any time revoke the appointment of a commissioner for oaths or vary the conditions or limits of any such appointment.

(2) A commissioner for oaths shall be informed forthwith in writing by the Principal Secretary of any revocation or variation of his appointment.

Solicitors and clerks of petty sessions

8.—(1) A solicitor already in office as a commissioner for oaths who does not hold a current practising certificate shall cease to be a commissioner for oaths.

(2) A clerk of petty sessions who is a commissioner for oaths shall, on ceasing to act as clerk of petty sessions for a district specified in his warrant of appointment, cease to be a commissioner for oaths for that district.

(3) A clerk of petty sessions in office as a commissioner for oaths at the time of his appointment to another district may apply to the Lord Chief Justice for the issue of a new warrant of appointment entitling him to act as a commissioner for oaths for that district.

(4) Such application shall be made by letter addressed to the Principal Secretary.

III. Notaries Public

Application for appointment

9.—(1) An application for appointment as a notary public shall be made by sending to the Principal Secretary a memorial in Form No. 53 in Appendix A, together with a certificate in Form No. 54 in Appendix A hereto, signed by [(**a**) District Judges (Magistrates' Courts)], traders and residents in a district in which the applicant carries on practice.

(2) The applicant shall send a copy of his memorial to every notary public practising in Northern Ireland.

[(**b**)(3) Service under paragraph (2) shall be proved by an affidavit of service exhibiting a certificate of posting by recorded delivery service.]

Objection to appointment

10. A notary public practising in Northern Ireland may object to the appointment sought in a letter to the Principal Secretary, setting forth the grounds of his objection and, before making any appointment, the Lord Chief Justice shall have regard to any such objection.

Other considerations affecting appointment

11. The Lord Chief Justice shall in any case, before making any appointment, have regard to—

(**a**) Word substituted by S.R. 2014 No. 220 with effect from 05.09.14
(**b**) Paragraph (3) added by S.R. 1992 No. 399 with effect from 1.11.92

(*a*) the number of notaries public already practising in Northern Ireland, and

(*b*) any other circumstances which he considers to be relevant.

Warrant of appointment

12.—(1) A warrant of appointment as a notary public shall be in Form No. 55 in Appendix A hereto, and shall issue from the Lord Chief Justice's Office.

(2) A person appointed a notary public shall not enter upon the duties of his office until his warrant of appointed has issued.

Conditions of appointment

13. Subject to the right of the Lord Chief Justice to specify the conditions, territory, duration or purpose of an appointment in a particular case, appointment as a notary public shall be made in accordance with the following rules in this Part.

Qualification

14. A notary public must be a practising solicitor of at least 6 years' standing.

Extent of appointment

15.—(1) A notary public may exercise his notarial functions anywhere in Northern Ireland.

(2) Notwithstanding any territorial limitation imposed by the terms of his appointment, paragraph (1) shall apply to any notary public who is in practice as such at the date of the commencement of this Order.

Revocation and variation of appointment

16.—(1) The Lord Chief Justice may at any time revoke the appointment of a notary public or vary the conditions or limits of any such appointment.

(2) A notary public shall forthwith be informed in writing by the Principal Secretary of any revocation of his appointment.

Solicitor ceasing to practise

17. A solicitor who ceases to practise as a solicitor shall cease to be a notary public.

ORDER 108
COURT BONDS

Application

1. This Order applies to bonds given for the purposes of any proceedings in the High Court or the Court of Appeal.

Persons to whom bonds may be given

2. Bonds may be given to any master by his official title.

Approval surety companies

3. Bonds may be given by any of the surety companies listed in the Schedule hereto.

Form of bond

4. A bond shall be in Form No. 58 in Appendix A with such variations and additions as may be approved by the master to whom it is given.

SCHEDULE
APPROVED SURETY COMPANIES

Bank of Ireland
Commercial Union Assurance Company Limited
Eagle Star Insurance Company Limited
Guardian, Royal Exchange Assurance Limited
[(**a**) Legal and General Insurance Limited]
[(**b**) London and Edinburgh Insurance Company Limited]
Norwich Union Fire Insurance Society Limited
Phoenix Assurance Company Limited
Provincial Insurance Company Limited
[(**c**) Royal Insurance (U.K.) Limited]
Scottish Union Insurance Company Limited
The Century Insurance Company Limited
The Insurance Corporation of Ireland Limited
[(**d**)...]
[(**e**)...]
The Prudential Assurance Company Limited
The Sun Alliance & London Insurance Limited
The Guarantee Society Limited

(a) Words substituted by S.R. 1993 No. 143 with effect from 19.4.93
(b) Words inserted by S.R. 1997 No. 543 with effect from 20.4.98
(c) Words substituted by S.R. 1981 No. 224 with effect from 01.9.81
(d) Reference to The Liverpool London & Globe Insurance Company Limited deleted by S.R. 1981 No. 224 with effect from 1.9.81
(e) Reference to The London & Lancashire Insurance Company Limited deleted by S.R. 1981 No. 224 with effect from 01.9.81

[(a) ORDER 109

PATIENTS' AFFAIRS

PART I

PRELIMINARY

Interpretation and application

1.—(1) In this Order, unless the context otherwise requires—

"the Act" means the Judicature (Northern Ireland) Act 1978(**b**);

"controller" means controller appointed under Article 101(1) of the Order;

"entered" means entered in the [(**c**) records] of the Office of Care and Protection;

"filed" means filed in the Office;

"judge" means the judge for the time being to whom the business of the Family Division is assigned under section 17 of the Act and any judge of the High Court exercising jurisdiction in matters relating to patients;

"Master" means the Master (Care and Protection) or other statutory officer acting under section 74(3) of the Act;

"the Office" means the Office of Care and Protection;

"officer of the Court" means an officer of the Office of Care and Protection;

"order" includes a certificate, direction or authority under seal;

"the Order" means the Mental Health (Northern Ireland) Order 1986(**d**);

"patient" includes a person who is alleged to be or who the Court has reason to believe may be incapable by reason of mental disorder of managing and administering his property and affairs;

"seal" means an official seal of the Office of Care and Protection and "sealed" shall be construed accordingly;

"stock" includes shares and also any fund, annuity or security transferable in the books kept by any body corporate or unincorporated company or society, or by an instrument of transfer either alone or accompanied by other formalities and "dividends" shall be construed accordingly;

"Visitor" means one of the Lord Chief Justice's Visitors appointed under Article 104 of the Order.

(2) Where any discretion, power or other function is (in whatever words) expressed by this Order to be exerciseable by "the Court" then subject to the provisions of the Order, that discretion, power or other function may be exercised—

(*a*) by the judge;

(*b*) by the Master.

(3) In this Order a form referred to by number means the form so numbered in Appendix D or a form to the like effect with such variations as the circumstances may require or the Court may approve.

(4) This Order applies to matters in relation to the property and affairs of patients, and the other provisions of these Rules apply to those matters subject to the provisions of this Order.

[*Court of Protection Rules 1984, r.2*]

(a) Order added by S.R. 1986 No. 184 with effect from 31.7.86
(b) 1978 c. 23
(c) Word substituted by S.R. 1995 No. 462 with effect from 9.1.96
(d) S.I. 1986/595 (N.I. 4)

PART II

EXERCISE OF JURISDICTION

Exercise of jurisdiction

2. Except where this Order otherwise provides the jurisdiction of the Court may be exercised—

(*a*) without fixing an appointment for a hearing;

(*b*) by the Court of its own motion or at the instance or on the application of any person interested;

(*c*) whether or not any proceedings have been commenced in the Court with respect to the patient.

[*E.r.* 5]

PART III

APPLICATIONS

Notification to the Office under Article 107 of the Order

3. A notification to the Office under Article 107 of the Order shall be in Form 1 and shall be sent to the Office within 14 days from the first ascertainment of the incapacity of the person concerned.

Forms of application

4.—(1) Subject to the following provisions of this rule, a first application to the Court for the appointment of a controller shall be in Form 2 and an application to the Court respecting the exercise of any of its other jurisdiction in relation to a patient may be by letter unless the Court directs that a formal application shall be made, in which case it shall be made in Form 3.

(2) On grounds of urgency the Court may dispense with the need for an application in writing.

(3) An application relating to the committal of a person for contempt of court shall be made to a judge by motion.

[*E.r.* 6]

Short procedure

5.—(1) Without prejudice to the generality of rule 2, if it appears to the Court that—

(*a*) the property of the patient does not exceed [(a) £20,000] in value; or

(*b*) it is otherwise appropriate to proceed under this rule,

and that it is not necessary to appoint a controller for the patient, the Court may make an order under this rule whether or not an application has been made for the appointment of a controller for the patient.

(2) An order under this rule is an order directing an officer of the Court or some other suitable person named in the order to deal with the patient's property, or any part thereof, or with his affairs, in any manner authorised by the Order and specified in the order.

[*E.r.* 7]

(a) Figure substituted by S.R. 2013 No. 202 with effect from 05.09.13

Date for hearing

6.—(1) Upon receiving an application under rule 4 the Court shall fix a date for the hearing of the application unless it considers that the application can properly be dealt with without a hearing, and upon the same ground the Court may cancel any hearing fixed under this paragraph.

(2) Where a hearing is fixed under paragraph (1) an officer of the Court shall endorse the date and time thereof on the application form, shall seal it and shall retain a copy.

[*E.r.* 8]

Consolidation of proceedings

7. The Court may allow one application to be made in respect of two or more patients or may consolidate applications relating to two or more patients, if in the opinion of the Court the proceedings relating to them can be more conveniently dealt with together.

[*E.r.* 9]

Power to direct application by officer of Court or Official Solicitor

8. Where in the opinion of the court an application ought to be made for the appointment or discharge of a controller or for the exercise of any other power conferred on the Court with respect to the property and affairs of the patient, and there appears to the Court to be no other suitable person able and willing to make the application, or the Court for any other reason thinks fit, the Court may direct that the application be made by an officer of the Court or, if he consents, by the Official Solicitor.

[*E.r.* 10]

Representation of patient by controller

9.—(1) An application on behalf of a patient for whom a controller has been appointed shall, unless the Court otherwise directs, be made by the controller in his own name.

(2) Subject to any directions given by the Court, a patient for whom a controller has been appointed may be represented by the controller at any hearing relating to the patient or of which the patient has been given notice.

[*E.r.* 11]

Representation of patient by Official Solicitor

10. Where in any proceedings the Court considers that the interests of a patient for whom a controller has been appointed are not adequately represented by the Controller, the Court may, if he consents, direct that the Official Solicitor shall act as solicitor for the patient either generally in the proceedings or for any particular purpose connected with the proceedings, so, however, that it shall not be necessary to appoint the Official Solicitor to be controller or guardian ad litem for the patient.

[*E.r.* 12]

Persons under disability

11.—(1) In this rule "person under disability" means a minor or a patient for whom no controller has been appointed.

(2) A person under disability shall not make an application in proceedings relating to another person except by his next friend and shall not resist, or attend the hearing of, an application in any such proceedings except by his guardian ad litem.

(3) Where a person is to be appointed next friend or guardian ad litem of a person under disability in substitution for the person previously acting as next friend or

guardian ad litem, the appointment shall be made by the Court but, except as aforesaid, an order of the Court appointing a next friend or guardian ad litem of a person under disability shall not be necessary.

(4) Before the name of any peron is used in any proceedings as next friend or guardian ad litem of a person under disability there shall be filed—

(*a*) a written consent of the first-mentioned person to act as next friend or guardian ad litem, as the case may be, of the person under diability in the proceedings, and

(*b*) a certificate by the solicitor acting for the person under disability certifying—

(i) that he knows or believes that the person to whom the certificate relates is a minor or patient giving (in the case of a patient) the grounds of his knowledge or belief, and

(ii) except where the person named in the certificate as next friend or guardian ad litem is the Official Solicitor, that the person so named has no interest in the proceedings adverse to that of the person under disability.

[*E.r.* 13]

Application under section 35(9) of the Trustee Act (Northern Ireland) 1958

12. No application may be made to the Court under section 35(9) of the Trustee Act (Northern Ireland) 1958(**a**) for leave to appoint a new trustee in place of a patient unless the person intending to make the appointment is an applicant.

[*E.r.* 15]

Application under Article 99(1)(k) of the Order

13. An application to the Court under Article 99(1)(*k*) of the Order for the exercise of any power vested in a patient of appointing trustees or retiring from a trust may be made only by—

(*a*) the controller for the patient, or

(*b*) any person who has made an application for the appointment of a controller which has not yet been determined, or

(*c*) a continuing trustee, or

(*d*) any other person who, according to the practice of the Chancery Division, would have been entitled to make the application if it had been made to that Division.

[*E.r.* 16]

Application for settlement or gift of patient's property or for execution of will of patient

14. An application under Article 99(1)(*d*) of the Order for an order for the settlement or gift of any property of a patient, or an application under Article 99(1)(*e*) of the Order for an order for execution for a patient of a will, may be made only by—

(*a*) the controller for the patient, or

(*b*) any person who has made an application for the appointment of a controller which has not yet been determined, or

(*c*) any person, who under any known will of the patient or under his intestacy, may become entitled to any property of the patient or any interest therein, or

(*d*) any person for whom the patient might be expected to provide if he were not mentally disordered, or

(*e*) any other person whom the Court may authorise to make it.

[*E.r.* 17]

(**a**) 1958 c. 23 (N.I.)

PART IV

SERVICE

Notice of hearing

15.—(1) Except where this Order otherwise provides or the Court otherwise directs the applicant shall give notice of the hearing of an application in accordance with the following provisions of this rule.

(2) Where a controller has been appointed for a patient he shall, unless he is the applicant, be given notice of the hearing of any application relating to the patient.

(3) Where the application is one to which rule 13 above relates notice of the hearing of the application shall also be given to every person who, according to the practice of the Chancery Division, would have been required to be served with the summons if the application had been made to the Chancery Division.

(4) Notice of the hearing of the application shall also be given to such other persons who appear to the Court to be interested as the Court may specify.

(5) Notice of a hearing shall be given—

(*a*) in the case of a first application for the appointment of a controller, or an application under rule 12, not less then ten clear days, and

(*b*) in the case of any other application, not less than two clear days

before the date fixed for the hearing.

(6) For the purposes of this rule notice of a hearing is given if a copy of the sealed application form is served on the person concerned.

[*E.r.* 18]

Mode of service

16. Except where this Order otherwise provides any document required by this Order to be served on any person shall be served by delivering it to him personally or, if any particular case or class of case the Court so directs, by sending it to him at his last known address.

[*E.r.* 19]

Service on solicitor

17. Where a solicitor for the person to be served with any document endorses on the document or a copy of it a statement that he accepts service on behalf of that person, the document shall be deemed to have been duly served on that person and to have been served on the date on which the endorsement was made.

[*E.r.* 20]

Substituted service

18. Where it appears to the Court that it is impracticable for any reason to serve a document in accordance with rule 16, the Court may make an order for substituted service of the document by taking such steps as the Court may direct to bring it to the notice of the person to be served.

[*E.r.* 21]

Service on person under disability

19.—(1) Unless the Court otherwise directs, any document required by this Order to be served on a person who is a minor or patient (in this rule referred to as a person under disability) shall be served—

(*a*) in the case of a minor who is not also a patient, on his parent or guardian or, if he has no parent or guardian, on the person with whom he resides or in whose care he is;

and must be served in the manner required by this Order.

(2) Notwithstanding anything in the foregoing paragraph, the Court may order that any document which has been served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(3) Nothing in this rule shall apply to an order required by rule 38 to be served on a patient.

[*E.r.* 22]

Notification of application for appointment of controller, etc.

20.—(1) Subject to paragraph (2) below, where—

(*a*) a first application is made for the appointment of a controller for a patient or for an order authorising a person to do any act or carry out any transaction on behalf of a patient without appointing him controller, or

(*b*) the Court proposes to make an order with respect to a patient's property under rule 5;

the patient shall be notified in such manner as the court may direct.

(2) The Court may at any time direct that no specific notification shall be given if it is satisfied that—

(*a*) the patient is incapable of understanding it, or

(*b*) such notification would be injurious to the patient's health, or

(*c*) for any other reason notification ought to be dispensed with.

(3) Where notification has been dispensed with under paragraph (2) above and the patient is in Northern Ireland, a Visitor shall, if so requested by the Court, visit him and report to the Court as to his condition and welfare.

(4) Where the patient is a minor, notification under paragraph (1) of this rule shall be given, whether or not notification to the patient is dispensed with under paragraph (2) and unless the Court otherwise directs, to his parent or guardian or, if he has no parent or guardian, to the person with whom he resides or in whose care he is.

[*E.r.* 23]

Certificate of service or notification

21.—(1) Subject to paragraph (2) below and unless the Court otherwise directs, a certificate of service showing where, when, how and by whom service was effected shall be filed as soon as practicable after service of a document has been effected in accordance with this Order.

(2) The Court may if it thinks fit order that instead of, or in addition to, a certificate of service, an affidavit of service shall be filed.

(3) The provisions of paragraphs (1) and (2) of this rule shall apply to the giving of notification under rule 20 as they apply to the service of documents and references in paragraphs (1) and (2) to service and the effecting of service shall accordingly be construed as including references to notification and the giving of notification respectively.

[*E.r.* 24]

PART V

EVIDENCE

Affidavit evidence

22. Except where this Order provides, evidence in proceedings under this Order shall be given by affidavit.

[*E.r.* 25]

Unsworn evidence

23.—(1) Notwithstanding rule 22, the Court may accept and act upon a statement of facts or such other evidence, whether oral or written, as the Court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule.

(2) The Court may give directions as to the manner in which a statement of facts or other written evidence under paragraph (1) above is to be given but subject to such directions any such statement or other evidence shall—

(*a*) be drawn up in numbered paragraphs and dated; and

(*b*) be signed by the person by whom it is made or given.

[*E.r.* 26]

Written questions to Visitors

24.—(1) Where a Visitor's report, or information contained in such a report, has been disclosed to any person in pursuance of Article 105(8) of the Order, the Court may, on the application of any person who appears to the Court to be interested, give leave for written questions relevant to the issues before the Court to be put to the Visitor by whom the report was made.

(2) The questions sought to be put to the Visitor shall be submitted to the Court, which may put them to the Visitor with such amendments, if any, as it thinks fit and the Visitor shall give his replies in writing to the questions so put.

(3) The Court may disclose the replies given by a Visitor under this rule to any person who appears to the Court to be interested, or to his legal or medical adviser, on such conditions, if any, as it thinks fit.

[*E.r.* 27]

Cross-examination of deponent

25. Any person who has made an affidavit or given a certificate or other written evidence for use in proceedings under this Order may be ordered by the Court to attend for cross-examination.

[*E.r.* 28]

Administration of oaths

26. The Court may direct that an oath be administered to any witness or interpreter in any proceedings before the Court.

[*E.r.* 29]

Filing of written evidence

27.—(1) Before an affidavit, certificate or other written evidence is used in any proceedings under this Order it shall be filed but the Court may make an Order on the basis of such evidence before it is filed if the person tendering it undertakes to file it before the order is drawn up.

(2) There shall be endorsed on every affidavit, certificate or other written evidence the name and address of the solicitor, if any, for the person on whose behalf it is filed.

[*E.r.* 30]

Use of evidence in subsequent proceedings

28.—(1) Except where the Court otherwise directs, evidence which has been used in any proceedings related to a patient may be used at any subsequent stage of those proceedings or in any other proceedings relating to the same patient or to another member of the patient's family.

(2) Without prejudice to paragraph (1) above, the Master may, upon application being made for the purpose, authorise the use of any such evidence in any legal proceedings that the Master may specify.

[*E.r.* 31]

Evidence to be filed on a first application for controller, etc.

29.—(1) On the issue of a first application for the appointment of a controller for a patient or for an order authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him controller, the applicant shall, unless the Court otherwise directs, file a medical certificate and evidence of family and property.

(2) In this rule—

"a medical certificate" means a certificate by a medical practitioner that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs; and

"evidence of family and property" means a certificate or, if the Court so orders in a particular case, an affidavit, giving particulars of the patient's relatives, property and affairs and of the circumstances giving rise to the application.

(3) Rule 23(2) above applies to unsworn evidence of family and property as it applies to unsworn evidence generally.

[*E.r.* 32]

Evidence of patient's death or recovery

30. Where at any stage of proceedings relating to a patient the Court has reason to believe that the patient has died or recovered, the Court may require evidence of the death or recovery to be furnished by such person as the Court thinks appropriate.

[*E.r.* 33]

Consent to act as trustee

31. Where in any proceedings it is proposed to appoint a person to act as trustee, a written consent in Form 4 signed by him and verified by some other person shall be evidence of his consent so to act, but no such consent shall be required where the person to be appointed is an applicant in the proceedings or the proceedings are brought under section 35(9) of the Trustee Act (Northern Ireland) 1958.

[*E.r.* 34]

Proof of amount due to public authority

32. The amount due to any public authority for the past maintenance of a patient may, unless the Court otherwise directs, be proved by the filing of an account certified under the hand of the proper officer of the authority.

[*E.r.* 35]

PART VI

HEARING OF PROCEEDINGS

Applications to be heard in Chambers

33. Every application shall be heard in chambers unless, in the case of an application for hearing by the judge, the judge otherwise directs.

[*E.r.* 36]

Persons attending hearing

34. The Court may determine what persons are to be entitled to attend at any stage of the proceedings relating to a patient.

[*E.r.* 37]

Representation at hearing

35. Where two or more persons appearing at a hearing are represented by the same legal representative, the Court may, if it thinks fit, require any of them to be separately represented.

[*E.r.* 38]

Reference of proceedings to judge

36. The Master shall, after giving such directions as he thinks fit, refer to the judge any proceedings or any question arising in any proceedings which ought by virtue of any enactment or in the opinion of the Master, to be considered by the judge.

[*E.r.* 39]

Reference of proceedings to Master

37. The judge may refer any proceedings before him or any question arising therein to the Master for inquiry and report.

[*E.r.* 40]

PART VII

CONTROLLERS

Interim provision

38.—(1) Where in the opinion of the Court it is necessary to make immediate provision in relation to the property and affairs of a patient for any of the matters referred to in Article 98(1) of the Order, the court may—

(*a*) by certificate direct or authorise any person named therein to do any act or carry out any transaction specified in the certificate; or

(*b*) by order appoint a controller ad interim for the patient and, subject to any direction given by the Court, such appointment shall continue until further order.

(2) An order appointing a controller ad interim shall, unless the Court otherwise directs, be served upon the patient within such time as the order may specify and the patient may, within such further time as the order may specify, apply under rule 50 for the reconsideration of the order by the Court or, if the order was made by a judge, apply to have the order set aside.

[*E.r.* 41]

Remuneration of controller

39.—(1) Where a controller is appointed for a patient, the Court may, during the control, allow the controller remuneration for his services at such amount or at such

rate as the Court considers reasonable and proper and any remuneration so allowed shall constitute a debt due to the controller from the patient and his estate.

(2) No request by a controller to have the sum payable for his remuneration fixed after the death or recovery of the patient shall be entertained unless the Court has during the control directed that remuneration be allowed and the request is made within six years from the date of the controller's discharge.

[*E.r.* 42]

Appointment of controllers with survivorship

40. Where in the opinion of the Court two or more persons ought to be appointed controllers for the same patient and one or more of them ought to continue to act after the death or discharge of any of the others, the Court may when appointing them controllers direct that the control shall continue in favour of the surviving or continuing controller or controllers.

[*E.r.* 43]

PART VIII

ENTRY OF ORDERS

Sealing and filing of orders

41. Every order, certificate, direction or authority of the Court which is drawn up shall, when entered, be sealed and filed.

[*E.r.* 44]

Entry of orders after notification to patient

42.—(1) Where—

(*a*) an order is made on a first application appointing a controller for a patient or directing or authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him controller, or

(*b*) an order with respect to a patient's property is made under rule 5,

the order shall not be entered until the expiration of ten clear days after the patient has been notified in accordance with rule 20(1) unless such notification is dispensed with.

(2) Nothing in paragraph (1) above shall prevent the entry of an interim order for the protection of a patient's property or for the application of a patient's property for his benefit.

[*E.r.* 45]

PART IX

SUMMONSES AND ORDERS FOR ATTENDANCE OF WITNESSES AND OTHER PERSONS

Summoning of witnesses

43.—(1) In any proceedings under this Order the Court may allow or direct any party or the Official Solicitor to take out a witness summons in Form 5 requiring the person named therein to attend before the Court and give oral evidence or produce any document.

(2) An application by a person to be allowed to take out a witness summons shall be made by filing a statement giving—

(*a*) the name and address of the person making the application and of his solicitor, if any;

(*b*) the name, address and occupation of the proposed witness;

(*c*) particulars of any document which the proposed witness is to be required to produce; and

(*d*) the grounds on which the application is made.

(3) A witness summons shall be served on the witness personally a reasonable time before the day fixed for his attendance, and he shall be entitled to the like conduct money and payment for expenses and loss of time as if he had been summoned to attend the trial of an action in the High Court.

[*E.r.* 47]

Powers of Court where undue delay, etc.

44.—(1) If the Court is dissatisfied with the conduct of any proceedings or the carrying out of any order or direction of the Court whether by reason of undue delay or otherwise, the Court may require the person having the conduct of the proceedings, or any other person appearing to be responsible, to explain the delay or other cause of dissatisfaction, and may thereupon make such order for expediting the proceedings or otherwise as may be appropriate.

(2) For the purpose of the last foregoing paragraph the Court may direct any person to make any application and to conduct any proceedings and carry out any directions which the Court may specify; and the Court may, if it thinks fit, and if he consents, appoint the Official Solicitor to act as solicitor for the patient in the proceedings in the place of any solicitor previously acting for him.

[*E.r.* 48]

Order for examination of patient

45. In any proceedings relating to a patient a judge or the Master may make an order for the patient's attendance at such time and place as he may direct for examination by the Master, a Visitor or any medical practitioner.

[*E.r.* 49]

PART X

AMENDMENT

Amendment of application

46.—(1) The Court may allow or direct an applicant, at any stage of the proceedings, to amend his application in such manner and on such terms as to costs or otherwise as may be just.

(2) The amendment may be effected by making in writing the necessary alterations of the application, but if the amendments are so numerous or of such a nature or length that written alterations would make it difficult or inconvenient to read, a fresh application amended as authorised or directed may be issued.

[*E.r.* 50]

Clerical mistakes and slips

47. The Court may at any time correct any clerical mistakes in an order or any error arising in an order from any accidental slip or omission.

[*E.r.* 51]

Endorsement of amendment

48. Where an application or order has been amended under rule 46 or 47, a note shall be placed on it showing the date on which it was amended and the alteration shall be sealed.

[*E.r.* 52]

PART XI

APPEALS

Appeal from Master

49.—(1) Subject to rule 50, any person aggrieved by an order or decision of the Master may, within eight days from the date of entry of the order or, as the case may be, from the date of the decision, appeal therefrom to the judge.

(2) The appellant shall, within the said period of eight days—

(*a*) serve a notice of appeal in Form 6 on—

(i) every person who is directly affected by the appeal, being a person who appeared, or was represented before, the Court when the order or decision was made or given, and

(ii) any other person whom the Court may direct; and

(*b*) leave a copy of the notice at the Office.

(3) The time and place at which the appeal is to be heard shall be fixed by the Office in consultation with the judge, and the Office shall cause notice of the time and place so fixed to be sent to the appellant who shall forthwith send notice thereof to every person who has been served with notice of the appeal.

(4) No further evidence shall be filed in support of or in opposition to the appeal without leave of the Court.

[*E.r.* 53]

Appeal from order not made on appointment for a hearing

50.—(1) No appeal shall lie—

(*a*) from any order or decision of the Court which is not made or given on an appointment for a hearing; or

(*b*) at the instance of a patient from any order of the Court appointing a controller ad interim for the patient,

except in accordance with the following provisions of this rule.

(2) Any person who is aggrieved by such an order as is mentioned in paragraph (1)(*a*), or a patient who is aggrieved by such an order as is mentioned in paragraph (1)(*b*), may apply to the Court to reconsider the order or decision, and the Office shall fix an appointment for a hearing.

(3) No further evidence shall be filed in support of or in opposition to the application without the leave of the Court.

(4) On the hearing of the application the Court may either confirm or revoke its previous order or decision to make or give any other order or decision which it thinks fit.

(5) Any person aggrieved by any order or decision made or given on the hearing of the application may appeal therefrom to the judge in accordance with rule 49.

[*E.r.* 54]

PART XII

SECURITY

Controller to give security

51.—(1) Where an order is made appointing a person other than the Official Solicitor as controller for a patient—

(*a*) the person appointed shall, unless the Court otherwise directs, give such security for the due performance of his duties as the Court may approve and shall give it before acting as controller unless the Court allows it to be given subsequently; and

(*b*) the order shall not be entered until the person appointed has given to the satisfaction of the Court any security required to be given by him before acting.

(2) The Court may from time to time vary any security required.

[*E.r.* 55]

Manner of giving security

52.—(1) Subject to any directions of the Court, security may be given in any of the following ways or partly in one of those ways and partly in another—

(*a*) by a bond approved by the Court and given by the person giving security and also by—

(i) an insurance company, group of underwriters or bank approved by the Court; or

(ii) with the approval of the Court, two personal sureties; or

(*b*) by lodging in court a sufficient sum of money or stock; or

(*c*) in such other manner as the Court may approve.

(2) A person desiring to give security in whole or in part by lodging money or stock in court shall file a form of request in Form 7 and the Court may thereupon give leave to make the lodgment and direct how any such money is to be invested and how any dividends are to be applied.

[*E.r.* 56]

Lodgment of Security

53. Any security given by lodgment of money or stock shall be dealt with in accordance with the terms of the request filed when the lodgment was made.

[*E.r.* 57]

Discharge of security where new security given

54. Where a controller is authorised or directed to give new security, and—

(*a*) the new security has been completed, and

(*b*) he has paid or secured to the satisfaction of the Court any balance due from him

the former security shall, unless the Court otherwise directs, be discharged.

[*E.r.* 58]

Maintenance of security by bond

55. Every person who has given security by a bond shall, whenever his accounts are passed or the Court so directs, satisfy the Court—

(*a*) that any premiums payable in respect of the bond have been duly paid, or

(*b*) if the bond was given by personal sureties that each surety is living and within the jurisdiction and has neither been adjudicated bankrupt nor compounded with his creditors

and, if the Court is not so satisfied, it may require new security to be given or may give such other directions as it thinks fit.

[*E.r.* 59]

PART XIII

ACCOUNTS

Passing of accounts

56.—(1) Every controller shall annually, or at such other intervals as the Court may direct, deliver his accounts to the Office and attend at or within such time as the Office may appoint to have the accounts taken and passed.

(2) On the passing of any accounts the Court shall make all proper allowances out of the patient's estate, including an allowance in respect of the reasonable and proper costs of the controller of passing the accounts and of any other person allowed to attend.

(3) The Court may, if it thinks fit, direct that a controller need not account under this rule or may dispense with the passing of any accounts at any time at which they would otherwise require to be passed.

[*E.r.* 60]

Application of balance due from controller

57. The balance found due from a controller on the passing of his accounts or so much thereof as the Court may direct, shall—

(*a*) be paid by the controller into court to the credit of the proceedings and invested in such manner as the Court may direct, or

(*b*) be invested or otherwise dealt with by the controller in such manner as the Court may direct.

[*E.r.* 61]

Default of controller

58. Where a controller fails to comply with rule 56 or fails to pay into court or invest or otherwise deal with any money in accordance with any direction of the Court, the Court may disallow any remuneration which would otherwise be due to the controller and, if he has made default in paying into court or investing or otherwise dealing with any money, may charge him with interest thereon at such rate as the Court may fix, for the period of his default.

[*E.r.* 62]

Payment of maintenance and costs

59. Unless otherwise directed, any money ordered to be paid by a controller for maintenance shall be paid out of income and any costs ordered to be paid by a controller may, when taxed or measured, be paid out of any moneys coming into his hands, after providing for any maintenance payable under this Order and fees payable under an Order made under section 116(1) of the Act.

[*E.r.* 63]

Final accounts

60.—(1) On the discharge or death of a controller or on the death or recovery of a patient for whom a controller has been appointed, the Court shall take and pass the accounts of the controller from the foot of his last account or, if no account of his has previously been passed, from the date of his appointment, unless in the opinion of the Court the taking and passing of such accounts may properly be dispensed with.

(2) If a balance is found due from the controller or his estate, he or his personal representatives, as the case may be, shall pay into court or otherwise deal with it as the Court may direct.

(3) If a balance is found due to the controller or his estate, it shall be paid to him or his personal representatives, as the case may be, by the patient or out of the patient's estate.

(4) On payment of any balance found due from the controller, or if no balance is found due from him or the passing of his accounts has been dispensed with under paragraph (1) above, the security of the controller shall, unless the Court otherwise directs, be discharged.

[*E.r.* 64]

Accounting by other persons

61. Rules 56 to 60 shall also apply, to the extent directed by the Court, to any person who is—

(*a*) directed to deal with the patient's property or affairs under rule 5;

(*b*) directed or authorised to act under rule 38(1)(*a*); or

(*c*) appointed a controller ad interim under rule 38(1)(*b*),

as they apply to a controller.

[*E.r.* 65]

PART XIV

INQUIRIES

Inquiries as to desirability of appointment of controller, etc.

62.—(1) Where the Court has reason to believe that a controller should be appointed for a patient or that any other power conferred on the Court should be exercised with respect to the property and affairs of a patient, the court may direct—

(*a*) an officer of the Court or a Visitor or, if he consents, the Official Solicitor to make inquiries and report to the Court whether it is desirable in the interests of the patient that an application should be made for that purpose; or

(*b*) a Medical Visitor to visit the patient and report to the Court on the capacity of the patient to manage and administer his property and affairs.

(2) On receiving any report pursuant to paragraph (1) above, the Court may, if it thinks fit—

(*a*) direct an application to be made pursuant to rule 8; or

(*b*) if the report is by a Medical Visitor and the Court is satisfied that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs, make an order appointing a controller or exercising any other power conferred on the Court with respect to the patient's property and affairs.

[*E.r.* 66]

Inspection of patient's property

63. For the purpose of any proceedings relating to the property of a patient, the Court may if it thinks fit, inspect the property or direct an officer of the Court or, if he consents, the Official Solicitor to inspect the property, make any necessary inquiries and report to the Court.

[*E.r. 67]*

Inquiries as to prior dealing with the patient's property

64. In any proceedings relating to a patient the Court may make or cause to be made such inquiries as it thinks fit as to any dealing with the patient's property before

the commencement of the proceedings and as to the mental capacity of the patient at the time of such dealing.

[*E.r.* 68]

Inquiries as to testamentary documents executed by patient

65. The Court may make or cause to be made inquiries whether any person has in his posssession or under his control or has any knowledge of any testamentary document executed by a patient, and may direct that person to answer the inquiries on oath and to produce any such document which is in his possession or under his control deal with it in such manner as the Court may direct.

[*E.r.* 69]

Power to direct other inquiries

66. The Court may make or cause to be made any other inquiries which it may consider necessary or expedient for the proper discharge of its functions under the Order or this Order.

[*E.r.* 70]

Part XV

Custody and Disposal of Funds and Other Property

Statement of property retained or deposited

67. Where under a direction of the Court any furniture or effects of a patient are allowed to remain in the possession of, or deposited with, any person, that person shall, unless the Court otherwise directs, sign and file a statement of the furniture or effects and an undertaking not to part with them except on a direction under seal.

[*E.r.* 71]

Stock in name of patient or controller

68.—(1) Where any stock—

(*a*) is standing in the name of a patient beneficially entitled thereto; or

(*b*) is standing in the name of a controller in trust for a patient, or as part of his property, and the controller dies intestate or himself becomes incapable by reason of mental disorder of acting as controller, or is out of the jurisdiction of the Court, or it is uncertain whether he is still alive, or he neglects or refuses to transfer the stock or to receive and pay over the dividends thereof as the Court directs,

the Court may order some proper person to transfer the stock into the name of the controller or, as the case may be, a new controller for the patient or into court or otherwise deal with it as the Court may direct and also to receive and pay over the dividends thereof as the Court may direct.

(2) Where an order is made under paragraph (1) above or under Article 102 of the Order directing stock to be transferred into court, the person required to effect the transfer shall be—

(*a*) in the case of stock standing in the stock register kept by the Bank of Ireland or any other bank or by the Crown Agents for Overseas Governments and Administrations, some proper officer of the bank or the Crown Agents;

(*b*) in any other case, some proper officer of the company or other body, whose stock is to be transferred;

and the said person shall, if so ordered, receive any sum accrued due before the transfer by way of dividend, bonus or periodical payment in respect of the stock and pay it into court to the general account of the patient or to a separate account or otherwise deal with it as the Court may direct.

[*E.r.* 72]

Disposal of property on patient's death or recovery

69.—(1) On the death or recovery of a patient the Court may order any money, securities or other property belonging to the patient, or forming part of his estate, or remaining under the control of, or held under the directions of the Court, to be paid, transferred, delivered or released to the person who appears to be entitled thereto.

(2) If no grant of representation has been taken out to the estate of a deceased patient and it appears to the Court that the assets of the estate, after deduction of debts and funeral expenses, do not exceed £5,000 in value, the Court may, if it thinks fit, provide for payment of the funeral expenses out of any funds in court standing to the credit of the deceased and order that any such funds, or the balance thereof, or any other property of the patient remaining under the control, or held under the directions, of the Court, be paid, transferred, delivered or released either to the personal representative of the deceased when constituted or to the person who appears to be entitled to apply for a grant of representation to his estate.

(3) The Court may at any time, pending notification to the Office of the grant of representation to the estate of a patient, direct that any money or securities which belonged to the patient when he died and were not already in court shall be transferred into court.

[*E.r.* 73]

PART XVI

SETTLEMENT AND APPROVAL OF DEEDS

Documents to be settled by court

70. All mortgages, leases and other dispositions of a patient's land and such other deeds and documents relating to his estate as may be directed shall be settled and approved by the Court.

[*E.r.* 74]

Authentication by seal

71.—(1) The seal of the Office on any deed or other document shall be evidence that it has been settled and approved by the Court.

(2) Unless otherwise directed, no deed or other document shall be sealed for the purpose aforesaid unless—

(*a*) it bears a certificate by the person tendering it that it is an exact copy of a draft settled and approved by the Court, and

(*b*) in the case of a deed or document containing a recital that any money has been lodged in court, a certificate of the Accountant General is produced stating that the lodgment has been made.

[*E.r.* 75]

PART XVII

COPIES OF DOCUMENTS

Copies of documents in court

72.—(1) Any person who has filed an affidavit or other document shall, unless the Court otherwise directs, be entitled, on request, to be supplied by the Office with a copy of it.

(2) The person having the conduct of any proceedings shall, unless the Court otherwise directs, be entitled, on request, to be supplied by the Office with a copy of any order, certificate, authority, direction or other document made, given or prepared by the Court in the proceedings.

(3) Any other person may, on request, be supplied by the Office with a copy of any such document as is mentioned in paragraph (1) or (2), if the Court is satisfied that he has good reason for requiring it and that it is not reasonably practicable for him to obtain it from the person entitled to bespeak a copy from the Office.

(4) Any copy of a document supplied under paragraph (1), (2) or (3) above shall, if so required, be marked as an office copy.

[*E.r.* 76]

PART XVIII

FEES

Payment of fees

73.—(1) Subject to paragraph (2), the person by whom any fee is payable shall, unless the Court otherwise directs, make the payment out of the income of the patient or, if he is dead, out of his estate.

(2) Where the Court directs that a fee is to be paid by the Accountant General wholly or partly out of funds in court, then, unless the Court directs payment to be made out of capital, the Accountant General shall meet the fee out of the income arising from the fund.

[*E.r.* 77]

Administration fee

74.—(1) The Office shall annually, or at such other intervals as may be convenient, issue a certificate in respect of each patient in which there shall be stated—

(*a*) the amount of the administration fee payable in respect of the patient at the date of the certificate;

(*b*) the period in respect of which the administration fee is payable; and

(*c*) the name of the person by whom the payment is to be made.

(2) The Office may, if it thinks fit, issue a certificate for the payment of an estimated administration fee.

(3) Upon the issue of a certificate under this rule the amount of the fee shall be charged upon the patient's estate, and the payment shall be made within such time (not exceeding one month from the date of the certificate) as the Court may allow.

[*E.r.* 79]

PART XIX

COSTS

Costs generally

75.—(1) All costs incurred in relation to proceedings under this Order, and not provided for by way of remuneration under rule 39, shall be in the discretion of the Court and the Court may order them to be paid by the patient or charged on or paid out of his estate or paid by any other person attending or taking part in the proceedings.

(2) An order that costs incurred during the lifetime of a patient be paid out of or charged on his estate may be made within six years after his death.

[*E.r.* 84]

Supreme Court costs rules to apply

76. Subject to the provisions of this Order, Order 62 shall apply, with such modifications as may be necessary to costs incurred in relation to proceedings under this Order as they apply to costs incurred in relation to proceedings in the Chancery Division and may be taxed where required accordingly.

[*E.r.* 86]

Costs of unnecessary employment of solicitor etc., not to be allowed

77.—(1) No controller for a patient other than the Official Solicitor, shall, unless authorised by the Court, be entitled at the expense of the patient's estate to employ a solicitor or other professional person to do any work not usually requiring professional assistance.

(2) Where two or more persons having the same interest in relation to the matter to be determined attend any hearing by separate legal representatives, they shall not be allowed more than one set of costs of that hearing unless the Court certifies that the circumstances justify separate representation.

[*E.r. 87*]

Costs of Official Solicitor

78. Any costs incurred by the Official Solicitor in relation to proceedings under this Order or in carrying out any directions given by the Court, and not provided for by way of remuneration under rule 39, shall be paid by such person or out of such funds as the Court may direct.

[*E.r.* 88]

Certificate of service or notification

79. Where in proceedings relating to a patient a claim is made against his estate in respect of any costs alleged to have been incurred by him or on his behalf otherwise than in relation to the proceedings, the Court may refer the claim to the Master (Taxing Office) so that the amount due to the claimant may be ascertained by him or under his direction.]

[*E.r.* 89]

[(a) ORDER 109A

ENDURING POWERS OF ATTORNEY

PART I

PRELIMINARY

Application and interpretation

1.—(1) This Order applies to proceedings under the Enduring Powers of Attorney (Northern Ireland) Order 1987, and the other provisions of these Rules apply to such proceedings subject to the provisions of this Order.

(2) In this Order, unless the context otherwise requires—

"the Act" means the Judicature (Northern Ireland) Act 1978;

"the 1987 Order" means the Enduring Powers of Attorney (Northern Ireland) Order 1987(**b**);

"applicant" includes an objector;

"application" includes an objection;

"attorney" means an attorney appointed under an enduring power of attorney;

"donor" means a person who has created an enduring power of attorney;

"enduring power of attorney" means any power of attorney which complies with the provisions of Article 4 of the 1987 Order;

"judge" means the judge for the time being to whom the business of the Family Division is assigned under section 17 of the Act and any judge of the High Court exercising jurisdiction in relation to patients under Order 109;

"Master" means the Master (Care and Protection) or other statutory officer acting under section 74(3) of the Act;

"the Office" means the Office of Care and Protection;

"order" includes a certificate, direction or authority under seal;

"relative" means one of the persons referred to as relatives and entitled to receive notice under the provisions of paragraphs 1 and 2(1) of Schedule 1 to the 1987 Order;

"seal" means an official seal of the Office of Care and Protection and "sealed" shall be construed accordingly.

(3) Where any discretion, power or other function is (in whatever words) expressed by this Order to be exercisable by "the Court" then, subject to the provisions of the Order, that discretion, power or other function may be exercised—

(*a*) by a judge; or

(*b*) by the Master.

(4) In this Order a form referred to by number means the form so numbered in Appendix E or a form to the like effect with such variations as the circumstances may require or the Court may approve.

[*Court of Protection (Enduring Powers of Attorney) Rules 1986 — r. 3*].

(**a**) New Order 109A inserted by S.R. 1989 No. 79 with effect from 10.4.89
(**b**) S.I. 1987/1627 (N.I. 16)

PART II

APPLICATIONS

Notice of intention to register

2.—(1) Notice of the attorney's intention to apply to register an enduring power of attorney shall be given in Form EP1 to the donor and to those relatives entitled to receive such notice and to any co-attorney.

(2) An application to dispense with such notice shall be made in Form EP3 before any application for registration is made.

[*E.r. 5*]

Application for registration

3. An application to register an enduring power of attorney shall be made in Form EP2.

[*E.r. 6*]

Other applications

4. Subject to the provisions of rules 2 and 3, an application to the Court may be by letter unless the Court directs that the application should be formal, in which case it shall be made in Form EP3.

[*E.r. 7*]

Objections to registration

5.—(1) Any objection to registration shall be made in writing and shall set out:—

(*a*) the name and address of the objector;

(*b*) the name and address of the donor, if the objector is not the donor;

(*c*) any relationship of the objector to the donor;

(*d*) the name and address of the attorney; and

(*e*) the grounds for objecting to registration of the enduring power.

(2) Any objection to registration received by the Court on or after the date of registration shall be treated by the Court as an application to cancel the registration.

[*E.r. 8*]

Exercise of the Court's powers and functions under the provisions of the 1987 Order

6.—(1) This rule shall apply to applications to the Court for relief or for determination of any question under the 1987 Order which is not made simultaneously with an application for registration of an enduring power.

(2) Any application made by letter under rule 4 other than objection to registration or disclaimer of attorneyship, shall include the name and address of the applicant, the name of the donor if the applicant is not the donor, the form of relief or determination required and the grounds for the application.

(3) On receipt of an application, the Court may decide either that no hearing shall be held or may fix an appointment for directions or for the application to be heard.

(4) The Court may at any time, on application or of its own motion, give such directions as it thinks proper with regard to any matter arising in the course of an application.

(5) Notification of an appointment for directions or a hearing shall be given by the applicant to the attorney (if he is not the applicant), to any objector and to any other person as directed by the Court.

(6) The applicant, the attorney (if he is not the applicant) and any person given notice of the appointment or hearing may attend or be represented.

(7) If it appears to the Court on application or of its own motion that any order for relief should be made or any question determined, the Court may make such order or give such direction as it thinks fit.

(8) Where an enduring power of attorney is sought to be disclaimed pursuant to Articles 6(6) or 9(1)(*b*) of the 1987 Order, notice of disclaimer by the attorney shall be given in form EP3 and the disclaimer shall take effect on the day on which the notice of disclaimer is received by the Court.

[*E.r. 9*]

Consolidation of proceedings

7. The Court may consolidate any applications for registration or relief or any objections to registration if it considers that the proceedings relating to them can more conveniently be dealt with together.

[*E.r. 10*]

Registration

8.—(1) Where there is no objection to registration or any objection has been withdrawn or dismissed, the enduring power of attorney shall be registered and sealed.

(2) The Court shall retain a copy of the registered enduring power of attorney and shall return the original instrument to the applicant.

(3) Any alterations which are on the face of the instrument when an application for registration is made shall be sealed.

(4) Any qualification to registration imposed by reason of Articles 13(6) or 13(7) of the 1987 Order shall be noted on the register, and on the instrument, and sealed.

(5) The date of registration shall be the date stamped by the Court on the instrument when it is registered.

[*E.r. 11*]

Searches of the register and copies of registered enduring powers of attorney

9.—(1) Any person may, on payment of the appropriate fee, request in Form EP4 a search in the register to determine whether an enduring power of attorney has been registered.

(2) The Court may supply any person with an office copy of a registered enduring power of attorney if the Court is satisfied that he has good reason for requesting a copy and that it is not reasonably practicable to obtain a copy from the attorney.

(3) For the purposes of this rule, an office copy is a photocopy or a facsimile of an enduring power of attorney, marked as an office copy and sealed.

(4) An office copy of an enduring power of attorney need not contain the explanatory information endorsed on the original power.

[*E.r. 12*]

PART III

HEARINGS

Notice of hearing

10.—(1) Except where the Court otherwise directs, an applicant shall give ten clear days' notice of a hearing to the attorney, the donor, every relative as defined in this Order, to any co-attorney and to such other persons who appear to the Court to be interested, as the Court may specify.

(2) For the purposes of this rule notice of a hearing is given if the applicant sends a copy of the application to the person concerned.

[*E.r. 13*]

Mode of service

11.—(1) Any document required by this Order to be given to the donor shall be given to him personally.

(2) Except where these Rules otherwise provide, any document required by these Rules to be given to any person other than the donor shall be served by sending it to him by first class post.

[*E.r. 14*]

Service on a solicitor

12. Where a solicitor for the person to be given any document endorses on that document or on a copy of it a statement that he accepts the document on behalf of that person, the document shall be deemed to have been duly sent to that person and to have been received on the date on which the endorsement was made.

[*E.r. 15*]

Use of evidence in subsequent proceedings

13. Except where the Court otherwise directs, evidence which has been used in any proceedings relating to a donor may be used at any subsequent stage of those proceedings or in any other proceedings before the Court.

[*E.r. 17*]

Copies of documents in Court

14.—(1) Any person who has filed an affidavit or other document shall, unless the Court otherwise directs, be entitled on request to be supplied by the Office with a copy of it.

(2) An attorney or his solicitor may have a search made for and may inspect and request a copy of any document filed in proceedings relating to the enduring power of attorney under which the attorney has been appointed.

(3) Subject to the foregoing sub-paragraphs, no documents filed in the Office shall be open to inspection without the leave of the Court and no copy of any such document or an extract thereof shall be taken by or issued to any person without such leave.

[*E.r. 18*]

Summoning of witnesses

15. In any proceedings under this Order a witness summons shall be issued in Form EP6.

[*E.r. 19*]

Leave to bring an application

16. Any person other than an attorney or a person who has been served with a notice of intention to register an enduring power of attorney shall apply to the Court for leave to make application for relief specified in the 1987 Order.

[*E.r. 20*]

Notification of decision

17. The applicant shall notify all persons who receive notice under rule 6(5) of the Court's decision and shall send to each of them a copy of any order made or directions given.

[*E.r. 21*]

PART IV

CANCELLATION OF REGISTRATION

Cancellation of registered enduring power of attorney

18.—(1) Where the Court is satisfied that one of the circumstances listed in Article 10(4) of the 1987 Order applies, it shall cancel the registration of the enduring power of attorney in question and shall send a notice to the attorney requiring him to deliver to the Court the original instrument.

(2) Where the instrument creating an enduring power of attorney has been lost or destroyed, the person on whom notice under paragraph (1) of this rule has been served shall give to the Court written details of the date on which the instrument was lost or destroyed and the circumstances in which that occurred.

(3) Where the Court has cancelled the registration of an instrument because it is satisfied that:—

(*a*) fraud or undue pressure was used to induce the donor to create the power, or

(*b*) having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney,

the Court shall revoke the power created by the instrument.

(4) Where registration has been cancelled for any reason other than one of those set out in paragraph 3(*a*) *or (b)* of this rule or [(**a**) Article 10(4)(c)] of the 1987 Order, the Court shall mark the power of attorney as cancelled.

(5) Any notice issued by the Court under this rule may contain a warning that failure to comply with the notice may lead to punishment for contempt of court.

[*E.r.* 24]

(**a**) Words substituted by S.R. 2013 No. 202 with effect from 05.09.13

[(a) ORDER 110

THE OFFICIAL SOLICITOR

Duties of the Official Solicitor

1.—(1) The Official Solicitor shall conduct such investigations and render such assistance as may be authorised under these Rules or required by the Lord Chief Justice or a court for the purpose of assisting in the due administration of justice.

(2) The Official Solicitor shall perform such duties as were formerly discharged by the General Solicitor for Northern Ireland.

(3) Without prejudice to paragraph (1) the Official Solicitor may discharge any function analogous to those performed by the Official Solicitor in England and Wales, which are not the responsibility of some other officer or person in Northern Ireland.

Costs of Official Solicitor

2.—(1) The costs of the Official Solicitor may be paid out of such fund to which the proceedings relate or by such parties as the court may by order direct.

(2) All costs of the Official Solicitor shall be ascertained on taxation.]

(a) New Order 110 substituted by S.R. 1983 No. 5 with effect from 28.2.83

ORDER 111

[(a) COMMITTAL UNDER ARTICLE 107 OF THE JUDGMENTS ENFORCEMENT (NORTHERN IRELAND) ORDER 1981]

Interpretation

1. In this Order, unless the context otherwise requires—

[(**b**) ''the Order of 1981'' means the Judgments Enforcement (Northern Ireland) Order 1981(**c**)];

''judgment'' means any judgment, order or decree of any division of the High Court (other than an order made in matrimonial proceedings within the meaning of [(**d**) rule 130 of the Matrimonial Causes Rules (Northern Ireland) 1981(**e**)] or an instalment order made under [(**b**) Article 3 of the Order of 1981] or of any inferior Court for the payment of money;

''judgment creditor'' means a person entitled to enforce a judgment;

''debtor'' means a person liable under a judgment;

''judgment summons'' means a summons under [(**b**) Article [(**f**) 107] of the Order of 1981].

Application

2. An application for the issue of a judgment summons shall be made by filing an affidavit verifying the amount due under the judgment and showing how the amount is arrived at.

Judgment summons

3. Every judgment summons shall be in Form No. 56 of Appendix A and shall be served on the debtor personally not less than 10 clear days before the hearing and at the time of service there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court.

Evidence

4. Evidence at the hearing may be given orally or by affidavit.

Debtor's expenses, etc.

5. Where the debtor appears at the hearing, the travelling expenses paid to him may, if the judge so directs, be allowed as expenses of a witness, but if the debtor appears at the hearing and no order of committal is made, the judge may allow to the debtor, by way of set-off or otherwise, his proper costs, including compensation for loss of time, as upon an attendance by a defendant at a trial in court.

Stay of execution

6. If the judge makes an order for committal, he may direct its execution to be stayed on terms that the debtor pays to the judgment creditor the amount due, together with the costs of the judgment summons, either at a specified time or by instalments, in addition to any sums accruing due under the original judgment.

(**a**) Title substituted by S.R. 1981 No. 224 with effect from 1.9.81
(**b**) Words substituted by S.R. 1981 No. 224 with effect from 1.9.81
(**c**) S.I. 1981/226 (N.I. 6)
(**d**) Words substituted by S.R. 1982 No. 217 with effect from 1.9.82
(**e**) S.R. 1981 No. 184
(**f**) Figure substituted by S.R. 1984 No. 354 with effect from 12.11.84

Removal of stay, etc.

7. Where an order of committal is stayed on such terms as are mentioned in paragraph 6—

(*a*) all payments thereafter made shall be deemed to be made, first, in or towards the discharge of any sums from time to time accruing due under the original judgment and, secondly, in or towards the discharge of the debt in respect of which the judgment summons was issued and the costs of the summons; and

(*b*) the said order shall not be issued until the judgment creditor has filed an affidavit of default on the part of the debtor.

Application for further stay

8. Where an order of committal has been made but execution of the order is stayed and the debtor subsequently desires to apply for a further stay, he shall attend at or write to the Central Office and apply for the stay he requires, stating the reasons for his inability to comply with the order, and the Master shall fix a day for the hearing of the application by the judge and serve notice thereof on the judgment creditor and on the debtor by recorded delivery at least three clear days before the day fixed for the hearing.

Variation etc. of orders

9. Any order made under this Order may be stayed, suspended, rescinded or varied by a subsequent order.

Service of notice

10. The judgment creditor shall serve notice personally on the debtor of the terms of any order made under this Order whether or not the debtor has attended the hearing.

Execution of order

11. An order of committal shall be directed to any police officer or other person as the Court may direct for execution.

Discharge from custody

12.—(1) A debtor taken into custody under an order of committal shall not be released from custody unless he pays to the police officer or the governor of the prison to which he is committed the full amount of the debt or instalment in respect of which such order was made and the costs of the order or upon receipt by the governor of the certificate of discharge prescribed under paragraph (5).

(2) A police officer or prison governor to whom a sum of money is paid by a debtor in accordance with paragraph (1) shall issue to the debtor a receipt therefor and shall indorse on the order of committal a certificate of the amount he has received and the date thereof and the police officer or prison governor shall sign his name at the foot of the cetificate.

(3) Such sum shall be transmitted to the judgment creditor or his solicitor forthwith.

(4) The creditor or his solicitor on receiving the sum transmitted to him shall send a receipt therefor.

(5) The certificate prescribed for the purposes of [(**a**) Article 109 of the Order of 1981] shall be in Form No. 57 in Appendix A, signed by the creditor, or his solicitor

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(a) Words substituted by S.R. 1982 No. 217 with effect from 1.9.82

or a master, that there has been paid to or on account of the creditor by or on behalf of the debtor—

(*a*) the debt or instalment in respect of which he was imprisoned;

(*b*) the costs of the order of committal;

and the creditor or his solicitor shall, if the debtor so requires, furnish to the debtor a copy of such certificate.

ORDER 112

[(a) APPLICATIONS FOR USE OF SCIENTIFIC TESTS IN DETERMINING PARENTAGE]

Interpretation

1. In this Order—

[(a) "bodily samples"] and [(a) "scientific tests"] have the meaning assigned to them by Article 13 of the Family Law Reform (Northern Ireland) Order 1977(b); "direction" means a direction for the use of [(a) scientific tests] under Article 8(1) of that Order;

"the proper officer" means the officer of the court who draws up a direction.

[*E.r.* 1]

Application for direction

2.—(1) Except with the leave of the Court, an application in any proceedings for a direction shall be made on notice to every party to the proceedings (other than the applicant) and to any other person from whom the direction involves the taking of [(a) "bodily samples"].

(2) If the application is made otherwise than at the hearing of the proceedings it shall be made by summons.

(3) Any notice or summons required by this rule to be served on a person who is not a party to the proceedings shall be served on him personally.

[*E.r.* 2]

Applications involving persons under disability

3. Where an application is made for a direction in respect of a person (in this rule referred to as a person under disability) who is either—

(*a*) under 16, or

(*b*) suffering from a mental disorder within the meaning of the [(c)Mental Health (Northern Ireland) Order 1986(d)] and incapable of understanding the nature and purpose of [(a) scientific tests]

the notice of application or summons shall state the name and address of the person having the care and control of the person under disability and shall be served on him instead of on the person under disability.

[*E.r.* 3]

Joinder of person to be tested

4. Where an application is made for a direction involving the taking of [(a) bodily samples] from a person who is not a party to the proceedings in which the application is made, the Court may at any time direct that person to be made a party to the proceedings.

[*E.r.* 4]

(a) Words substituted by S.R. 2002 No. 202 with effect from 21.6.02
(b) S.I. 1977 No. 1250 (N.I. 17)
(c) Words substituted by S.R. 1986 No. 184 with effect from 31.7.86
(d) S.I. 1986/595 (N.I. 4)

[*Supplt. No. 38 (June 2002)*]

ORDER 112

Service of direction and adjournment of proceedings

5. Where the Court gives a direction in any proceedings, the proper officer shall send a copy to every party to the proceedings and to every other person from whom the direction involves the taking of [(**a**) bodily samples] and, unless otherwise ordered, further consideration of the proceedings shall stand adjourned until the court receives a report pursuant to the direction.

[*E.r.* 5]

Service of copy of report

6. On receipt by the court of a report made pursuant to a direction, the proper officer shall send a copy to every party to the proceedings and to every other person from whom the direction involved the taking of [(**a**) bodily samples].

[*E.r.* 6]

(**a**) Words substituted by S.R. 2002 No. 202 with effect from 21.6.02

ORDER 113

SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

Proceedings to be brought by originating summons

1.—(1) Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

[(**a**) . . .]

[*E.r.* 1]

Form of originating summons

2. The originating summons shall be in Form No. 9 in Appendix A and no appearance need be entered to it.

[*E.r.* 2]

Affidavit in support

3. The plaintiff shall file in support of the original summons an affidavit stating—

(*a*) his interest in the land;

(*b*) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and

[(**b**)(*c*) that he does not know the name of any person occupying the land who is not named in the summons;

[(**c**) . . .]

Service of originating summons

4.—(1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him—

(*a*) in accordance with Order 10, rule 5, or

(*b*) by leaving a copy of the summons and of the affidavit, or sending them to him, at the premises, or

(*c*) in such other manner as the Court may direct.

(2) The summons shall, in addition to being served on the named defendants (if any) in accordance with paragraph (1), be served, unless the Court otherwise directs, by—

(*a*) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises, and

(*b*) if practicable, inserting through the letter-box at the premises a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to "the occupiers".

[(**a**) . . .]

(**a**) Rules 1(2) and 4(2A) deleted by S.R. 1983 No. 183 with effect from 1.9.83
(**b**) New sub-paragraph (*c*) substituted by S.R. 1992 No. 399 with effect from 1.11.92
(**c**) Words deleted by S.R. 2001 No. 254 with effect from 5.9.01

(3) Order 28, rule 3, shall not apply to proceedings under this Order.

[*E.r.* 4]

Application by occupier to be made a party

5. Without prejudice to Order 15, rule 6 and 10, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

[*E.r.* 5]

Order for possession

6.—(1) A final order shall not be made on the originating summons except by a judge in person and shall, except in case of urgency and by leave of the Court, not be made less than 5 clear days after the date of service.

(2) An order for possession in proceedings under this Order shall be in Form No. 33 in Appendix A.

[(**a**) (3) Nothing in this Order shall prevent the Court from ordering possession to be given on a specified date, in the exercise of any power which could have been exercised if possession had been claimed in an action begun by writ.]

[*E.r.* 6]

Setting aside order

7. The judge may, on such terms as he thinks just, set aside or vary any order made in the proceedings under this Order.

[*E.r.* 8]

(**a**) Paragraph (3) of rule 6 inserted by S.R. 1982 No. 217 with effect from 1.9.82

ORDER 114

REFERENCES TO THE EUROPEAN COURT

Interpretation

1. In this Order—

"the Court" means the court by which an order is made and includes the Court of Appeal;

"the European Court" means the Court of Justice of the European Communities; and

"order" means an order referring a question to the European Court for a preliminary ruling under Article 177 of the Treaty establishing the European Economic Community, Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community [(**a**) or for a ruling on the interpretation of [(**b**) any of the instruments referred to in section 1(1) of the Civil Jurisdiction and Judgments Act 1982 [(**c**) (other than the Lugano Convention)] or in section 1 of the Contracts (Applicable Law) Act 1990(**d**)].

[*E.r.* 1]

Making of order

2.—(1) An order may be made by the Court of its own motion at any stage in a cause or matter, or on application by a party before or at the trial or hearing thereof.

(2) Where an application is made before the trial or hearing, it shall be made by motion.

(3) In the High Court no order shall be made except by a judge in person.

[*E.r.* 2]

Schedule to order to set out request for ruling

3. An order shall set out in a schedule the request for the preliminary ruling of the European Court, and the Court may give directions as to the manner and form in which the schedule is to be prepared.

[*E.r.* 3]

Stay of proceedings pending ruling

4. The proceedings in which an order is made shall, unless the Court otherwise orders, be stayed until the European Court has given a preliminary ruling on the question referred to it.

[*E.r.* 4]

Transmission or order to the European Court

5. When an order has been made, the Master (Queen's Bench and Appeals) shall send a copy thereof to the Registrar of the European Court; but in the case of an order made by the High Court, he shall not do so, unless the Court otherwise orders, until the time for appealing against the order has expired or, if an appeal is entered within that time, until the appeal has been determined or otherwise disposed of.

[*E.r.* 5]

(a) Words added by S.R. 1984 No. 110 with effect from 1.1.87
(b) Words substituted by S.R. 1992 No. 399 with effect from 1.11.92
(c) Words inserted by S.R. 1993 No. 143 with effect from 19.4.93
(d) 1990 c. 36

ORDER 114

Appeals from orders made by High Court

6. An order made by the High Court shall be deemed to be a final decision, and accordingly an appeal against it shall lie to the Court of Appeal without leave; but the period within which a notice of appeal must be served under Order 59 rule 4(1), shall be 21 days.

[*E.r.* 6]

[(a) ORDER 115

APPLICATIONS UNDER PART II (MATRIMONIAL HOMES) OF THE FAMILY LAW (MISCELLANEOUS PROVISIONS) (NORTHERN IRELAND) ORDER 1984

Interpretation

1. In this Order ''the Order'' means the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984(**b**).

[(**c**) 2. . .]

Applications to be made by originating summons

3.—(1) An application under Part II of the Order shall be made by originating summons issued out of the Probate and Matrimonial Office [(**d**) or the Bankruptcy and Companies Office where the business has been assigned to that office] and Order 7 shall apply accordingly, except that references in that Order to ''plaintiff'' and ''defendant'' shall be read as references to ''applicant'' and ''respondent'' respectively.

(2) Where in an application under the said Part II for an order terminating the respondent's rights of occupation it appears to the Court, on the ex parte application of the applicant, that the respondent is not in occupation of the dwelling house to which the application relates and his whereabouts cannot after reasonable inquiries be ascertained, the Court may dispense with service of the summons on the respondent.]

(**a**) New Order inserted by S.R. 1989 No. 287 with effect from 1.9.89
(**b**) S.I. 1984/1984 (N.I. 14)
(**c**) Rule 2 revoked by S.R. 1991 No. 232 with effect from 1.10.91
(**d**) Words inserted by S.R. 1991 No. 232 with effect from 1.10.91

[(a) ORDER 116

[(b) TERRORISM ACT 2000(c) AND CONFISCATION AND FORFEITURE IN CONNECTION WITH CRIMINAL PROCEEDINGS]

[(d) PART I]

[(e) TERRORISM ACT 2000]

Interpretation

[(f) **1.** In this Part of this Order—

"the Act" means the Terrorism Act 2000 and a section or Schedule referred to by a number means the section or Schedule so numbered in the Act;

"defendant" includes a person charged with [(g) a relevant offence] and a person who is the subject of a criminal investigation which is being conducted with a view to it being ascertained whether a person should be charged with such an offence;

expressions used have the same meanings as in Part III of and Schedule 4 to the Act;

"Master" means the Master (Queen's Bench and Appeals);

"prosecutor" means the person with conduct of proceedings which have been instituted in Northern Ireland for [(g) a relevant offence], or the person who the High Court is satisfied will have the conduct of any proceedings for such an offence;]

[(h) "domestic freezing order certificate" means a certificate made by the High Court under paragraph 41B of Schedule 4 in relation to property in a country other than the United Kingdom;

"overseas freezing order" means an order received by the High Court in accordance with paragraph 41D of Schedule 4 in relation to property in the United Kingdom.]

Assignment of proceedings

2. The jurisdiction of the High Court under the Act shall be assigned to the Queen's Bench Division and, subject to rule 8, shall be exercised by a judge in chambers.

Application for restraint order [(h) *and domestic freezing order certificate*]

[(f) **3.**—(1) An application for a restraint order under paragraphs 33 and 34 [(h) and, where relevant, a domestic freezing order certificate under paragraph 41B] of Schedule 4 may be made by the prosecutor ex parte by originating summons in Form No. 8 in Appendix A.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall:—

(*a*) state, as the case may be, either that—

(i) proceedings have been instituted against a person for [(g) a relevant offence] and that they have not been concluded; or

(ii) a criminal investigation has been started in Northern Ireland with regard to such an offence;

and, in either case, give details of the alleged or suspected offence and of the defendant's involvement;

(a) Order added by S.R. 1989 No. 288 with effect from 01.09.89
(b) Title substituted by S.R. 2002 No. 15 with effect from 15.02.02
(c) 2000 c. 11 (as amended by Part 2 of Schedule 2 to the Anti-terrorism, Crime and Security Act 2001 c. 24)
(d) Order divided into parts by S.R. 1991 No. 334 with effect from 30.08.91
(e) Title substituted by S.R. 2002 No. 15 with effect from 15.02.02
(f) Rule substituted by S.R. 2002 No. 15 with effect from 15.02.02
(g) Words substituted by S.R. 2009 No. 207 with effect from 30.06.09
(h) Words inserted by S.R. 2011 No. 208 with effect from 23.05.11

(*b*) where proceedings have been instituted, state, as the case may be, that a forfeiture order has been made in the proceedings or the grounds for believing that such an order may be made;

(*c*) where proceedings have not been instituted—

(i) indicate the state of progress of the investigation and when it is anticipated that a decision will be taken on whether to institute proceedings against the defendant;

(ii) state the grounds for believing that a forfeiture order may be made in any proceedings against the defendant; and

(iii) verify that the prosecutor is to have conduct of any such proceedings;

[(**a**) (*d*) to the best of the deponent's ability, give full particulars of the property in respect of which the restraint order and, where relevant, the domestic freezing order certificate is sought, and specify the person or persons holding such property and any other person having an interest in it.]

[(**b**) (2A) Where an application for a domestic freezing order certificate is made, the applicant shall—

(*a*) prepare a draft of the certificate in accordance with paragraph 41B of Schedule 4; and

(*b*) attach it to the application made under paragraph (1).]

(3) An originating summons under paragraph (1) shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.]

Restraint order

4.—(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to living expenses and legal expenses of the defendant or other person, but the applicant shall not be required to give an undertaking to abide by an order as to damages sustained by the defendant or other person as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application.

(3) Where a restraint order is made the applicant shall, [(**c**) unless the court directs otherwise,] serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

[(**b**) (4) Where a domestic freezing order certificate is made it shall be served with copies of the restraint order in accordance with paragraph (3).]

Discharge or variation of restraint order [(**d**) *and a domestic freezing order certificate*]

5.—(1) Any person or body on whom a restraint order [(**d**) and, where relevant a domestic freezing order certificate] is served or who is notified of such an order may apply by summons to discharge or vary the order.

[(**a**) (2) The summons and any affidavit in support shall be lodged with the court and, where not the applicant, shall be served on—

(*a*) the prosecution;

(*b*) the defendant; and

(**a**) Paragraph substituted by S.R. 2011 No. 208 with effect from 23.05.11
(**b**) Rule 3(2A) and Rule 4(4) inserted by S.R. 2011 No. 208 with effect from 23.05.11
(**c**) Words inserted by S.R. 2002 No. 15 with effect from 15.02.02
(**d**) Words inserted by S.R. 2011 No. 208 with effect from 23.05.11

(*c*) any other person affected by the restraint order, and where relevant, the domestic freezing order certificate,

not less than two clear days before the date fixed for hearing of the summons.]

[(**a**)...]

[(**b**) (4) An order made under this rule which discharges or varies a domestic freezing order certificate, shall be sent to the Secretary of State in accordance with paragraph 41C of Schedule 4.]

Further application by the prosecution

6.—(1) Where a restraint order [(**c**) and, where relevant a domestic freezing order certificate,] has been made the prosecution may apply by summons or, where the case is one of urgency, ex parte to discharge or vary such order.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall give full particulars of the grounds of the application.

(3) The summons and affidavit in support shall be lodged with the court and served on the defendant [(**c**) and any other person affected by the restraint order and, where relevant, the domestic freezing order,] not less than two clear days before the date fixed for hearing of the summons.

(4) Rule 4(3), shall apply to the service of an order discharging or varying a restraint order [(**c**) and, where relevant, a domestic freezing order] on persons other than the defendant and to the notification of all other persons or bodies affected thereby.

[(**b**) (5) An order made under this rule which discharges or varies a domestic freezing order certificate, shall be sent to the Secretary of State in accordance with paragraph 41C of Schedule 4.]

Application for Compensation Order

[(**d**) **7.**—(1) An application for an order under paragraph 39 of Schedule 4 shall be made by summons, which shall be served, with any supporting evidence, on the person alleged to be in default (where known) and on the appropriate body mentioned in paragraph 39(6).

(2) An application for an order under paragraph 40 of Schedule 4 shall be made by summons, which shall be served, with any supporting evidence, on the Secretary of State.]

[(**d**) *Exercise of powers under Schedule 4, paragraph 43*

8. Notwithstanding the provisions of Order 32, rule 11(1)(*a*), the powers conferred on the High Court by paragraph 43 of Schedule 4 may be exercised by a judge in chambers or the Master.]

Application for registration

9. An application for registration of an England and Wales order, a Scottish order or an Islands order may be made ex parte.

(**a**) Paragraph (3) deleted by S.R. 2002 No. 15 with effect from 15.02.02
(**b**) Paragraphs (4) and (5) inserted by S.R. 2011 No. 208 with effect from 23.05.11
(**c**) Words inserted by S.R. 2011 No. 208 with effect from 23.05.11
(**d**) Rule substituted by S.R. 2002 No. 15 with effect from 15.02.02

Evidence in support of application

10. [(a) (1)] An application for registration of an order under Rule 9 must be supported by an affidavit—

(i) exhibiting the order or a certified copy thereof, and

(ii) stating, to the best of the deponent's knowledge, particulars of what property in respect of which the order was made is in Northern Ireland and specifying the person or persons holding such property.

[(b)...]

Register of orders

11.—(1) There shall be kept in the Central Office under the direction of the Master a register of the orders registered under the Act.

(2) There shall be included in such register particulars of any variation or setting aside of a registration, of any variation, satisfaction or discharge of a registered order, and of any execution issued on the order.

Notice of registration

12.—(1) Notice of the registration of an order must be served on the person or persons holding the property in Northern Ireland in respect of which the order was made by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the Court may direct.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a writ.

[(c) ...]

Application to vary or set aside the registration

13. An application to vary or set aside the registration of an order must be made to a judge by summons supported by affidavit.

Enforcement of order

14 [(c) ...].

(2) If an application is made under rule 13, an order shall not, unless the Court otherwise orders, be enforced until after such application is determined.

Variation and cancellation of registration

15. If effect is given (whether in Northern Ireland or elsewhere) to an England and Wales, Scottish or Islands order, or if the order is varied or discharged by the court by which it was made, the applicant for registration shall inform the court and—

(*a*) if such effect has been given in respect of all the money or other property to which the order applies, or if the order has been discharged by the court by which it was made, registration of the order shall be cancelled;

(*b*) if such effect has been given in respect of only part of the money or other property, or if the order has been varied by the court by which it was made, registration of the order shall be varied accordingly.]

(a) Rule 10 renumbered rule 10(1) by S.R. 1991 No. 334 with effect from 30.08.91

(b) Rule 10(2) omitted by S.R. 2001 No. 254 with effect from 05.09.01

(c) Rules 12(3) and Rule 14(1) omitted by S.R. 1991 No. 334 with effect from 30.08.91

[(**a**) *Consideration by the court of an overseas freezing order*

15A.—(1) Where an overseas freezing order has been received by the court, the court shall consider whether to give effect to the order—

(*a*) save in exceptional circumstances, on the next business day after receipt of a copy of the order from the Secretary of State; and

(*b*) in any event within 5 business days of receipt of the order.

(2) The court shall not make an order giving effect to an overseas freezing order unless it is satisfied that the [(**b**) Director of Public Prosecutions for Northern Ireland] has been given an opportunity to make representations to the court either in writing or at a hearing.

(3) In this rule—

(*a*) "business day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday;

(*b*) "bank holiday" has the same meaning as in Order 3, rule 2(6).

Giving effect to an overseas freezing order

15B. Where the court makes an order to give effect to an overseas freezing order, the court shall register the order in accordance with rule 11.

Notice of registration of an overseas freezing order

15C. Where the court gives effect to an overseas freezing order, the court shall provide for notice of the registration of the order to be given to any persons affected by it.

Application to cancel the registration of, or vary an overseas freezing order

15D. An application under paragraph 41G(4) of Schedule 4 by the Director of Public Prosecutions [(**b**) for Northern Ireland] or any person affected by an overseas freezing order shall be made to a judge by summons supported by affidavit.]

[(**c**) *Prevention of Terrorism (Temporary Provisions) Act 1989 (Enforcement of External Orders) Order 1995*(**d**)

16.—(1) The provisions of this Part of this Order shall, with such modifications as are necessary and subject to the provisions of any Order in Council made under [(**e**) paragraph 44 of Schedule 4], apply to proceedings for the registration and enforcement of external orders.

(2) For the purposes of this rule, an external order is a forfeiture or restraint order made by a court in a country or territory outside the United Kingdom which is enforceable in the United Kingdom by virtue of an Order in Council made under [(**e**) paragraph 44 of Schedule 4].

[(**f**)PART II

PROCEEDS OF CRIME (NORTHERN IRELAND) ORDER 1996(**g**) AND CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990(**h**)

Interpretation

17. In this Part of this Order—

"the 1996 Order" means the Proceeds of Crime (Northern Ireland) Order 1996 and an Article referred to by number means the Article so numbered in the 1996 Order;

(**a**) Paragraphs 15A – 15D inserted by S.R. 2011 No. 208 with effect from 23.05.11
(**b**) Words inserted by S.R. 2013 No. 202 with effect from 05.09.13
(**c**) Rule 16 inserted by S.R. 1996 No. 282 with effect from 25.8.96
(**d**) S.I. 1995 No. 760
(**e**) Words substituted by S.R. 2002 No. 15 with effect from 15.02.02
(**f**) Parts II and III substituted by new Part II by S.R. 1996 No. 282 with effect from 25.08.96
(**g**) S.I. 1996 No. 1299 (N.I. 9)
(**h**) 1990 c. 5

expressions used in this Part of this Order which are used in the 1996 Order, have the same meanings in this Part of this Order as in the 1996 Order and, for the purposes of the enforcement in Northern Ireland of orders made under Part VI of the Criminal Justice Act 1988(a), the Drug Trafficking Act 1994(b) and the Proceeds of Crime (Scotland) Act 1995(c), include any extended meaning given by those Acts;

"Master" means Master (Queen's Bench and Appeals).

Assignment of proceedings

18. The jurisdiction of the High Court under the 1996 Order shall be assigned to the Queen's Bench Division and, subject to rule 32, shall be exercised by a judge in chambers.

Title and service of proceedings

19.—(1) An originating summons under this Part of this Order shall be entitled in the matter of the defendant, naming him, and in the matter of the 1996 Order, and all subsequent documents in the matter shall be so entitled.

(2) Any originating summons, or other document, required to be served under this Part of this Order may be served out of the jurisdiction with the leave of the Court.

(3) In any application under Article 24 or any related application, where a defendant has absconded, if it appears to the Court that it is impracticable for any reason to serve the summons or other document on the defendant in accordance with the provisions of this Part of this Order, the Court may make an order for substituted service of the summons or other document or may order service to be dispensed with.

(4) An application for an order for substituted service or for an order dispensing with service under paragraph (3) may be made by an affidavit stating the facts on which the application is founded.

(5) Substituted service of a summons or other document, in relation to which an order is made under paragraph (3), is effected by taking such steps as the Court may direct to bring the summons or other document to the notice of the person to be served.

(6) In any application under Article 24 or any related application, where a defendant has died, the summons or other document may be served on the deceased's personal representatives.

Application for confiscation order and service

20.—(1) An application by the prosecution for a confiscation order under Article 24 shall be made by originating summons.

(2) The application shall be supported by an affidavit giving full particulars of the following matters:—

(*a*) the grounds for believing that the defendant has died or absconded;

(*b*) the date or approximate date on which the defendant died or absconded;

(*c*) where the application is made under Article 24(2), the offence or offences of which the defendant was convicted and the date and place of conviction;

(*d*) where the application is made under Article 24(4), the proceedings which have been instituted against the defendant (including particulars of the offence or offences and the date and place of institution of those proceedings); and

(*e*) where the defendant is alleged to have absconded, the steps taken to contact him.

(a) 1988 c. 33
(b) 1994 c. 37
(c) 1995 c. 43

(3) Any statement required from the prosecution under Article 15 shall be exhibited to the affidavit and shall include the following particulars—

(*a*) the name of the defendant;

(*b*) the name of the person by whom the statement is given; and

(*c*) such information known to the prosecution as is relevant to, the determination whether the defendant has benefited from any relevant criminal conduct or drug trafficking, and, as to the assessment of the value of his benefit from the criminal conduct or, as the case may be, from the drug trafficking.

[**(a)**...]

[**(b)** (4)] The application and affidavit in support shall be served not less than seven clear days before the date fixed for the hearing of the application on—

(*a*) the defendant;

(*b*) any person who the prosecution reasonably believes is likely to be affected by the making of a confiscation order; and

(*c*) the receiver, where one has been appointed in the matter.

Application for restraint order or charging order

21.—(1) An application for a restraint order under Article 31 or for a charging order under Article 32 (to either of which may be joined an application for the appointment of a receiver) may be made by the prosecution ex parte by originating summons in Form No. 8 in Appendix A.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall—

(*a*) give the grounds for the application; and

(*b*) to the best of the deponent's ability, give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

[**(c)**...]

Restraint order or charging order

22.—(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to living expenses and legal expenses of the defendant or other person, but the applicant shall not be required to give an undertaking to abide by an order as to damages sustained by the defendant or other person as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application and a charging order shall have effect subject to such conditions as the Court may direct.

(3) Where a restraint order is made the applicant shall serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the applicant shall, unless the Court otherwise directs, serve copies of the order and of the affidavit in support on the defendant and, where property to which the order relates is held by another person, on that person and shall serve a copy of the order on such of the persons or bodies referred to below as shall be appropriate:—

(a) Rule 20(4) omitted by S.R. 2001 No. 254 with effect from 05.09.01

(b) Paragraph (5) renumbered (4) by S.R. 2001 No. 254 with effect from 05.09.01

(c) Rule 21(3) omitted by S.R. 2001 No. 254 with effect from 05.09.01

(*a*) where the order relates to securities other than funds in court (including securities in court),

(i) in the case of Government funds or stock, on the keeper of the register;

(ii) in the case of stock of any body incorporated within Northern Ireland, on that body, or, on the keeper of the register;

(iii) in the case of stock of any body incorporated outside Northern Ireland or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within Northern Ireland, on the keeper of the register;

(iv) in the case of units of any unit trust in respect of which a register of the unit holders is kept at any place within Northern Ireland, on the keeper of the register;

(*b*) where the order relates to a fund in court on the Accountant General at the Court Funds Office, and

(*c*) where the order relates to an interest under a trust, on such trustees as the Court may direct.

Discharge or variation of restraint or charging order

23.—(1) Any person or body on whom a restrain order or charging order is served or who is notified of such an order or who is affected by such an order may apply by summons to discharge or vary the order.

(2) The summons and any affidavit in support shall be lodged with the Court and served on the prosecution and, where he is not the applicant for discharge or variation, on the defendant, not less than two clear days before the date fixed for the hearing of the summons.

(3) Upon the Court being satisfied that proceedings for the offences have been concluded or that the amount, payment of which is secured by the relevant charging order has been paid into Court, any restraint order or charging order, as the case may be, shall be discharged.

(4) The Court may also discharge a restraint order or a charging order upon receiving notice from the prosecution that it is no longer appropriate for the restraint order or charging order to remain in place.

Further application by the prosecution

24.—(1) Where a restraint order or a charging order has been made the prosecution may apply by summons or, where the case is one of urgency or the giving of notice would cause a reasonable apprehension of dissipation of assets, ex parte:—

(*a*) to vary such an order;

(*b*) for a restraint order or a charging order in respect of other realisable property; or

(*c*) for the appointment of a receiver.

(2) An application under paragraph (1) shall be supported by an affidavit which, where the application is for a restraint order or a charging order, shall to the best of the deponent's ability give full particulars of, the grounds of the application, and of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) The summons and affidavit in support shall be lodged with the Court and served on the defendant and, where one has been appointed in the matter, on the receiver, not less than two clear days before the date fixed for hearing of the summons.

(4) Rule 22(3) and (4) shall apply to the service of an order varying a restraint order or charging order on persons other than the defendant and to the notification of all other persons or bodies affected thereby.

Realisation of property

25.—(1) An application by the prosecution under Article 34 shall be made by summons and be supported by an affidavit.

(2) The summons and affidavit in support shall be lodged with the Court and served on:—

(*a*) the defendant;

(*b*) any person holding an interest in the realisable property to which the application relates; and

(*c*) the receiver, where one has been appointed in the matter,

not less than seven clear days before the date fixed for hearing of the summons.

(3) The supporting affidavit shall, to the best of the deponent's ability, give full particulars of the grounds of the application and of the realisable property to which it relates and specify the person or persons holding such property.

(4) A copy of the confiscation order, of any certificate issued by a Court under Article 15(10) and of any charging order made in the matter shall be exhibited to the supporting affidavit.

(5) The Court may, on an application under Article 34—

(*a*) exercise the power conferred by Article 35 to direct the making of payments by a receiver;

(*b*) give directions in respect of the property interests to which the application relates; and

(*c*) make declarations in respect of those interests.

Increase in realisable property

26.—(1) An application for a certificate under Article 21(2) shall be made by summons.

(2) A summons under paragraph (1) shall be served with any supporting affidavit on:—

(*a*) the prosecution, where it is not the applicant;

(*b*) the receiver, where one has been appointed in the matter and he is not the applicant; and

(*c*) the defendant,

not less than seven clear days before the date fixed for hearing of the summons.

Receivers

27.—(1) Subject to the provisions of this Rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed in pursuance of a charging order or under Articles 31 or 34.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the 1996 Order, it shall not be necessary for an affidavit of fitness to be sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall apply by summons for directions as to the distribution of such sums.

(4) A summons under paragraph (3) shall be served with any evidence in support not less than seven clear days before the date fixed for hearing of the summons on:—

(*a*) the defendant; and

(*b*) any other person who held property realised by the receiver.

(5) A receiver may apply for an order to discharge him from his office by making an application, which shall be served, together with any evidence in support, on all persons affected by his appointment not less than seven days before the date fixed for the hearing of the application.

Application for certificate of inadequacy

28.—(1) The defendant or a receiver appointed under Articles 31 or 34 or in pursuance of a charging order may apply by summons for a certificate under Article 22(1).

(2) A summons under paragraph (1) shall be served with any supporting evidence on:—

(*a*) the prosecution;

(*b*) the receiver, where one has been appointed in the matter, and he is not the applicant; and

(*c*) the defendant, where he is not the applicant,

not less than seven clear days before the date fixed for hearing of the summons.

Application for compensation order

29. An application for an order under Article 23 shall be made by summons which shall be served, with any supporting evidence, on the person alleged to be in default (where known) and on the appropriate body mentioned in Article 23(5) not less than seven clear days before the date fixed for hearing of the summons.

Compensation for discharge and variation of confiscation order

30.—(1) An application under Article 26, 27 or 28 shall be made by summons which, together with any evidence in support, shall be lodged with the Court and served on the prosecution not less than seven clear days before the day fixed for the hearing of the summons.

(2) Notice of an application under Article 26, 27 or 28 shall be served on any receiver appointed in pursuance of a charging order or under Article 31 or 34.

(3) An application made under Article 26 shall be supported by an affidavit giving details of—

(*a*) the confiscation order made under Article 24(4);

(*b*) the circumstances in which the defendant ceased to be an absconder; and

(*c*) the amounts referred to in Article 26(2).

(4) An application for an order under Article 27 shall be supported by an affidavit giving details of—

(*a*) the confiscation order made under Article 24(4);

(*b*) the acquittal of the defendant;

(*c*) the realisable property held by the defendant; and

(*d*) the loss suffered by the applicant as a result of the confiscation order.

(5) An application for an order under Article 28 shall be supported by an affidavit giving details of—

(*a*) the confiscation order made under Article 24(4);

(*b*) the date on which the defendant ceased to be an absconder;

(*c*) the date on which the proceedings against the defendant were instituted and a summary of the steps taken in the proceedings since then; and

(*d*) any indication given by the prosecution that it does not intend to proceed against the defendant.

(6) Where an application is made for an order under Article 28(3) the affidavit shall also include—

(*a*) details of the realisable property to which the application relates; and

(*b*) details of the loss suffered by the applicant as a result of the confiscation order.

[(**a**)...]

Application for order for disclosure of information

31.—(1) An application by the prosecution under Article 54 shall be made by summons, which shall state the nature of the order sought and whether material sought to be disclosed is to be disclosed to a receiver appointed in pursuance of a charging order or under Article 31 or 34 or to a person mentioned in Article 54(8).

(2) An application under paragraph (1) shall be supported by an affidavit which shall state the grounds for believing that the conditions in Article 54(4) and, if appropriate, 54(7) are fulfilled.

(3) The summons and affidavit in support shall be served on the authorised government department in accordance with Order 77, rule 3, not less than seven clear days before the date fixed for hearing of the summons.

Reciprocal enforcement of orders

32. Notwithstanding the provisions of Order 32 rule 11(1)(*a*), the powers conferred on the High Court by virtue of Article 43 may be exercised by a judge in chambers or the Master.

Application for registration

33. An application for registration of an external confiscation order to which Article 43 applies may be made ex parte.

Evidence in support of application under Article 43

34.—(1) An application for registration of an external confiscation order under Article 43 must be supported by an affidavit—

(i) exhibiting the order or a verified or certified or otherwise duly authenticated copy thereof and, where the order is not in the English language, a translation thereof into English certified by a notary public or authenticated by affidavit; and

(ii) stating—

(*a*) that the order is in force and is not subject to appeal,

(*b*) where the person against whom the order was made did not appear in the proceedings, that he received notice thereof in sufficient time to enable him to defend them,

(*c*) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered, and

(*d*) to the best of the deponent's knowledge, particulars of what property the person against whom the order was made holds in Northern Ireland, giving the source of the deponent's knowledge.

[(**b**)...]

(**a**) Rule 30(7) omitted by S.R. 2001 No. 254 with effect from 05.09.01
(**b**) Rule 34(2) omitted by S.R. 2001 No. 254 with effect from 05.09.01

Register of orders

35.—(1) There shall be kept in the Central Office under the direction of the Master a register of the orders registered under the 1996 Order.

(2) There shall be included in such register particulars of any variation or setting aside of a registration, of any variation, satisfaction or discharge of a registered order, and of any execution issued on the order.

Notice of registration

36.—(1) Notice of the registration of an order must be served on the person or persons against whom it was obtained by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the court may direct.

(2) Service of such a notice out of the jurisdiction is permissible without leave and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a writ.

Application to vary or set aside registration

37. An application by the person against whom an order was made to vary or set aside the registration of an order must be made to a judge by summons supported by affidavit.

Enforcement of order

38. If an application is made under rule 37, an order shall not, unless the Court otherwise orders, be enforced until after such application is determined.

Variation, satisfaction and discharge of registered order

39. Upon the Court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge (including where appropriate particulars of the amount received in satisfaction of the order), as the case may be, shall be entered in the register.

Rules to have effect subject to Orders in Council

40. Rules 17 to 39 shall have effect subject to the provisions of any Order in Council made under Article 42.

Criminal Justice (International Co-operation) Act 1990

41.—(1) The provisions of this Part of this Order shall, with such modifications as are necessary and subject to the provisions of any Order in Council made under Section 9 of the Criminal Justice (International Co-operation) Act 1990, apply to proceedings for the registration and enforcement of external forfeiture orders as they apply to such proceedings in relation to external confiscation orders.

(2) For the purposes of this rule, an external forfeiture order is an order made by a court in a country or territory outside the United Kingdom which is enforceable in the United Kingdom by virtue of any such Order in Council.]

[(a) PART III

PROCEEDS OF CRIME ACT 2002

Interpretation

42. In this Part of this Order—

"the Act" means the Proceeds of Crime Act 2002(**b**) and a section referred to by number means the section so numbered in the Act;

expressions used in this Part of this Order which are used in the Act have the same meaning in this Part of this Order as in the Act.

Assignment of proceedings

43. In this Order the jurisdiction of the High Court under the Act shall be assigned to the Queen's Bench Division and shall be exercised by a judge in chambers.

Title and service of proceedings

44.—(1) An originating summons under this Part of this Order shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.

(2) Any originating summons, or other document, required to be served under this Part of this Order may be served out of the jurisdiction with the leave of the court.

Application for restraint order

45.—(1) An application for a restraint order under section 191 may be made ex parte by originating summons.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall—

(*a*) give full particulars of the matters relied upon in the support of the application;

(*b*) to the best of the deponent's ability, give full particulars of the realisable property in respect of which the order is sought and specify the person holding such property;

(*c*) give the grounds for, and full particulars of, any order sought under section 190(7); and

(*d*) where the applicant is an accredited financial investigator, include a statement that he has been authorised under section 216 to make the application.

(3) Where a restraint order is made the applicant shall, unless the Court directs otherwise, serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify of its terms all other persons or bodies of whom the applicant is aware who are affected by the order.

Restraint Order

46.—(1) A restraint order may require the applicant to indemnify third parties against expenses incurred in complying with the order but the applicant shall not be required to give an undertaking to abide by an order as to damages sustained by the defendant or other person as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until the Court makes an order varying or discharging the restraint order.

(**a**) Part III, rules 42 – 60, inserted by S.R. 2003 No. 54 with effect from 24.03.03
(**b**) 2002 c. 29

Application for discharge or variation of restraint order by person affected by the order

47. An application for the discharge or variation of a restraint order or an order made under section 190(7) by a person affected by the order shall be made by summons which, together with any affidavit in support, shall be lodged with the Court and, not less than two days before the date fixed for the hearing of the summons, served on:

(*a*) the person who applied for the restraint order;

(*b*) all other named persons restrained by the order; and

(*c*) any other person of whom the applicant is aware who may be affected by the application.

Application for variation of restraint order by person who applied for the order

48.—(1) An application for variation of a restraint order or an order made under section 190(7) by the person who applied for the order shall be made by summons.

(2) The application shall be supported by an affidavit which shall:

(*a*) give full particulars of the matters relied upon in support of the application;

(*b*) where the application is for the inclusion of further realisable property in the restraint order, to the best of the deponent's ability give full particulars of the realisable property in respect of which the variation of the order is sought and specify the person holding such property; and

(*c*) where the applicant is an accredited financial investigator, include a statement that he has been authorised under section 216 to make the application.

(3) The summons and affidavit in support shall be lodged with the Court not less than two days before the date fixed for hearing the summons and, subject to paragraph (4), served on:

(*a*) the defendant; and

(*b*) the receiver, where one has been appointed in the matter; and

(*c*) any other person of whom the applicant is aware who may be affected by the order.

(4) An application under paragraph (1) may be made ex parte where the case is one of urgency or the giving of notice would cause a reasonable apprehension of dissipation of assets.

(5) Rule 45(3) shall apply to the service of an order varying a restraint order and to the notification of all other persons or bodies affected thereby.

Application for discharge of restraint order by person who applied for the order

49.—(1) An application for discharge of a restraint order or an order made under section 190(7) by the applicant for the order may be made ex parte by summons.

(2) An application under paragraph (1), together with any affidavit in support, shall be lodged with the Court not less than two days before the date fixed for the hearing of the summons.

(3) Rule 45(3) shall apply to the service of an order discharging a restraint order and to the notification of all persons or bodies affected thereby.

Application for appointment of a receiver

50.—(1) An application for the appointment of a receiver under section 196 shall be made by summons.

(2) The application shall be supported by an affidavit, which shall include—

(*a*) full particulars of the matters relied upon in support of the application;

(*b*) full details of the proposed receiver;

(*c*) to the best of the deponent's ability, full particulars of the realisable property in respect of which the order is sought and specify the person holding such property;

(*d*) where the applicant is an accredited financial investigator, a statement that he has been authorised under section 216 to make the application; and

(*e*) if the proposed receiver is not a member of staff of [(**a**)...] the Department of the Director of Public Prosecutions (Northern Ireland) or the Commissioners of Her Majesty's Customs and Excise and the applicant wishes the Court to authorise the proposed receiver to act without the giving of security or before he has given security, a statement of the reasons why the applicant considers this to be necessary.

(3) The summons and affidavit in support shall be lodged with the Court not less than seven days before the date fixed for the hearing, and subject to paragraph (4), served on:

(*a*) the defendant;

(*b*) any person who holds realisable property to which the application relates; and

(*c*) any other person of whom the applicant is aware who may be affected by the application.

(4) An application under paragraph (1) may be made ex parte where—

(*a*) it is joined with an application for a restraint order under rule 45;

(*b*) the case is one of urgency; or

(*c*) the giving of notice would cause a reasonable apprehension of dissipation of assets.

(5) Where the Court makes an order appointing a receiver, unless the Court otherwise directs, the applicant shall serve copies of the order and of the affidavit in support on:

(*a*) the defendant;

(*b*) the receiver;

(*c*) any person who holds realisable property to which the order applies; and

(*d*) any other person of whom the applicant is aware who may be affected by the order.

Receivers

51.—(1) Subject to the provisions of this Rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed under section 196.

(2) Where a receiver is appointed under section 196 and he is a member of the staff of [(**a**)...] the Department of the Director of Public Prosecutions (Northern Ireland) or the Commissioners of Her Majesty's Customs and Excise:

(*a*) it shall not be necessary for him to give security, unless the Court otherwise directs; and

(*b*) Order 30 rule 3 shall not apply.

Powers of a receiver

52.—(1) An application for an order for the conferment of powers on a receiver under section 197 shall be made by summons.

(2) The application shall be supported by an affidavit, which shall include—

(**a**) Words omitted by S.I. 2008 No. 574 with effect from 01.04.08

(*a*) full particulars of the matters relied upon in support of the application;

(*b*) to the best of the deponent's ability, full particulars of the realisable property in respect of which the order is sought and details of the person holding such property; and

(*c*) where the applicant is an accredited financial investigator, a statement that he has been authorised under section 216 to make the application.

(3) The summons and affidavit in support shall be lodged with the Court not less than seven days before the date fixed for hearing, and subject to paragraph (4), served on:

(*a*) the defendant;

(*b*) the receiver;

(*c*) any person who holds realisable property to which the application relates; and

(*d*) any other person of whom the applicant is aware who may be affected by the application.

(4) Except where section 197(8) applies, an application under paragraph (1) may be made ex parte—

(*a*) where the application is joined with an application for a restraint order under rule 45;

(b) the case is one of urgency; or

(*c*) the giving of notice would cause a reasonable apprehension of dissipation of assets.

(5) Rule 50(5) shall apply to the service of an order conferring powers on the receiver.

Application for discharge or variation of receivership order and application for other orders

53.—(1) An application under section 210(3) or section 211(1) shall be made by summons which, together with any affidavit in support, shall be lodged with the Court and, not less than seven days before the date fixed for the hearing of the summons, be served, where he is not the applicant, on:

(*a*) the person who applied for the appointment of the receiver;

(*b*) the defendant;

(*c*) any person who holds realisable property in respect of which the receiver has been appointed;

(*d*) the receiver; and

(*e*) any other person of whom the applicant is aware who may be affected by the application.

(2) Where the Court makes an order under section 211(2) for the discharge or variation of an order relating to a receiver, copies of the order shall be served by the applicant on all those who were served with a copy of the application under paragraph (1).

Application for leave

54. An application for leave under section 206(2) shall be made by summons which, together with any affidavit in support, shall be lodged with the Court and, not less than seven days before the date for the hearing of the application, be served on:

(*a*) the tenant;

(*b*) the applicant for the restraint order;

(*c*) the person against whom the restraint order has been made;

(*d*) the receiver (if appointed); and

(*e*) any other person of whom the applicant is aware who may be affected by the application.

Application for registration

55.—(1) An application for registration of an order under Article 16 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002 (**a**) ("the 2002 Order") may be made ex parte.

(2) An application under paragraph (1) shall be supported by an affidavit—

(*a*) exhibiting the order, or a certified copy thereof; and

(*b*) giving, to the best of the deponent's ability, full particulars of the realisable property located in Northern Ireland in respect of which the order was made, and specifying the person holding such property.

Register of orders

56.—(1) There shall be kept in the Central Office under the direction of the Master a register of the orders registered under Article 16 of the 2002 Order.

(2) There shall be included in such register particulars of any variation or setting aside of a registration, of any variation or discharge of a registered order, and of any execution issued on the order.

Notice of registration

57.—(1) Notice of the registration of an order shall be served on any person holding realisable property to which the order applies, and any other person of whom the applicant is aware who may be affected by the order, by delivering it to him personally or by sending it to him at his last known address or place of business or in such other manner as the Court may direct.

(2) Service of a notice under paragraph (1) out of the jurisdiction may be effected without leave and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a writ.

Application to vary or set aside registration

58.—(1) An application to vary or set aside the registration of an order may be made by—

(*a*) any person who holds realisable property to which the order applies; and

(*b*) any person affected by an order.

(2) An application under paragraph (1) shall be made to a judge by summons supported by affidavit.

(3) The summons, together with the affidavit in support, shall be lodged with the Court and served on the applicant for registration not less than seven days prior to the date fixed for the hearing of the summons.

(4) Where an application is made under paragraph (1), the registered order shall not, unless the Court otherwise orders, be enforced until after such application is determined.

Variation and discharge of the registered order

59. Upon the Court being notified by the applicant for registration that an order which has been registered has been varied or discharged, particulars of the variation or discharge, as the case may be, shall be entered in the register.

[(**b**)...]]

(**a**) S.I. 2002/3133

(**b**) Rule 60 revoked by S.I. 2008 No. 574 with effect from 01.04.08

[(**a**)ORDER 116A

PREVENTION OF TERRORISM ACT 2005

PART I

PRELIMINARY

Application and interpretation

1.—(1) This Order applies to –

(a) control order proceedings in the High Court; and

(b) appeals to the Court of Appeal against an Order of the High Court in such proceedings.

(2) In the case of proceedings brought by virtue of section 11(2) of the Act, the rules in this Order shall apply with any modification which the Court considers necessary.

(3) In this Order –

"the Act" means the Prevention of Terrorism Act 2005(**b**);

"closed material" means any relevant material that the Secretary of State objects to disclosing to a relevant party;

"control order proceedings" has the same meaning as in section 11(6) of the Act;

"controlled person" has the same meaning as in section 15(1) of the Act;

"legal representative" is to be construed in accordance with paragraph 11 of the Schedule to the Act;

"open material" means any relevant material that the Secretary of State does not object to disclosing to a relevant party;

"relevant law officer" has the same meaning as in paragraph 7(6) of the Schedule to the Act;

"relevant material" has the same meaning as in paragraph 4(5) of the Schedule to the Act;

"relevant party" has the same meaning as in paragraph 11 of the Schedule to the Act;

"special advocate" means a person appointed under paragraph 7 of the Schedule to the Act.

(4) For the purposes of this Order, disclosure is contrary to the public interest if it is made contrary to the interests of national security, the international relations of the United Kingdom, the detection and prevention of crime, or in any other circumstances where disclosure is likely to harm the public interest.

Modification to the overriding objective

2.—(1) Where this Order applies, the overriding objective in Order 1 and, so far as relevant, any other rule, must be read and given effect in a way which is compatible with the duty set out in paragraph (2).

(**a**) New Order inserted by S.R. 2005 No. 314 with effect from 27.6.05

(**b**) 2005 c. 2

(2) The Court must ensure that information is not disclosed contrary to the public interest.

(3) Subject to paragraph (2), the Court must satisfy itself that the material available to it enables it properly to determine proceedings.

PART II

APPLICATIONS TO THE HIGH COURT RELATING TO DEROGATING CONTROL ORDERS

Application of this Part

3. This Part of this Order applies to applications relating to derogating control orders.

Applications for the making of a derogating control order

4. An application for the making of a derogating control order under section 4(1) of the Act must be made by lodging with the Court –

(a) a statement of reasons to support the application for –

(i) making such an order; and

(ii) imposing each of the obligations to be imposed by that order;

(b) all relevant material;

(c) any written submissions; and

(d) a draft of the order sought.

Directions for a full hearing on notice

5.—(1) When the Court makes a derogating control order under section 4(3) of the Act it must –

(a) immediately fix a date, time and place for a further hearing at which the controlled person, his legal representative and a special advocate (if one has been appointed) can be present; and

(b) unless the Court otherwise directs, that date must be no later than 7 days from the date that the order is made.

(2) At the hearing referred to in paragraph (1)(a), the Court must give directions –

(a) for the holding of a full hearing under section 4(1)(b) of the Act to determine whether to confirm the control order (with or without modifications), or to revoke it; and

(b) specifying the date and time by which the parties and special advocate must lodge and serve any written evidence or written submissions in accordance with rule 33 of this Order.

(3) When giving directions under paragraph (2), the Court must have regard to the need to expedite the full hearing.

Applications on notice

6.—(1) An application under section 4(9) of the Act for the renewal, or under section 7(4) of the Act, for the revocation of a control order or for the modification of obligations imposed by such an order, must be made in accordance with this rule.

(2) An application by the Secretary of State must be made by –

(a) lodging with the Court –

(i) a statement of reasons to support the application,

(ii) all relevant material,

(iii) any written submission, and

(iv) a draft of the order sought; and

(*b*) serving on the controlled person or his legal representative any open material.

(3) An application by the controlled person must be made by lodging with the Court and serving on the Secretary of State–

(*a*) a statement of reasons to support the application;

(*b*) any written evidence upon which he relies;

(*c*) any written submissions; and

(*d*) where appropriate, a draft of the order sought.

(4) If the controlled person wishes to oppose an application made under this rule, he must as soon as practicable lodge with the Court, and serve on the Secretary of State, any written evidence and any written submissions upon which he relies.

(5) If the Secretary of State wishes to oppose an application made under this rule, he must as soon as practicable–

(*a*) lodge with the Court–

(i) all relevant material, and

(ii) any written submissions; and

(*b*) serve on the controlled person any open material.

(6) Rules 31 and 32 of this Order shall apply where any closed material is lodged by the Secretary of State.

PART III

LEAVE APPLICATIONS, REFERENCES AND APPEALS TO THE HIGH COURT RELATING TO NON-DEROGATING CONTROL ORDERS

Application of this Part

7. This Part of this Order applies to–

(*a*) applications under section 3(1)(*a*) of the Act for leave to make a non-derogating control order;

(*b*) references under section 3(3) of the Act of a non-derogating control order made without leave; and

(*c*) appeals to the High Court under section 10 of the Act relating to non-derogating control orders.

Application for leave to make non-derogating control order

8. An application under section 3(1)(*a*) of the Act for leave to make a non-derogating control order must be made by the Secretary of State by lodging with the Court–

(*a*) a statement of reasons to support the application;

(*b*) all relevant material;

(*c*) any written submissions; and

(*d*) the proposed control order.

[*Supplt. No. 48 (August 2009)*]

ORDER 116A

References under section 3(3) of the Act

9.—(1) This rule shall apply where the Secretary of State makes a reference under section 3(3) of the Act (reference of a non-derogating control order).

(2) The Secretary of State must promptly lodge with the Court—

(*a*) a statement of the reasons for—

(i) making the control order, and

(ii) imposing the obligations imposed by that order;

(*b*) all relevant material; and

(*c*) any written submissions.

Directions for hearing on an application for leave or on a reference

10.—(1) This rule applies where the Court gives directions under section 3(2)(*c*) or 6(*b*) or (*c*) of the Act.

(2) The Court must immediately—

(*a*) fix a date, time and place for a further hearing at which the controlled person, his legal representative and a special advocate (if one has been appointed) can be present; and

[(**a**) (*b*) unless the Court otherwise directs—

(i) in the case of directions given under section 3(2)(*c*), that date must be no later than 7 days from the date on which the notice of the terms of the control order is delivered to the controlled person in accordance with section 7(8) of the Act; or

(ii) in the case of directions given under section 3(6)(*b*) or (*c*), that date must be no later than 7 days from the date on which the Court's determination on the reference is made.]

(3) At the hearing referred to in paragraph (2), the Court must give directions–

(*a*) for a hearing under section 3(10) of the Act; and

(*b*) specifying the date and time by which the parties and special advocate must lodge and serve any written evidence or written submissions in accordance with rule 33 of this Order.

(4) When giving directions under paragraph (3), the Court must have regard to the need to expedite that hearing.

(5) Rules 31 and 32 of this Order shall apply where any closed material is lodged by the Secretary of State.

Appeals under section 10 of the Act

11.—(1) This rule and rules 12 to 14 of this Order apply to appeals under section 10 of the Act (appeals relating to a non-derogating control order).

(2) With the exception of rule 16 thereof, Part II of Order 55 shall not apply to appeals under section 10 of the Act.

(3) Order 59, rule 10 applies to appeals under section 10 of the Act subject to—

(*a*) rule 2 of this Order; and

(*b*) the rules in Part V of this Order.

Notice of appeal

12.—(1) The controlled person must give notice of appeal in Form 37B by–

(*a*) lodging it with the Court; and

(**a**) Paragraph substituted by S.R. 2009 No. 264 with effect from 10.08.09

(b) serving a copy of the notice and any accompanying documents on the Secretary of State.

(2) The notice of appeal must –

(a) set out the grounds of the appeal; and

(b) state the name and address of –

(i) the controlled person, and

(ii) any legal representative of that person.

(3) A notice of appeal may include an application for an order under rule 22 requiring anonymity.

(4) The notice of appeal must be lodged with –

(a) a copy of the order that is the subject of the appeal;

(b) a copy of the Secretary of State's decision on application for the revocation of the control order, or for the modification of an obligation imposed by such an order.

Time limit for appealing

13.—(1) Subject to paragraph (2), the controlled person must give notice of appeal no later than 28 days after receiving notice of –

(a) the terms of the renewal or modification of the order; or

(b) the decision by the Secretary of State on an application for the revocation of the control order, or for the modification of an obligation imposed by such an order.

(2) In the case where the Secretary of State has failed to determine an application for the revocation of the control order, or for the modification of an obligation imposed by such an order, the controlled person must lodge the notice of appeal –

(a) no earlier than 28 days; and

(b) no later than 42 days;

after the date the application was made.

Secretary of State's reply

14. If the Secretary of State wishes to oppose an appeal made under section 10 of the Act, he must no later than 14 days after he is served with the notice of appeal –

(a) lodge with the Court –

(i) all relevant material; and

(ii) any written submissions; and

(b) serve on the controlled person any open material.

PART IV

APPEALS TO THE COURT OF APPEAL

Application

15.—(1) Order 59 applies to appeals to the Court of Appeal against an Order of the High Court in control order proceedings subject to –

(a) rule 2 of this Order;

(b) the rules in Part V of this Order; and

(c) paragraph (2) of this rule.

(2) Order 59, rules 3(1), (2), (4) and (5), 4 to 6, 9, 11 and 14 to 18 do not apply to appeals to the Court of Appeal against an order of the High Court in control order proceedings.

(3) Rules 12 and 14 of this Order shall apply with appropriate modifications.

Leave to appeal

16.—(1) A party to an appeal under this Part of this Order requires leave to appeal to the Court of Appeal.

(2) An application for leave to appeal may be made –

(a) to the High Court at the hearing at which the decision to be appealed was made; or

(b) to the Court of Appeal in the notice of appeal.

(3) Where the High Court refuses an application for leave to appeal, a further application may be made to the Court of Appeal.

(4) Where the Court of Appeal, without a hearing, refuses leave to appeal, the person seeking leave may request the decision to be reconsidered at a hearing.

(5) A request under paragraph (4) must be lodged within 7 days after service of the notice that leave has been refused.

(6) Leave to appeal will only be given where –

(a) the Court considers that the appeal would have a real prospect of success; or

(b) there is some other compelling reason why the appeal should be heard.

(7) An order giving leave may –

(a) limit the issues to be heard; and

(b) be made subject to conditions.

Time limit for appealing

17.—(1) The appellant in an appeal under this Part of this Order must lodge the notice of appeal within –

(a) such period as may be directed by the High Court; or

(b) where the High Court makes no such direction, 14 days after the date of the decision of the High Court that the appellant wishes to appeal.

(2) Unless the Court of Appeal orders otherwise, a notice of appeal must be served on each respondent –

(a) as soon as practicable; and

(b) in any event not later than 7 days,

after it is lodged.

Striking out notices of appeal and setting aside or imposing conditions on leave to appeal

18.—(1) The Court of Appeal may –

(a) strike out the whole or part of a notice of appeal;

(b) set aside leave to appeal in whole or in part;

(*c*) impose or vary conditions upon which an appeal may be brought.

(2) The Court will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party was present at the hearing at which leave was given, he may not subsequently apply for an order that the Court exercise its powers under paragraph (1) (*b*) or (*c*).

(4) If the Court of Appeal—

(*a*) refuses an application for leave to appeal;

(*b*) strikes out a notice of appeal; or

(*c*) dismisses an appeal,

and it considers that the application, the notice of appeal or the appeal is totally without merit, the Court's order must record this fact.

Hearing of appeals

19.—(1) The provisions of this rule apply without prejudice to the generality of the provisions in Order 59, rule 10.

(2) Every appeal under this Part of this Order will be limited to a review of the decision of the High Court unless the Court of Appeal considers that, in the circumstances of an individual appeal, it would be in the interests of justice to hold a re-hearing.

(3) Unless it orders otherwise, the Court of Appeal will not receive—

(*a*) oral evidence; or

(*b*) evidence which was not before the High Court.

(4) The Court of Appeal will allow an appeal where the decision of the High Court was—

(*a*) wrong; or

(*b*) unjust because of a serious procedural or other irregularity in the proceedings in the High Court.

(5) The Court of Appeal may exercise its powers in relation to the whole or part of an order of the High Court.

PART V

GENERAL PROVISIONS

Scope of this Part

20. This Part of this Order applies to—

(*a*) control order proceedings in the High Court; and

(*b*) appeals to the Court of Appeal against an order of the High Court in such proceedings.

Address for issuing proceedings in the High Court

21. Any control order proceedings must be issued at the Central Office, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF.

[*Supplt. No. 48 (August 2009)*]

ORDER 116A

Applications for anonymity

22.—(1) The controlled person or the Secretary of State may apply for an order requiring the anonymity of the controlled person.

(2) An application under paragraph (1) may be made at any time, irrespective of whether any control order proceedings have been commenced.

(3) An application may be made without notice to the other party.

[(a) (4) References in this rule—

(*a*) to an order requiring anonymity for the controlled person are to be construed in accordance with paragraph 5(3) of the Schedule to the Act; and

(*b*) to the controlled person, in relation to a time before the control order has been made, are to be construed in accordance with paragraph 5(4) of the Schedule to the Act.]

Notification of hearing

23. Unless the Court orders otherwise, it must serve notice of the date, time and place fixed for any hearing on—

(*a*) every party, whether or not entitled to attend that hearing; and

(*b*) if one has been appointed for the purposes of the hearing, the special advocate or those instructing him.

Hearings

24.—(1) The following proceedings must be determined at a hearing—

(*a*) a hearing pursuant to directions given under section 4(1)(*b*) of the Act in respect of derogating control orders;

(*b*) a hearing pursuant to directions given under sections 3(2) or (6)(*b*) or (*c*) of the Act in respect of non-derogating control orders;

(*c*) an appeal under section 10 of the Act relating to a non-derogating control order;

(*d*) an appeal to the Court of Appeal from an Order of the High Court made in any of the above proceedings; and

(*e*) a hearing under rule 32(2) of this Order.

(2) Paragraph (1)(*c*) and (*d*) do not apply where—

(*a*) the appeal is withdrawn by the controlled person;

(*b*) the Secretary of State consents to the appeal being allowed; or

(*c*) the controlled person is outside the United Kingdom or it is impracticable to give him notice of a hearing and, in either case, he is unrepresented.

Hearings in private

25.—(1) If the Court considers it necessary for any relevant party and his legal representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, it must—

(*a*) direct accordingly; and

(*b*) conduct the hearing, or that part of it from which the relevant party and his legal representative are excluded, in private.

(2) The Court may conduct a hearing or part of a hearing in private for any other good reason.

(a) Paragraph 4 substituted by S.R. 2009 No. 264 with effect from 10.08.09

Appointment of a special advocate

26.—(1) Subject to paragraph (2), the Secretary of State must immediately give notice of the proceedings to the relevant law officer upon—

(*a*) making an application under section 4(1) of the Act in relation to a derogating control order;

(*b*) making an application under section 3(1)(*a*) of the Act for leave to make a non-derogating control order;

(*c*) making a reference under section 3(3) of the Act in relation to a non-derogating control order made without leave; or

(*d*) being served with a copy of any application, claim, or notice of appeal in proceedings to which this Order applies.

(2) Paragraph (1) applies unless—

(*a*) the Secretary of State does not intend to—

(i) oppose the appeal or application; or

(ii) withhold closed material from a relevant party; or

(*b*) a special advocate has already been appointed to represent the interests of the relevant party in the proceedings and that special advocate is not prevented from communicating with that party by virtue of rule 28.

(3) Where notice is given to the relevant law officer under paragraph (1), the relevant law officer may appoint a special advocate to represent the interests of the relevant party in the proceedings.

(4) Where any proceedings to which this Order applies are pending but no special advocate has been appointed, a relevant party or the Secretary of State may request the relevant law officer to appoint a special advocate.

Functions of special advocate

27. The functions of a special advocate are to represent the interests of a relevant party by—

(*a*) making submissions to the Court at any hearings from which the relevant party and his legal representatives are excluded;

(*b*) [(**a**) adducing evidence and] cross-examining witnesses at any such hearings; and

(*c*) making written submissions to the Court.

Special advocate: communicating about proceedings

28.—(1) The special advocate may communicate with the relevant party or his legal representative at any time before the Secretary of State serves closed material on him.

(2) After the Secretary of State serves closed material on the special advocate, the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (3) or a direction of the Court pursuant to a request under paragraph (4).

(3) The special advocate may, without directions from the Court, communicate about the proceedings with–

(*a*) the Court;

(*b*) the Secretary of State, or any person acting for him;

(*c*) the relevant law officer, or any person acting for him; or

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(**a**) Words inserted by S.R. 2009 No. 264 with effect from 10.08.09

(*d*) any other person, except for the relevant party or his legal representative, with whom it is necessary for administrative purposes for him to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from the Court authorising him to communicate with the relevant party or his legal representative or with any other person.

(5) Where the special advocate makes a request for directions under paragraph (4)—

(*a*) the Court must notify the Secretary of State of the request; and

(*b*) the Secretary of State must, within a period specified by the Court, lodge with the Court and serve on the special advocate notice of any objection which he has to the proposed communication, or to the form in which it is proposed to be made.

(6) Paragraph (2) does not prohibit the relevant party from communicating with the special advocate after the Secretary of State has served material on him as mentioned in paragraph (1), but—

(*a*) the relevant party may only communicate with the special advocate through a legal representative in writing; and

(*b*) the special advocate must not reply to the communication other than in accordance with directions of the Court, except that he may without such directions send a written acknowledgement of receipt to the legal representative of the relevant party.

Modification of the general rules of evidence and disclosure

29.—(1) Orders 24 and 38 and Order 39, rules 1 and 2 do not apply to any proceedings to which this Order applies.

(2) Subject to the other rules in this Order, the evidence of a witness may be given either—

(*a*) orally, before the Court; or

(*b*) in writing, in which case it shall be given in such manner and at such time as the Court directs.

(3) The Court may also receive evidence in documentary or any other form.

(4) The Court may receive evidence that would not, but for this rule, be admissible in a court of law.

(5) Every party shall be entitled to adduce evidence and to cross-examine witnesses during any part of a hearing from which he and his legal representative are not excluded.

[(**a**) (5A) A special advocate shall be entitled to adduce evidence and to cross examine witnesses.]

(6) The Court may require a witness to give evidence on oath.

Lodging and service of relevant material

30. The Secretary of State is required to make a reasonable search for relevant material and to lodge and serve that material in accordance with the rules in this Order.

Closed material

31.—(1) The Secretary of State—

(**a**) Rule 5A inserted by S.R. 2009 No. 264 with effect from 10.08.09

(a) must apply to the Court for leave to withhold closed material from a relevant party or his legal representative in accordance with this rule; and

(b) may not rely on closed material at a hearing on notice unless a special advocate has been appointed to represent the interests of the relevant party.

(2) The Secretary of State must lodge with the Court and serve, at such time as the Court directs, on the special advocate –

(a) the closed material;

(b) a statement of his reasons for withholding that material from the relevant party; and

(c) if he considers it possible to summarise that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the relevant party.

(3) The Secretary of State may at any time amend or supplement material lodged under this rule, but only with –

(a) the agreement of the special advocate; or

(b) the leave of the Court.

Consideration of Secretary of State's objection

32.—(1) This rule applies where the Secretary of State has –

(a) objected under rule 28(5)(b) of this Order to a proposed communication by the special advocate; or

(b) applied under rule 31 of this Order for leave to withhold closed material.

(2) The Court must fix a hearing for the Secretary of State and the special advocate to make oral representations, unless –

(a) the special advocate gives notice to the Court that he does not challenge the objection or application;

(b) the Court has previously considered –

(i) an objection under rule 28(5)(b) of this Order in relation to the proposed communication of an objection under paragraph (1)(a) above or a substantially similar communication, or

(ii) an application under rule 31(1) of this Order for leave to withhold the same or substantially the same material, and

is satisfied that it would be just to uphold that objection or to give leave without a hearing; or

(c) the Secretary of State and the special advocate consent to the Court deciding the issue without a hearing.

(3) If the special advocate does not challenge the objection or the application, he must give notice of that fact to the Court and the Secretary of State within 14 days, or such other period as the Court may direct, after the Secretary of State serves on him a notice under rule 28(5)(b) of this Order or material under rule 31(2) of this Order.

(4) Where the Court fixes a hearing under this rule, the Secretary of State and the special advocate must before the hearing lodge with the Court a schedule identifying the issues which cannot be agreed between them, which must –

(a) list the items or issues in dispute;

(b) give brief reasons for their contentions on each; and

(c) set out any proposals for the Court to resolve the issues in contention.

(5) A hearing under this rule shall take place in the absence of the relevant party and his legal representative.

(6) Where the Court gives leave to the Secretary of State to withhold closed material, the Court must –

(a) consider whether to direct the Secretary of State to serve a summary of that material on the relevant party or his legal representative; but

(b) ensure that no such summary contains information or other material the disclosure of which would be contrary to the public interest.

(7) Where the Court has not given leave to the Secretary of State to withhold closed material from, or has directed the Secretary of State to serve a summary of that material on, a relevant party or his legal representative –

(a) the Secretary of State shall not be required to serve that material or summary; but

(b) if he does not do so, at a hearing on notice the Court may –

(i) if it considers that the material or anything that is required to be summarised might be of assistance to the relevant party in relation to a matter under consideration by the court, direct that the matter be withdrawn from its consideration, and

(ii) in any other case, direct that the Secretary of State shall not rely in the proceedings on that material or (as the case may be) on what is required to be summarised.

(8) The Court must give leave to the Secretary of State to withhold closed material where it considers that the disclosure of that material would be contrary to the public interest.

Order for lodging and serving material and written submissions

33.—(1) Subject to any directions given by the Court, the parties must lodge and serve any material and written submissions, and the special advocate must lodge and serve any written submissions, in the following order –

(a) the Secretary of State must lodge with the Court all relevant material;

(b) the Secretary of State must serve on –

(i) the relevant party or his legal representative; and

(ii) the special advocate (as soon as one is appointed) or those instructing him, any open material;

(c) the relevant party must lodge with the Court and serve on the Secretary of State and special advocate (if one is appointed) or those instructing him any written evidence which he wishes the Court to take into account at the hearing;

(d) the Secretary of State must lodge with the Court any further relevant material;

(e) the Secretary of State must serve on –

(i) the relevant party of his legal representative, and

(ii) the special advocate (as soon as one is appointed) or those instructing him, any open material lodged with the Court under paragraph (d);

(f) the Secretary of State must serve on the special advocate (if one has been appointed) any closed material;

(g) the parties and the special advocate (if one has been appointed) must lodge and serve any written submissions as directed by the Court.

(2) Rules 31 and 32 of this Order apply where any closed material is lodged by the Secretary of State.

Failure to comply with directions

34.—(1) Where a party or the special advocate fails to comply with a direction of the Court, the Court may serve on him a notice which states –

(a) the respect in which he has failed to comply with the direction;

(b) a time limit for complying with the direction; and

(c) that the Court may proceed to determine the proceedings before it, on the material available to it, if the party or the special advocate fails to comply with the relevant direction within the time specified.

(2) Where a party or special advocate fails to comply with such a notice, the Court may proceed in accordance with paragraph (1)(c).

Judgments

35.—(1) When the Court gives judgment in any proceedings to which this Order applies, it may withhold any or part of its reasons if and to the extent that it is not possible to give reasons without disclosing information contrary to the public interest.

(2) Where the judgment of the Court does not include the full reasons for its decision, the Court must serve on the Secretary of State and the special advocate a separate written judgment including those reasons.

Application by Secretary of State for reconsideration of decision

36.—(1) This rule applies where the Court proposes, in any proceedings to which this Order applies, to serve notice on a relevant party of any –

(a) order or direction made or given in the absence of the Secretary of State; or

(b) any judgement.

(2) Before the Court serves any such notice on the relevant party, it must first serve notice on the Secretary of State of its intention to do so.

(3) The Secretary of State may, within 5 days of being served with notice under paragraph (2), apply to the Court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if he considers that –

(a) his compliance with the order or direction; or

(b) the notification to the relevant party of any matter contained in the judgment, order or direction;

would cause information to be disclosed contrary to the public interest.

(4) Where the Secretary of State makes an application under paragraph (3), he must at the same time serve a copy of it on the special advocate, if one has been appointed.

(5) Rule 32 of this Order (except for paragraphs (6) and (7)) shall, if a special advocate has been appointed, apply with any necessary modifications to the consideration of an application under paragraph (3) of this rule.

(6) The Court must not serve on the relevant party as mentioned in paragraph (1) before the time for the Secretary of State to make an application under paragraph (3) has expired.

Supply of Court documents

37. Unless the Court otherwise directs, Order 66, rules 3 to 5 shall not apply to proceedings under this Order.]

[(a) ORDER 116B

COUNTER-TERRORISM ACT 2008 [(b) AND PART 1 OF THE TERRORIST ASSET-FREEZING ETC. ACT 2010]

PART I

PRELIMINARY

Application and interpretation

[(c) 1.—(1) This Order applies to—

(*a*) financial restrictions proceedings;

(*b*) appeals to the Court of Appeal against an order of the High Court in such proceedings; [(d)...]

[(e) (*ba*) appeals relating to designations under the Terrorist Asset-Freezing etc. Act 2010; and]

(*c*) applications for a notification order under Schedule 4 to the Counter-Terrorism Act 2008.]

(2) In this Order—

(*a*) "the [(f) 2008] Act" means the Counter-Terrorism Act 2008(g);

[(b) (*aa*) "the 2010 Act" means the Terrorist Asset-Freezing etc. Act 2010;]

(*b*) "financial restrictions decision" means a decision to which section 63(1) of the [(b) 2008 Act or section 27 of the 2010] Act applies;

(*c*) "financial restrictions proceedings" [(b) means—

(i) financial restrictions proceedings within the meaning of section 65 of the 2008 Act; and

(ii) proceedings in the High Court on an application under section 27 of the 2010 Act, or on a claim arising from any matter to which such an application relates];

[(h) (*ca*) "designation" means a designation in accordance with Chapter 1 of Part 1 of the 2010 Act;]

(*d*) "closed material" means—

(i) material, evidence or submissions to the Court upon which the Treasury wishes to rely in proceedings;

(ii) material which adversely affects the Treasury's case or supports another party's case; or

(iii) information which the Treasury is required to lodge pursuant to an order under rule 10(7),

but which the Treasury objects to disclosing to another party and that party's legal representative;

(*e*) "legal representative" in relation to a party to proceedings other than the Treasury does not include a special advocate;

(*f*) "material" means anything in which information of any description is recorded;

(*g*) "party" includes the Treasury unless otherwise stated or unless the context otherwise requires;

(a) Order 116B inserted by S.R. 2008 No. 479 with effect from 04.12.08
(b) Words inserted by 2010 c. 38 with effect from 17.12.10
(c) Rule 1(1) substituted by S.R. 2009 No. 264 with effect from 1.10.09
(d) Word omitted by S.R. 2010 No. 430 with effect from 24.12.10
(e) Paragraph (*ba*) inserted by S.R. 2010 No. 430 with effect from 24.12.10
(f) Year inserted by 2010 c. 38 with effect from 17.12.10
(g) 2008 c. 28
(h) Paragraph (*ca*) inserted by S.R. 2010 No. 430 with effect from 24.12.10

(*h*) "special advocate" means a person appointed under section 68 of the [(**a**) 2008 Act (including that section as applied by section 28(4) of the 2010 Act)]; and

(*i*) "specially represented party" means a party, other than the Treasury, whose interest a special advocate represents.

Modification to the overriding objective

2.—(1) Where this Order applies, the overriding objective in Order 1, and so far as relevant any other rule, must be read and given effect in a way which is compatible with the duty set out in paragraph (2).

(2) The Court will ensure that information is not disclosed contrary to the public interest.

(3) Without prejudice to paragraph (2), the Court will satisfy itself that the material available to it enables it to properly determine the proceedings.

PART II
APPLICATION TO SET ASIDE A FINANCIAL RESTRICTIONS DECISION [(**b**) UNDER THE 2008 ACT OR THE 2010 ACT]

Application of this Part

3. This Part applies to an application to set aside a financial restrictions decision [(**b**) under section 63(2) of the 2008 Act or section 27(2) of the 2010 Act].

Application to set aside

4.—(1) An application to set aside a financial restrictions decision must be made by originating summons in Form 6 in Appendix A modified in accordance with rule 5(2).

(2) The originating summons must be supported by an affidavit setting out—

(*a*) the details of the financial restrictions decision;

(*b*) details of how the plaintiff is affected by the financial restrictions decision; and

(*c*) the grounds on which the plaintiff seeks to set aside the decision.

(3) The plaintiff must lodge with the originating summons—

(*a*) a copy of —

(i) the written notice of the relevant financial restrictions decision made by the Treasury; or

(ii) where relevant, any direction, order or licence made under Schedule 7 to the [(**c**) 2008] Act or any freezing order made under Part 2 of the Anti-Terrorism, Crime and Security Act 2001(**d**); and

(*b*) any evidence, including witness statements, on which the plaintiff relies at that stage.

Title and form of proceedings

5.—(1) An originating summons under this Part of this Order shall be entitled in the matter of a decision by the Treasury under section 63 of the Counter-Terrorism Act 2008 [(**a**) or section 27 of the Terrorist Asset-Freezing etc. Act 2010, as the case may be,] and all subsequent documents in the matter shall be so entitled.

(**a**) Words inserted by 2010 c. 38 with effect from 17.12.10
(**b**) Words inserted by 2010 No. 430 with effect from 24.12.10
(**c**) Year inserted by 2010 c. 38 with effect from 17.12.10
(**d**) 2001 c. 24

(2) In Form 6, the following paragraph shall be omitted—

"If the defendant does not enter an appearance, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.".

Fixing of directions hearing date

6.—(1) When the Court issues the originating summons it will fix a date for a directions hearing.

(2) Unless the Court directs otherwise, the directions hearing will be not less than 14 days but not more than 28 days after the date of issue of the originating summons.

Service of the originating summons and accompanying documents

7. The Court will—

(*a*) serve on the Treasury and any special advocate (if one has been appointed)—

(i) the originating summons; and

(ii) the documents specified in rule 4(3); and

(*b*) send to all parties and any special advocate a notice of the directions hearing date (where such date is not endorsed on the originating summons).

Memorandum of appearance

8. Where a special advocate has been appointed, the Treasury must serve on that special advocate a copy of the memorandum of appearance lodged under Order 12, rule 9.

Directions Hearing

9. At the directions hearing, the Court may give such directions as to the further conduct of the proceedings as it thinks necessary to secure the just, expeditious and economical disposal of the case, in particular—

(*a*) for the holding of a further hearing to determine the application;

(*b*) fixing a date, time and place for the further hearing at which the parties, their legal representatives (if any) and any special advocate can be present; and

(*c*) as to the order in which, and the time within which, the following are to be lodged and served—

(i) any response to the application to be lodged and served by the Treasury under rule 10(1), (2) and (4);

(ii) any application to be made under rule 10(5);

(iii) any information to be lodged and served by the Treasury pursuant to an order under rule 10(7);

(iv) any evidence to be lodged and served by the plaintiff under rule 11(1);

(v) any evidence to be lodged and served by the Treasury under rule 11(2);

(vi) any application by the Treasury under rule 10(3), (8) or 11(3); and

(vii) any further evidence, including witness statements, written submissions or skeleton arguments, to be lodged and served by the parties and any special advocate.

Response by the Treasury

10.—(1) Where the Treasury intends to oppose the application to set aside the financial restrictions decision, they must lodge with the Court —

(*a*) the grounds for contesting the application; and

(*b*) any relevant evidence of which they are aware at that stage.

(2) Unless the Treasury objects to the grounds and evidence in paragraph (1) being disclosed to the plaintiff and the plaintiff's legal representative, the Treasury must serve a copy of the grounds and evidence on the plaintiff at the same time as lodging the grounds.

(3) Where the Treasury objects to the grounds and evidence in paragraph (1) being disclosed to the plaintiff and the plaintiff's legal representative, the Treasury must make an application in accordance with rule 30.

(4) Where a special advocate has been appointed, the Treasury must serve on that special advocate a copy of the grounds and evidence lodged under paragraph (1).

(5) The plaintiff and any special advocate may apply to the Court for an order directing the Treasury to lodge and serve further information about the Treasury's grounds lodged under paragraph (1)(*a*).

(6) The application under paragraph (5) must set out—

(*a*) what information is sought; and

(*b*) why the information sought is necessary for the determination of the application to set aside the financial restrictions decision.

(7) The Court may make an order on an application under paragraph (5) where it considers that the information sought is—

(*a*) necessary for the determination of the application to set aside the financial restrictions decision; and

(*b*) may be provided without disproportionate cost, time or effort.

(8) Where the Treasury objects to serving on the plaintiff and the plaintiff's legal representative the information sought under paragraph (5), the Treasury must make an application in accordance with rule 30.

Lodging and service of evidence

11.—(1) Where the plaintiff wishes to rely on evidence in support of the application to set aside the financial restrictions decision and—

(*a*) such evidence was not lodged with the Court with the originating summons; or

(*b*) such evidence was lodged with the Court with the originating summons but the plaintiff wishes to rely on further evidence,

the plaintiff must lodge and serve that evidence, including any witness statement, on the Treasury and any special advocate.

(2) Where the plaintiff serves evidence in support of the application, the Treasury must lodge and serve, subject to paragraph (3), any further evidence, including any witness statement, on the plaintiff and any special advocate.

(3) Where the Treasury seeks to withhold disclosure of any closed material from the plaintiff and the plaintiff's legal representative, the Treasury must make an application in accordance with rule 30.

(4) The Treasury must serve any closed material on the special advocate.

(5) The parties and, where relevant, any special advocate must lodge and serve any further evidence, including witness statements, written submissions or skeleton arguments as directed by the Court.

[(**a**) PART III

APPEALS

A. APPEAL TO THE HIGH COURT IN RESPECT OF DESIGNATIONS

Application and Modification of Order 55

12.—(1) Order 55 Part II applies to an appeal to the High Court under section 26 of the 2010 Act (appeals to the court in relation to designations) in relation to designations and variations, revocation and renewal of those designations, subject to—

(*a*) rule 2;

(*b*) the rules in Part IV of this Order; and

(*c*) the modification set out in paragraph (2).

(2) Order 55, rules 16 to 20 do not apply to appeals to the High Court under section 26 of the 2010 Act.

Notice of Motion

13.—(1) The notice of motion must set out the details of—

(*a*) the interim or final designation;

(*b*) how the appellant is affected by the interim or final designation; and

(*c*) the grounds of the appeal.

(2) The appellant must file and serve the following documents with the notice of motion—

(*a*) a copy of the written notice of the interim or final designation; and

(*b*) any evidence, including witness statements in support of the [(**b**) appeal].

(3) The notice of motion may not be amended without the leave of the High Court.

(4) The High Court may strike out the whole or part of a notice of motion where there is a compelling reason to do so.

B. APPEAL TO THE COURT OF APPEAL

Application and Modification of Order 59

14.—(1) Order 59 applies to appeals to the Court of Appeal against orders of the High Court in financial restrictions proceedings, and to appeals to the Court of Appeal in relation to designations under the 2010 Act, subject to—

(*a*) rule 2 of this Order;

(*b*) the rules in Part IV of this Order; and

(*c*) the modification set out in paragraph (2).

(2) Order 59, rules 3(1), (4) and (5), 4, 5, 6(3) and (4), 11, 14 and 16 to 18 do not apply to appeals to the Court of Appeal against orders of the High Court in financial restrictions proceedings, and to appeals to the Court of Appeal in relation to designations under the 2010 Act.

Leave to appeal

15.—(1) A party who wishes to appeal against an order of the High Court in financial restrictions proceedings requires leave to appeal to the Court of Appeal.

(2) An application for leave to appeal may be made—

(*a*) to the High Court at the hearing at which the decision to be appealed was made; or

(*b*) to the Court of Appeal in the notice of appeal.

(3) Where the High Court refuses an application for leave to appeal, a further application may be made to the Court of Appeal.

(**a**) Part III substituted by S.R. 2010 No. 430 with effect from 24.12.10
(**b**) Word substituted by 2012 No. 273 with effect from 01.08.12

(4) Where the Court of Appeal, without a hearing, refuses leave to appeal, the person seeking leave may request the decision to be reconsidered at a hearing.

(5) A request under paragraph (4) must be lodged within 7 days after service of the notice that leave has been refused.

(6) Leave to appeal will only be given where—

(*a*) the Court considers that the appeal would have a real prospect of success; or

(*b*) there is some other compelling reason why the appeal should be heard.

(7) An order giving leave may—

(*a*) limit the issues to be heard; and

(*b*) be made subject to conditions.

16.—(1) A party who wishes to appeal against an order of the High Court in respect of a designation under the 2010 Act requires leave to appeal to the Court of Appeal from that court.

(2) Leave to appeal will only be given where—

(*a*) the Court of Appeal considers that the appeal would raise an important point of principle or practice; or

(*b*) there is some other compelling reason for the Court of Appeal to hear it.

Notice of appeal

17.—(1) An appeal to the Court of Appeal under this Order shall be brought by motion, and the notice of motion in this Order shall be referred to as a notice of appeal.

(2) The provisions of Order 8 shall apply to a notice of appeal under this Order as they apply to a notice of motion.

Time limit for appealing

18.—(1) The appellant in an appeal to the Court of Appeal under this Order must lodge the notice of appeal within—

(*a*) such period as may be directed by the High Court; or

(*b*) where the High Court makes no such direction, 21 days after the date of the decision of the High Court that the appellant wishes to appeal.

(2) Unless the Court of Appeal orders otherwise, a notice of appeal must be served on each respondent—

(*a*) as soon as practicable; and

(*b*) in any event not later than 7 days,

after it is lodged.

Service of notice of appeal on special advocate

19. The appellant must serve a copy of the notice of appeal on any special advocate (if one has been appointed).

Time limit for lodging the respondent's notice

19A.—(1) A respondent's notice must be lodged within—

(*a*) such period as may be directed by the High Court; or

(*b*) where the Court makes no such direction, 14 days after the date in paragraph (2).

(2) The date referred to paragraph (1) is—

(*a*) the date the respondent is served with the notice of appeal where leave to appeal was given by the High Court;

(*b*) the date the respondent is served with notification that the Court of Appeal has given the appellant leave to appeal; or

(*c*) the date the respondent is served with notification that the application for leave to appeal and the appeal itself are to be heard together.

(3) Unless the Court of Appeal orders otherwise a respondent's notice must be served on the appellant and any other respondent—

(*a*) as soon as practicable; and

(*b*) in any event not less than 7 days,

after it is lodged.

Striking out notices of appeal and setting aside or imposing conditions on leave to appeal

19B.—(1) The Court of Appeal may—

(*a*) strike out the whole or part of a notice of appeal;

(*b*) set aside leave to appeal in whole or in part;

(*c*) impose or vary conditions upon which an appeal may be brought.

(2) The Court will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party was present at the hearing at which leave was given, he may not subsequently apply for an order that the Court exercise its powers under paragraph (1) (b) or (c).

(4) If the Court of Appeal—

(*a*) refuses an application for leave to appeal;

(*b*) strikes out a notice of appeal; or

(*c*) dismisses an appeal,

and it considers that the application, the notice of appeal or the appeal is without merit, the Court's order must record this fact.

Hearing of appeals

19C.—(1) The provisions of this rule apply without prejudice to the generality of the provisions in Order 59, rule 10.

(2) Every appeal to the Court of Appeal under this Order will be limited to a review of the decision of the High Court unless the Court of Appeal considers that, in the circumstances of an individual appeal, it would be in the interests of justice to hold a re-hearing.

(3) Unless it orders otherwise, the Court of Appeal will not receive—

(*a*) oral evidence; or

(*b*) evidence which was not before the High Court.

(4) The Court of Appeal will allow an appeal where the decision of the High Court was—

(*a*) wrong; or

(*b*) unjust because of a serious procedural or other irregularity in the proceedings in the High Court.

(5) The Court of Appeal may exercise its powers in relation to the whole or part of an order of the High Court.]

PART IV

GENERAL PROVISIONS [(a) APPLICABLE TO PARTS II AND III OF THIS ORDER]

Scope of this Part

20. This Part applies to all proceedings specified in [(b)[(c) Parts II and III of this Order.]]

Notification of hearing

21. Unless the Court orders otherwise, the Court will serve any notice of the date, time and place fixed for a hearing on—

(*a*) every party, whether or not a party is entitled to attend that hearing; and

(*b*) if one has been appointed for the purposes of the proceedings, the special advocate or those instructing the special advocate.

Hearings

22.—(1) All [(b) proceedings to which Parts II, III or this Part of this Order apply] must be determined at a hearing except where—

(*a*) the plaintiff withdraws the claim or application;

(*b*) the Treasury consents to the claim or application being allowed;

(*c*) the appellant withdraws the appeal against a decision of [(a) the Treasury or] the High Court;

(*d*) the respondent to the appeal consents to the appeal being allowed; or

(*e*) the parties agree to a determination without a hearing.

(2) Where the Court considers it necessary for a party other than the Treasury and that party's legal representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, the Court will—

(*a*) direct accordingly; and

(*b*) conduct the hearing, or that part of it from which the party and that party's legal representative are excluded, in private but attended by a special advocate to represent the interests of the excluded party.

(3) The Court may otherwise conduct a hearing or part of a hearing in private if it considers that it is in the interests of justice or national security to do so.

(4) Subject to paragraphs (2) and (3) a hearing under this Order is to be in public.

Appointment of a special advocate

23.—(1) Subject to paragraph (2), the Treasury must immediately give notice of the proceedings to the Attorney General—

(*a*) upon being served with any originating summons or writ or notice of appeal; or

(*b*) where the Treasury intends to lodge a notice of appeal,

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(a) Words inserted by S.R. 2010 No. 430 with effect from 24.12.10
(b) Words substituted by 2009 No. 264 with effect from 01.10.09
(c) Words substituted by S.R. 2010 No. 430 with effect from 24.12.10

in [(a) proceedings to which Parts II, III or this Part of this Order apply].

(2) Paragraph (1) applies unless—

(*a*) the Treasury does not intend to—

(i) oppose the claim, application or appeal; or

(ii) apply for leave to withhold closed material from a party and that party's legal representative; or

(*b*) a special advocate has already been appointed to represent the interests of a party other than the Treasury and that special advocate is not prevented from communicating with that party by virtue of rule 25.

(3) Where any [(*a*) proceedings to which Parts II, III or this Part of this Order apply] are pending but no special advocate has been appointed, any party may request the Attorney General to appoint a special advocate.

Function of a special advocate

24. The function of a special advocate is to represent the interests of a party other than the Treasury by, for example—

(*a*) making submissions to the Court at any hearing from which the party and that party's legal representative are excluded;

(*b*) adducing evidence and cross-examining witnesses at such a hearing;

(*c*) making applications to the Court or seeking directions from the Court where necessary; and

(*d*) making written submissions to the Court.

Special advocate: communicating about proceedings

25.—(1) The special advocate may communicate with the specially represented party or that party's legal representative at any time before the Treasury serves closed material on the special advocate.

(2) After the Treasury serves closed material on the special advocate, the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (3) or a direction of the Court pursuant to a request under paragraph (4).

(3) The special advocate may, without directions from the Court, communicate about the proceedings with—

(*a*) the Court;

(*b*) the Treasury and any persons acting for it;

(*c*) the Attorney General and any persons acting for the Attorney General; and

(*d*) any other person, except for—

(i) the specially represented party and that party's legal representative; and

(ii) any other party to the proceedings (other than the Treasury) and that party's legal representative,

with whom it is necessary for administrative purposes for the special advocate to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from the Court authorising the special advocate to communicate with the specially represented party or that party's legal representative or with any other person.

(a) Words substituted by S.R. 2009 No. 264 with effect from 01.10.09

(5) Where the special advocate makes a request for directions under paragraph (4)—

(*a*) the Court will notify the Treasury of the request; and

(*b*) the Treasury must, within a period specified by the Court, lodge and serve on the special advocate notice of any objection which it has to the proposed communication, or to the form in which it is proposed to be made.

(6) Paragraph (2) does not prohibit the specially represented party from communicating with the special advocate after the Treasury has served closed material on the special advocate as mentioned in paragraph (1), but—

(*a*) that party may only communicate with the special advocate through a legal representative in writing; and

(*b*) the special advocate must not reply to the communication other than in accordance with directions given by the Court, except that the special advocate may without such directions send a written acknowledgment of receipt to the specially represented party's legal representative.

Consideration of the Treasury's objection

26.—(1) Where the Treasury objects under rule 25(5)(b) to a proposed communication by the special advocate the Court will fix a hearing for the Treasury and the special advocate to make oral representations, unless—

(*a*) the special advocate gives notice to the Court that the special advocate does not challenge the objection;

(*b*) the Court—

(i) has previously considered an objection under rule 25(5)(b) to the same or substantially the same communication; and

(ii) is satisfied that it would be just to uphold or dismiss that objection without a hearing; or

(*c*) the Treasury and the special advocate consent to the Court deciding the issue without a hearing.

(2) If the special advocate does not challenge the objection, the special advocate must give notice of that fact to the Court and to the Treasury—

(*a*) within 14 days after the Treasury serves on the special advocate a notice under rule 25(5)(b); or

(*b*) within such other period as the Court may direct.

(3) Where the Court fixes a hearing under paragraph (1)—

(*a*) the special advocate may lodge with the Court and serve on the Treasury a reply to the Treasury's objection;

(*b*) the Treasury may lodge with the Court and serve on the special advocate a response to the special advocate's reply; and

(*c*) the Treasury and the special advocate must lodge with the Court at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must—

(i) give brief reasons for their contentions on each issue in dispute; and

(ii) set out any proposals for the Court to resolve the issues in dispute.

(4) A hearing under this rule must take place in the absence of the specially represented party and that party's legal representative.

Modification of the general rules of evidence and disclosure

27.—(1) Order 24 (discovery and inspection of documents), Order 38 (evidence) and Order 39 (evidence by deposition), rules 1 and 2 do not apply to any [(**a**) proceedings to which Parts II, III or this Part of this Order apply.]

(2) [(**a**) Subject to the other rules in Parts II, III or this Part of this Order] and to any directions of the Court, the evidence of a witness may be given either—

(*a*) orally before the Court; or

(*b*) in a witness statement.

(3) The Court may also receive evidence in documentary or any other form.

(4) A party is entitled to adduce evidence and to cross-examine witnesses during any part of a hearing from which a party and that party's legal representative are not excluded.

[(**b**) (4A) A special advocate is entitled to adduce evidence and to cross examine witnesses.]

(5) The Court may require a witness to give evidence on oath or by affirmation.

Search for, lodging of and service of material

28.—(1) A party (the disclosing party) must—

(*a*) make a reasonable search for material relevant to the matters under consideration in the [(**a**) proceedings to which Parts II, III or this Part of this Order apply]; and

(*b*) lodge and serve on the other party and any special advocate material other than closed material—

(i) on which the disclosing party relies;

(ii) which adversely affects the disclosing party's case; [(**c**) or]

[(**d**)...]

(iv) which supports the other party's case.

[(**e**) (**d**)....]]

(2) The factors relevant in deciding the reasonableness of a search under paragraph (1)(a) include—

(*a*) the amount of material involved;

(*b*) the nature and complexity of the proceedings;

(*c*) whether the material is in the control of the party making the search;

(*d*) the ease and expense of retrieval of any material; and

(*e*) the significance of any material which is likely to be located during the search.

(3) The duty to search for, lodge and serve material under paragraph (1) continues until the [(a) proceedings to which Parts II, III or this Part of this Order apply] have been determined.

(4) Where material, other than closed material, to which the duty under paragraph (1) extends comes to a party's attention before the [(**a**) proceedings to which Parts II, III or this Part of this Order apply] have been determined, that party must immediately—

(*a*) lodge it with the Court;

(*b*) serve it on the other party; and

(*c*) serve it on any special advocate.

(**a**) Words substituted by S.R. 2009 No. 264 with effect from 01.10.09
(**b**) Paragraph (4A) inserted by S.R. 2009 No. 264 with effect from 01.10.09
(**c**) Word inserted by S.R. 2012 No. 273 with effect from 01.08.12
(**d**) Paragraphs 1(b)(iii) and (1A) omitted by S.R. 2012 No. 273 with effect from 01.08.12
(**e**) Paragraph (1A) inserted by S.R. 2010 No. 430 with effect from 24.12.10

ORDER 116B

Redacted material

29. Where the Treasury serves on another party any evidence (including a witness statement) or material which has been redacted on grounds other than those of legal professional privilege, the Treasury must—

(*a*) notify the party that the evidence or material has been redacted and on what grounds it has been redacted;

(*b*) lodge the evidence or material with the Court in an unredacted form together with an explanation of the redaction.

Application to withhold closed material

30.—(1) The Treasury—

(*a*) must apply to the Court for leave to withhold closed material from another party and that party's legal representative in accordance with this rule; and

(*b*) may not rely on closed material at a hearing unless a special advocate has been appointed and attends the hearing to represent the interests of that party.

(2) The Treasury must lodge with the Court and serve, at such time as the Court directs, on the special advocate—

(*a*) the closed material;

(*b*) a statement of the reasons for withholding that material from the specially represented party; and

(*c*) if the Treasury considers it possible to summarise that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the specially represented party or that party's legal representative.

(3) Where the Treasury serves on the special advocate any closed material which has been redacted on grounds other than those of legal professional privilege—

(*a*) the Treasury must file with the Court the material in an unredacted form together with an explanation of the redactions; and

(*b*) the Court will give a direction to the Treasury as to what may be redacted and what, if any, must be served on the special advocate in an unredacted form.

(4) The Treasury may at any time amend or supplement material lodged under this rule, but only with—

(*a*) the agreement of the special advocate; or

(*b*) the leave of the Court.

Consideration of the Treasury's application

31.—(1) Where the Treasury applies in accordance with rule 30 for leave to withhold closed material the Court will fix a hearing for the Treasury and the special advocate to make oral representations, unless—

(*a*) the special advocate gives notice to the Court that the special advocate does not challenge the application;

(*b*) the Court—

(i) has previously considered an application for leave to withhold the same or substantially the same material; and

(ii) is satisfied that it would be just to grant leave without a hearing; or

(*c*) the Treasury and the special advocate consent to the Court deciding the issue without a hearing.

(2) If the special advocate does not challenge the application, the special advocate must give notice of that fact to the Court and to the Treasury—

(*a*) within 14 days after the Treasury serves on the special advocate the material under rule 30(2); or

(*b*) within such other period as the Court may direct.

(3) Where the Court fixes a hearing under paragraph (1)—

(*a*) the special advocate may lodge with the Court and serve on the Treasury a reply to the Treasury's application;

(*b*) the Treasury may lodge with the Court and serve on the special advocate a response to the special advocate's reply; and

(*c*) the Treasury and the special advocate must lodge with the Court at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must—

(i) give brief reasons for their contentions on each issue in dispute; and

(ii) set out any proposals for the Court to resolve the issues in dispute.

(4) A hearing under this rule must take place in the absence of the specially represented party and that party's legal representative.

(5) The Court will grant leave to the Treasury to withhold closed material where it considers that disclosure of that material would be contrary to the public interest.

(6) Where the Court grants leave to the Treasury to withhold closed material, the Court will—

(*a*) consider whether to direct the Treasury to serve a summary of that material on the specially represented party or that party's legal representative; but

(*b*) ensure that such a summary does not contain material, the disclosure of which would be contrary to the public interest.

(7) Where the Court does not grant leave to the Treasury to withhold closed material from, or directs the Treasury to serve a summary of that material on, the specially represented party or that party's legal representative—

(*a*) the Treasury is not required to serve that material or summary; but

(*b*) if it does not do so, at a hearing on notice, the Court may—

(i) where it considers that the material or anything that is required to be summarised might adversely affect the Treasury's case or supports the case of the specially represented party, direct that the Treasury must not rely on such material in its case, or must make such concessions or take such other steps, as the Court may specify; or

(ii) in any other case, direct that the Treasury does not rely on the material or (as the case may be) on that which is required to be summarised.

Failure to comply with directions

32.—(1) Where a party or special advocate fails to comply with a direction of the Court, the Court may serve on that party or the special advocate a notice which states—

(*a*) the respect in which that party or special advocate has failed to comply with the direction;

(*b*) a time limit for complying with the direction; and

(*c*) that the Court may proceed to determine the proceedings before it, on the material available to it, if the party or special advocate fails to comply with the relevant direction within the time specified.

(2) Where a party or special advocate fails to comply with such a notice, the Court may proceed in accordance with paragraph (1)(*c*).

ORDER 116B

Judgments

33.—(1) When the Court gives judgment in any [(a) proceedings to which Parts II, III or this Part of this Order apply], it may withhold all or some of its reasons if and to the extent that it is not possible to give reasons without disclosing information contrary to the public interest.

(2) Where the judgment of the Court does not include the full reasons for its decision, the Court will serve on the Treasury and the special advocate a separate written judgment including those reasons.

(3) Where the Court serves a separate written judgment under paragraph (2), the special advocate may apply to the Court to amend that judgment and the judgment under paragraph (1) on the grounds that the separate written judgment under paragraph (2) contains material not in the judgment under paragraph (1) the disclosure of which would not be contrary to the public interest.

(4) The special advocate must serve a copy of the application under paragraph (3) on the Treasury.

(5) The Court will give the special advocate and the Treasury an opportunity to lodge written submissions and may determine the application with or without a hearing.

Application by Treasury for reconsideration of order, direction or judgment

34.—(1) This rule applies where the Court proposes, in any [(a) proceedings to which Parts II, III or this Part of this Order apply], to serve on a party other than the Treasury—

(*a*) notice of any order or direction made or given in the absence of the Treasury; or

(*b*) any written judgment.

(2) Before the Court serves any such notice or judgment on a party other than the Treasury, it will first serve notice on the Treasury of its intention to do so.

(3) The Treasury may, within 5 days of being served with notice under paragraph (2), apply to the Court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if it considers—

(*a*) its compliance with the order or direction; or

(*b*) the notification to another party of any matter contained in the judgment, order or direction,

would cause information to be disclosed contrary to the public interest.

(4) Where the Treasury makes an application under paragraph (3), it must at the same time serve on the special advocate, if one has been appointed—

(*a*) a copy of the application;

(*b*) a copy of the relevant document referred to in paragraph (1)(*a*) or (*b*); and

(*c*) a copy of the notice served on the Treasury pursuant to paragraph (2).

(5) If a special advocate has been appointed, rule 31 (except for paragraphs (6) and (7)) will apply with any necessary modifications to the consideration of an application under paragraph (3) of this rule.

(6) The Court will not serve notice on a party other than the Treasury as mentioned in paragraph (1) before the time for the Treasury to make an application under paragraph (3) has expired.

(a) Words substituted by S.R. 2009 No. 264 with effect from 01.10.09

Supply of court documents

35. Unless the Court directs otherwise, Order 66 (paper, printing, notices, copies and inspection of documents), rules 3 to 5 do not apply to any [(**a**)proceedings to which Parts II, III or this Part of this Order apply] or to any documents relating to such proceedings.]

[(**b**) PART V

NOTIFICATION ORDERS

Application for a notification order

36.—(1) An application for a notification order under Schedule 4 to the [(**c**)2008] Act must be made by originating summons in Form 6 in Appendix A.

(2) Where the defendant wishes to serve a notice under paragraph 2(4) of Schedule 4 to the [(c)2008] Act, the defendant must lodge and serve the notice with a memorandum of appearance not more than 14 days after service of the originating summons.]

(**a**) Words substituted by S.R. 2009 No. 264 with effect from 01.10.09
(**b**) Part V inserted by S.R. 2009 No. 264 with effect from 01.10.09
(**c**) Year inserted by 2010 c. 38 with effect from 17.12.10

[(a) ORDER 116C

PART 1

APPLICATION OF THIS ORDER

Scope and interpretation

1.—(1) This Order contains rules about—

(*a*) TPIM proceedings in the High Court, and

(*b*) appeals to the Court of Appeal against an order of the High Court in such proceedings.

(2) In the case of proceedings brought by the virtue of section 17(2) of the Act, the rules in this Order shall apply with any modification which the Court considers necessary.

(3) In this Order—

(*a*) "the Act" means the Terrorism, Prevention and Investigation Measures Act 2011;

(*b*) "closed material" means any relevant material that the Secretary of State objects to disclosing to a relevant party on the grounds that it is contrary to the public interest;

(*c*) "extension notice" means a notice issued under section 5(2) of the Act, extending a TPIM notice;

(*d*) "legal representative" is to be construed in accordance with paragraph 4(4)(*b*) of Schedule 4 to the Act;

(*e*) "measures" means terrorism prevention and investigation measures (which has the has the same meaning as in section 2 of the Act);

(*f*) "open material" means any relevant material that the Secretary of State does not object to disclosing to a relevant party on the grounds it is contrary to the public interest;

(*g*) "relevant material" means the material described in paragraph 3(1)(a) to (*c*) of Schedule 4 to the Act;

(*h*) "relevant party" means any party to the proceedings other than the Secretary of State;

(*i*) "revival notice" means a notice issued under section 13(6) of the Act, reviving a TPIM notice;

(*j*) "special advocate" is a person appointed under paragraph 10(1) of Schedule 4 to the Act;

(*k*) "TPIM notice" has the same meaning as in section 2(1) of the Act;

(*l*) "TPIM proceedings" has the same meaning as in section 30(1) of the Act;

(*m*)"TPIM subject" means an individual on whom the Secretary of State has imposed, or is proposing to impose, measures by means of a TPIM notice;

(*n*) "variation notice" means a notice issued under section 12(1)(*c*) of the Act, varying the TPIM notice without the individual's consent.

(4) For the purposes of this Order, disclosure is contrary to the public interest if it is made contrary to the interests of national security, the international relations of the United Kingdom, the detection and prevention of crime, or in any other circumstances where disclosure is likely to harm the public interest.

(a) Order 116C inserted by S.R. 2011 No. 422 with effect from 15.12.11

ORDER 116C

Modification to the overriding objective

2.—(1) Where this Order applies, the overriding objective in Order 1, and so far as relevant any other rule, must be read and given effect in a way which is compatible with the duty set out in paragraph (2).

(2) The court must ensure that information is not disclosed contrary to the public interest.

(3) Subject to paragraph (2), the court must satisfy itself that the material available to it enables it properly to determine proceedings.

PART 2

PERMISSIONS APPLICATIONS, REFERENCES AND APPEALS TO THE HIGH COURT RELATING TO TPIM NOTICES

Scope of this Part

3. This Part of this Order contains rules about—

(*a*) applications under section 6(1)(*b*) of the Act (application for permission to impose a TPIM notice);

(*b*) references under paragraph 3(1) of Schedule 2 to the Act (references of a TPIM notice imposed without permission); and

(*c*) appeals to the High Court under section 16 of the Act (appeals relating to TPIM notices).

Application for permission to impose measure

4. An application under section 6(1)(*b*) of the Act for permission to impose measures must be made by the Secretary of State lodging with the Court—

(*a*) statement of reasons to support the application;

(*b*) any relevant material of which the Secretary of State is aware at that stage;

(*c*) any written submissions; and

(*d*) the proposed TPIM notice.

Reference of measures imposed without permission

5. A reference under paragraph 3(1) of Schedule 2 to the Act of the imposition of measures imposed without permission is made by the Secretary of State lodging with the Court—

(a) a statement of reasons for imposing measures and for imposing the measures specified in the TPIM notice;

(b) any relevant material of which the Secretary of State is aware at that stage;

(c) any written submissions; and

(d) the TPIM notice.

Directions for hearing on application for permission or on a reference

6.—(1) If the Court gives permission on an application under section 6(1)(*b*) of the Act or confirms a TPIM notice on a reference under paragraph 3(1) of Schedule 2 to the Act, the Court must give directions for a directions hearing at which the TPIM subject, the TPIM subject's legal representative, the special advocate (if one has been appointed) and the Secretary of State's legal representative may be present.

(2) In a case where permission is given (following an application under section 6(1)(*b*) of the Act), the date to be fixed for the directions hearing must, unless the court otherwise directs, be no later than 7 days after the date on which the TPIM notice is served on the TPIM subject.

(3) In a case where the TPIM notice is confirmed (following a reference under paragraph 3(1) of Schedule 2 to the Act), the date to be fixed for the directions hearing must, unless the Court otherwise directs, be no later than 7 days after the date on which the Court confirms the TPIM notice.

(4) At the directions hearing, the Court must give directions—

(*a*) for a review hearing under section 9(1) of the Act; and

(*b*) specifying a date and time by which the parties and special advocate must lodge and serve any written evidence or written submissions in accordance with rule 29.

(5) When giving directions under paragraph (4), the Court must have regard to the need to expedite the review hearing.

(6) Rules 27 and 28 will apply where any closed material is lodged by the Secretary of State.

Appeals under section 16 of the Act

7.—(1) This rule and rules 8 to 10 apply to an appeal under section 16 of the Act (appeals relating to a TPIM notice).

(2) With the exception of rule 16 thereof, Part II of Order 55 shall not apply to appeals under section 16 of the Act.

(3) Order 59, rule 10 applies to appeals under section 16 of the Act subject to —

(*a*) rule 2 of this Order; and

(*b*) the rules in Part 4 of this Order.

Notice of appeal

8.—(1) The TPIM subject must give notice of appeal by—

(*a*) lodging a notice of appeal in Form 37C with the Court; and

(*b*) serving a copy of that notice and any accompanying documents on the Secretary of State.

(2) The notice of appeal must—

(*a*) set out the grounds of the appeal; and

(*b*) state the name and address of—

(i) the TPIM subject, and

(ii) the TPIM subject's legal representative (if any).

(3) A notice of appeal may include an application under rule 18 for an order requiring anonymity for the TPIM subject.

(4) The notice of appeal must be lodged with a copy of the TPIM notice imposing measures on the TPIM subject and (as relevant)—

(*a*) a copy of the extension notice, revival notice or variation notice that is the subject of the appeal;

(*b*) a copy of the application to the Secretary of State—

(i) for permission in connection with a measure in the TPIM notice,

(ii) for the revocation of the TPIM notice, or

(iii) for the variation of a measure imposed by the TPIM notice;

(*c*) a copy of the Secretary of State's decision on such an application.

Time limit for appealing

9.—(1) Subject to paragraph (2), the TPIM subject must give notice of appeal no later than 28 days after receiving—

(*a*) the extension notice, revival notice or variation notice that is the subject of the appeal; or

(*b*) notice of the Secretary of State's decision on an application for permission in connection with a measure specified in the TPIM notice, for the revocation of the TPIM notice or for the variation of a measure specified in the TPIM notice.

(2) In a case where the Secretary of State has failed to determine an application for permission in connection with a measure specified in the TPIM notice, for the revocation of the TPIM notice or for the variation of a measure specified in the TPIM notice, the TPIM subject must lodge the notice of appeal—

(*a*) no earlier than 28 days, and

(*b*) no later than 42 days

after the date on which the Secretary of States received the application.

Secretary of State's reply

10. If the Secretary of State wishes to oppose an appeal made under section 16 of the Act, the Secretary of State must, no later than 14 days after being served with the notice of appeal—

(*a*) lodge with the Court—

(i) any relevant material of which the Secretary of State is aware at that stage, and

(ii) any written submissions; and

(*b*) serve on the TPIM subject any open material.

PART 3

APPEALS TO THE COURT OF APPEAL

Application

11.—(1) Order 59 applies to an appeal to the Court of Appeal against an order of the High Court in TPIM proceedings, subject to—

(*a*) rule 2;

(*b*) the rules in Part 4 of this Order; and

(*c*) paragraphs (2) and (3) of this rule.

(2) Order 59, rules 3(1), (2), (4) and (5), 4 to 6, 9, 11, 14 and 16 to 18 do not apply to appeals to the Court of Appeal against an order of the High Court in TPIM proceedings.

(3) Rules 8 and 10 of this Order shall apply with appropriate modifications.

Leave to appeal

12.—(1) A party to an appeal under this Part of this Order requires leave to appeal to the Court of Appeal.

(2) An application for leave to appeal may be made—

(*a*) to the High Court at the hearing at which the decision to be appealed was made; or

(*b*) to the Court of Appeal in the notice of appeal.

(3) Where the High Court refuses an application for leave to appeal, a further application may be made to the Court of Appeal.

(4) Where the Court of Appeal, without a hearing, refuses leave to appeal, the person seeking leave may request the decisions to be reconsidered at a hearing.

(5) A request under paragraph (4) must be lodged within 7 days after service of the notice that leave has been refused.

(6) Leave to appeal may only be given where—

(*a*) the Court considers that the appeal would have a real prospect of success; or

(*b*) there is some other compelling reason why the appeal should be heard.

(7) An order giving leave may—

(*a*) limit the issues to be heard; and

(*b*) be made subject to conditions.

Time limit for appealing

13.—(1) The appellant in an appeal under this Part of this Order must lodge the notice of appeal within—

(*a*) such period as may be directed by the High Court; or

(*b*) where the High Court makes no such direction, 14 days after the date of the decision of the High Court that the appellant wishes to appeal.

(2) Unless the Court of Appeal orders otherwise, a notice of appeal must be served on each respondent—

(*a*) as soon as practicable; and

(*b*) in any event not later than 7 days.

after it is lodged.

Striking out notice of appeal and setting aside or imposing conditions on leave to appeal

14.—(1) The Court of Appeal may—

(*a*) strike out the whole or any part of a notice of appeal;

(*b*) set aside leave to appeal in whole or in part;

(*c*) impose or vary conditions upon which an appeal may be brought.

(2) The Court may only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party was present at the hearing at which leave was given, he may not subsequently apply for an order that the Court exercise its powers under paragraph (1) (*b*) or (*c*).

(4) If the Court of Appeal—

(*a*) refuses an application for leave to appeal;

(*b*) strikes out a notice of appeal; or

(*c*) dismisses the appeal,

and it considers that the application, the notice of appeal or the appeal is totally without merit, the Court's order must record this fact.

Hearing of appeals

15.—(1) The provisions of this rule apply without prejudice to the generality of the provisions in Order 59, rule 10.

(2) Every appeal under this Part of this Order will be limited to a review of the decision of the High Court unless the Court of Appeal consider that, in the circumstances of the individual appeal, it would be in the interests of justice to hold a re-hearing.

(3) Unless it orders otherwise, the Court of Appeal will not receive—

(*a*) oral evidence; or

(*b*) evidence which was not before the High Court.

(4) The Court of Appeal will allow an appeal where the decision of the High Court was—

(*a*) wrong; or

(*b*) unjust because of a serious procedural or other irregularity in the proceedings before the High Court.

PART 4

GENERAL PROVISIONS

Scope of this Part

16. This Part of this Order applies to—

(*a*) TPIM proceedings in the High Court; and

(*b*) appeals to the Court of Appeal against an order of the High Court in such proceedings.

Address for issuing proceedings

17. Any TPIM proceedings must be issued at the Central Office, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF.

Applications for anonymity

18.—(1) The TPIM subject or the Secretary of State may apply for an order requiring the anonymity of the TPIM subject.

(2) An application under paragraph (1) may be made at any time, irrespective of whether any TPIM proceedings have been commenced.

(3) An application may be made without notice to the other party.

(4) The reference in this rule to an order requiring anonymity for the TPIM subject is to be construed in accordance with paragraph 6(3) of Schedule 4 to the Act.

Notification of hearing

19. Unless the Court directs otherwise, it must serve notice of the date, time and place fixed for any hearing on—

(*a*) every party, whether or not entitled to attend that hearing; and

(*b*) if one had been appointed for the purposes of the hearing, the special advocate or those instructing the special advocate.

Hearings

20.—(1) The following proceedings must be determined at a hearing—

(*a*) a review hearing under section 9(1) of the Act (review hearing);

(*b*) an appeal under section 16 of the Act (appeal relating to a TPIM notice);

(*c*) an appeal to the Court of Appeal from an order of the High Court made in the proceedings mentioned in sub-paragraph (*a*) or (*b*) above; and

(*d*) a hearing under rule 28(2) (consideration of the Secretary of State's objection or application).

(2) Paragraph (1)(*a*) does not apply where the court discontinues the review hearing in accordance with section 9(3) of the Act.

(3) Paragraph (1)(*b*) does not apply where—

(*a*) the appeal is withdrawn by the TPIM subject;

(*b*) the Secretary of State consents to the appeal being allowed; or

(*c*) the TPIM subject is outside the United Kingdom or it is impracticable to give the TPIM subject notice of a hearing and, in either case, the TPIM subject is unrepresented.

(4) Paragraph (1)(c) does not apply where —

(*a*) the Court of Appeal grants a request by the appellant to dismiss the appeal;

(*b*) the Court of Appeal allows the appeal with consent; or

(*c*) the Court of Appeal strikes out the appeal.

Hearings in private

21.—(1) If the Court considers it necessary for any relevant party and any relevant party's legal representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, it must—

(*a*) direct accordingly; and

(*b*) conduct the hearing, or that part of it from which the relevant party and the relevant party's legal representative are excluded, in private.

(2) The Court may conduct a hearing or part of a hearing in private for any other good reason.

Appointment of a special advocate

22.—(1) Subject to paragraph (2), the Secretary of State must immediately give notice of the proceedings to the Advocate General (who under paragraph 10(1) of Schedule 4, has the power to appoint a special advocate) on —

(*a*) making an application under section 6(1)(*b*) of the Act (application for permission to impose a TPIM notice);

(*b*) making a reference under paragraph 3(1) of Schedule 2 to the Act (reference of a TPIM notice imposed without permission); or

(*c*) being served with a copy of any application, claim, or notice of appeal in proceedings to which this Order applies.

(2) Paragraph (1) applies unless—

(*a*) the Secretary of State does not intend to—

(i) oppose the application, claim or appeal; or

(ii) withhold closed material from a relevant party; or

(*b*) a special advocate has already been appointed to represent the interests of the relevant party in the proceedings and that special advocate is not prevented from communicating with that party by virtue of rule 24.

(3) Where any proceedings to which this Order applies are pending but no special advocate has been appointed, a relevant party or the Secretary of State may request the Advocate General to appoint a special advocate.

Functions of a special advocate

23. The functions of a special advocate are to represent the interests of a relevant party by—

(*a*) making submissions to the Court at any hearings (or parts of hearing) from which the relevant party and the relevant party's legal representatives are excluded;

(*b*) adducing evidence and cross-examining witnesses at any such hearings (or parts of hearing); and

(*c*) making written submissions to the Court.

Special advocate: communicating about proceedings

24.—(1) The special advocate may communicate with the relevant party or the relevant party's legal representative at any time before the Secretary of State serves closed material on the special advocate.

(2) After the Secretary of State serves the closed material on the special advocate, the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (3) or (6)(*b*) or with a direction of the court pursuant to a request under paragraph (4).

(3) The special advocate may, without directions from the Court, communicate about the proceedings with—

(*a*) the Court;

(*b*) the Secretary of State, or any person acting for the Secretary of State;

(*c*) the Advocate General, or any person acting for the Advocate General; or

(*d*) any other person, except the relevant party or the relevant party's legal representative, with whom it is necessary for administrative purposes for the special advocate to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from the Court authorising him or her to communicate with the relevant party or the relevant party's legal representative or with any other person.

(5) Where the special advocate makes a request for directions under paragraph (4)—

(*a*) the Court must notify the Secretary of State of the request; and

(*b*) the Secretary of State must, within a period specified by the Court, lodge with the court and serve on the special advocate notice of any objection which the Secretary of State has to the proposed communication, or to the form in which it is proposed to be made.

(6) Paragraph (2) does not prohibit the relevant party from communicating with the special advocate after the Secretary of State has served closed material on the special advocate, but—

(*a*) the relevant party may only communicate with the special advocate through the relevant party's legal representative in writing; and

(*b*) the special advocate must not reply to the communication other than in accordance with directions of the court, except that the special advocate may without such directions send a written acknowledgment of receipt to the relevant party's legal representative.

Modification of the general rules of evidence and disclosure

25.—(1) Orders 24 and 38 and Order 39, rules 1 and 2 do not apply to any proceedings to which this Order applies.

(2) Subject to the other rules in this Order, the evidence of a witness may be given either—

(*a*) orally, before the Court; or

(*b*) in writing, in which case it shall be given in such manner and at such time as the Court directs.

(3) The Court may also receive evidence in documentary or any other form.

(4) The Court may receive evidence that would not, but for this rule, be admissible in a court of law.

(5) Every party shall be entitled to adduce evidence and to cross-examine witnesses during any hearing or part of a hearing from which that party and that party's legal representative are not excluded.

(6) A special advocate shall be entitled to adduce evidence and to cross-examine witnesses.

(7) The Court may require a witness to give evidence on oath.

Lodging and service of relevant material

26.—(1) The Secretary of State is required to make a reasonable search for relevant material and to lodge and serve that material in accordance with the rules in this Order.

(2) The duty to search for, file and serve material under paragraph (1) continues until the proceedings in question have been determined.

Closed material

27.—(1) The Secretary of State—

(*a*) must apply to the Court for permission to withhold closed material from a relevant party or the relevant party's legal representative in accordance with this rule, and

(*b*) may not rely on closed material at a hearing on notice unless a special advocate has been appointed to represent the interests of the relevant party.

(2) The Secretary of State must lodge with the Court and, at such time as the Court directs, serve on the special advocate—

(*a*) the closed material;

(*b*) a statement of the Secretary of State's reasons for withholding that material from the relevant party; and

(*c*) if the Secretary of State considers it possible to provide a summary of that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the relevant party.

(3) The Secretary of State may at any time amend or supplement material lodged under this rule, but only with—

(*a*) the agreement of the special advocate; or

(*b*) the permission of the Court.

Consideration of the Secretary of State's objection

28.—(1) This rule applies where the Secretary of State has—

(*a*) objected under rule 24(5)(*b*) to a proposed communication by the special advocate; or

(*b*) applied under rule 27 for permission to withhold closed material.

(2) The Court must fix a hearing for the Secretary of State and the special advocate to make oral representations, unless—

(*a*) the special advocate gives notice to the Court that he or she does not challenge the objection or application;

(*b*) the Court has previously considered—

(i) an objection under rule 24(5)(*b*) to the same or substantially the same communication, or

(ii) an application under rule 27(1) for permission to withhold the same or substantially the same material, and

is satisfied that it would be just to uphold that objection or to give permission without a hearing; or

(*c*) the Secretary of State and the special advocate consent to the Court deciding the issue without a hearing.

(3) If the special advocate does not challenge the objection or the application, he or she must give notice of that fact to the Court and the Secretary of State no later than the end of 14 days after the date the Secretary of State serves on the special advocate a notice under rule 24(5)(*b*) or material under rule 27(2), or such other period as the Court may direct.

(4) Where the Court fixes a hearing under this rule, the Secretary of State and the special advocate must before the hearing lodge with the Court a schedule identifying the issues which cannot be agreed between them, which must also—

(*a*) give brief reasons for their contentions in relation to each issue; and

(*b*) set out any proposals for the Court to resolve those issues.

(5) A hearing under this rule shall take place in the absence of the relevant party and the relevant party's legal representative.

(6) Where the Court gives permission to the Secretary of State to withhold closed material, the Court must—

(*a*) consider whether to direct the Secretary of State to serve a summary of that material on the relevant party or the relevant party's legal representative; but

(*b*) ensure that no such summary contains information or other material the disclosure of which would be contrary to the public interest.

(7) Where the Court has not given permission to the Secretary of State to withhold closed material from, or has directed the Secretary of State to serve a summary of that material on, the relevant party or the relevant party's legal representative—

(*a*) the Secretary of State shall not be required to serve that material or summary; but

(*b*) if the Secretary of State does not do so, at a hearing on notice the Court may—

(i) if it considers that the material or anything that is required to be summarised might be of assistance to the relevant party in relation to a matter under consideration by the court, direct that the matter is withdrawn from its consideration or that the Secretary of State makes such concessions or takes such other steps as the Court specifies, and

(ii) in any other case, direct that the Secretary of State shall not rely in the proceedings on that material or (as the case may be) on what is required to be summarised.

(8) The Court must give permission to the Secretary of State to withhold closed material where it considers that the disclosure of that material would be contrary to the public interest.

Order of lodging and serving material and written submissions

29.—(1) Subject to any directions given by the Court, the parties must lodge and serve any material and written submissions, and the special advocate must lodge and serve any written submissions, in the following order—

(*a*) the Secretary of State must lodge with the Court all relevant material of which the Secretary of State is aware;

(*b*) the Secretary of State must serve on—

(i) the relevant party or the relevant party's legal representative; and

(ii) the special advocate (as soon as one is appointed) or those instructing the special advocate,

any open material;

(*c*) the relevant party must lodge with the Court and serve on the Secretary of State and special advocate (if one is appointed) or those instructing the special advocate any written evidence which the relevant party wishes the Court to take into account at the hearing;

(*d*) the Secretary of State must lodge with the Court any further relevant material;

(*e*) the Secretary of State must serve on—

(i) the relevant party or the relevant party's legal representative; and

(ii) the special advocate (as soon as one is appointed) or those instructing the special advocate,

any open material lodged with the Court under paragraph (*d*);

(*f*) the Secretary of State must serve on the special advocate (if one has been appointed) any closed material;

(*g*) the parties and the special advocate (if one has been appointed) must file and serve any written submissions as directed by the Court.

(2) Rules 27 and 28 will apply where any closed material is lodged by the Secretary of State.

Failure to comply with directions

30.—(1) Where a party or the special advocate fails to comply with a direction of the Court, the Court may serve on that person a notice which states—

(*a*) the respect in which that person has failed to comply with the direction;

(*b*) a time limit for complying with the direction; and

(*c*) that the Court may proceed to determine the proceedings before it, on the material available to it, if the party or special advocate fails to comply with the relevant direction within the time specified.

(2) Where a party or special advocate fails to comply with such a notice, the Court may proceed in accordance with paragraph (1)(c).

Judgments

31.—(1) When the Court gives judgment in any proceedings to which this Order applies, it may withhold any or part of its reasons if and to the extent that it is not possible to give reasons without disclosing information contrary to the public interest.

(2) Where the judgment of the Court does not include the full reasons for its decision, the court must serve on the Secretary of State and the special advocate a separate written judgment including those reasons.

Application by the Secretary of State for reconsideration of decision

32.—(1) If the Court proposes, in any proceedings to which this Order applies, to serve notice on a relevant party of any—

(*a*) order or direction made or given in the absence of the Secretary of State; or

(*b*) any judgment

then before the Court serves any such notice on the relevant party, it must first serve notice on the Secretary of State of its intention to do so.

(2) The Secretary of State may, within 5 days of being served with notice under paragraph (1), apply to the Court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if the Secretary of State considers that—

(*a*) the Secretary of State's compliance with the order or direction; or

(*b*) the notification to the relevant party of any matter contained in the judgment, order or direction;

would cause information to be disclosed contrary to the public interest.

(3) Where the Secretary of State makes an application under paragraph (2), the Secretary of State must at the same time serve on the special advocate, if one has been appointed—

(*a*) a copy of the application; and

(*b*) a copy of the notice served on the Secretary of State pursuant to paragraph (1).

(4) Rule 28 (except for paragraphs (6) and (7)) shall, if a special advocate has been appointed, apply with any necessary modifications to the consideration of an application under paragraph (2) of this rule.

(5) The Court must not serve notice on the relevant party as mentioned in paragraph (1) before the time for the Secretary of State to make an application under paragraph (2) has expired.

Supply of court documents

33. Unless the Court otherwise directs, Order 66, rules 3 to 5 shall not apply to any proceedings to which this Order applies.]

[(a) ORDER 117

EXPENSES IN CRIMINAL PROCEEDINGS IN THE COURT OF APPEAL

Interpretation

1. In this Order—

"the Act" means the Criminal Appeal (Northern Ireland) Act 1980 and a section referred to by number means the section so numbered in the Act;

"applicant" means the solicitor or counsel applying for the review of a decision of the Taxing Master under section 28(2A);

"Taxing Master" means the Master (Taxing Office).

Application to the Taxing Master for review

2.—(1) An application under section 28(2A)(**b**) for a review of the Taxing Master's decision under section 28(2)(*a*) must be made within 21 days of receipt of that decision or within such other period as may be fixed by the Taxing Master.

(2) Every applicant for review under this rule must at the time of making his application—

(*a*) deliver to the Taxing Master his objections in writing specifying separately in relation to the expenses to be reviewed, the amount claimed for those expenses, the amount allowed and the grounds of the objection to the amount allowed;

(*b*) indicate in writing whether he wishes to appear or to be represented at the review or whether he will accept a decision given in his absence.

Review by Taxing Master

3.—(1) A review under section 28(2A) shall be carried out by the Taxing Master.

(2) The Taxing Master may require the applicant to provide any further information which he requires for the purposes of the review and unless the Taxing Master otherwise directs, no further evidence shall be received on a hearing of a review and no ground of objection shall be valid which was not specified in the application under rule 2(2).

(3) On a review under section 28(2A) the Taxing Master may allow the applicant a sum in respect of part or all of any reasonable costs incurred by him in connection with the review.

(4) The Taxing Master shall communicate his decision on a review to the applicant in writing and shall state his reasons for that decision by reference to the objections and any special circumstances or facts relevant to it.

(5) The Taxing Master shall also communicate his decision on a review and the reasons for it to the [(**c**) Department of Justice] and shall send to the [(**c**) Department of Justice] copies of such documents as the [(**c**) Department of Justice] may require.

Appeals to the High Court

4. An appeal to the High Court under section 28(2D) or (2E) from a decision of the Taxing Master on a review under section 28(2A) shall be made in accordance with the provisions of Order 55 Part II.]

(**a**) Order 117 inserted by S.R. 1995 No. 2 with effect from 02.02.95

(**b**) Sub-section (2A) was inserted into section 38 by section 53 of the Criminal Justice and Public Order Act 1994 (c. 33)

(**c**) Words substituted by S.R. 2010 No. 381with effect from 20.12.10

[(**a**) ORDER 118

THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996

Application

1. This Order shall apply in relation to acquittals in respect of offences alleged to be committed on or after 30th June 1997.

Interpretation

2. In this Order—

"the Act" means the Criminal Procedure and Investigations Act 1996(**b**);

"acquitted person" means a person whose acquittal of an offence is the subject of a certification under section 54(2) of the Act and "acquittal" means the acquittal of that person of that offence;

"conviction" means the conviction which occasioned a certification under section 54(2) of the Act;

"deponent" means a deponent to an affidavit filed under rule 5, 7, 8 or 9;

"magistrates' court" has the same meaning as in Article 2 of the Magistrates' Courts (Northern Ireland) Order 1981(**c**);

"prosecution" means the individual or body which acted as the prosecution in the proceedings which led to the acquittal;

"record of court proceedings" means a transcript of the evidence in the proceedings which led to the conviction for the administration of justice offence referred to in section 54(1)(*b*) of the Act or, as the case may be, the proceedings which led to the acquittal.

Exercise of jurisdiction

3. The jurisdiction of the High Court under section 54(3) of the Act shall be exercised, subject to rule 10(11), by a judge in chambers.

Time limit for making application

4. An application under section 54(3) of the Act shall be made not later than 28 days after—

(*a*) the expiry of the period allowed for appealing (whether by case stated or otherwise), or making an application for leave to appeal, against the conviction referred to in section 54(1)(*b*) of the Act; or

(*b*) where notice of appeal or application for leave to appeal against the conviction is given, the determination of the appeal or application for leave to appeal and, for this purpose, "determination" includes abandonment (within the meaning of rule 16 of the Criminal Appeal Rules (Northern Ireland) 1968(**d**) or, as the case may be, Article 150 of the Magistrates' Courts (Northern Ireland) Order 1981(**e**)).

Application

5.—(1) An application by the prosecution under section 54(3) of the Act shall be commenced by originating motion.

(**a**) Order 118 inserted by S.R. 1997 No. 265 with effect from 30.6.97
(**b**) 1996 c. 25; as modified in its application to Northern Ireland by Schedule 4 to the Act
(**c**) S.I. 1981/1675 (N.I. 26)
(**d**) S.R. 1968 No. 218; to which there are amendments not relevant to these Rules
(**e**) S.I. 1981/1675 (N.I. 26)

(2) The application shall be supported by an affidavit which deals with the conditions in section 55(1), (2) and (4) of the Act and which exhibits—

(*a*) any relevant documents (which may include a copy of any record of court proceedings); and

(*b*) a copy of the certification under section 54(2).

Notice to the acquitted person

6.—(1) The prosecution shall serve the notice of motion along with any supporting affidavit on the acquitted person within 4 days of issue of the application and at the same time shall also serve a notice—

(*a*) specifying the date on which the notice of motion was issued; and

(*b*) informing the acquitted person that—

(i) the result of the application may be the making of an order by the High Court quashing the acquittal, and

(ii) if he wishes to respond to the application he must within 28 days of the date of service on him of the notice, file in the Central Office any affidavit on which he intends to rely.

(2) Order 10 rule 1(3) shall not apply in relation to any notice of motion served in accordance with paragraph (1).

Affidavit of service on an acquitted person

7. The prosecution shall, as soon as practicable after serving the documents referred to in rule 6, file in the Central Office an affidavit of service which exhibits both a copy of the notice of motion and a copy of the accompanying notice required to be served with the notice of motion.

Response of acquitted person

8.—(1) If the acquitted person wishes to respond to the application, he shall, within 28 days of service on him under rule 6, file in the Central Office an affidavit which—

(*a*) deals with the conditions in section 55(1), (2) and (4) of the Act; and

(*b*) exhibits any relevant documents (which may include a copy of any record of court proceedings).

(2) The acquitted person shall, within 4 days of the filing of the documents mentioned in paragraph (1), serve a copy of them on the prosecution.

Evidence

9. [**(a)** . . .]

[**(b)**(1) The prosecution may, not later than 10 days after expiry of the period allowed under rule 8(1), apply ex parte for an order granting leave to file further affidavit evidence.

(2) If the Court grants leave, the order shall specify a period within which further affidavit evidence or records are to be filed, and the Central Office shall serve a copy of the order on the prosecution and on the acquitted person.

(3) The prosecution shall, within 4 days of filing further evidence in the Central Office, serve a copy of that evidence on the acquitted person.

(a) Words deleted by S.R. 2001 No. 254 with effect from 5.9.01

(b) Figures renumbered by S.R. 2001 No. 254 with effect from 5.9.01

Determination of the application

10.—(1) Subject to paragraph (3), the Court shall determine whether or not to make an order under section 54(3) of the Act on the basis of the written material provided under rules 5, 7, 8 and 9 in the absence of the prosecution, the acquitted person, or of any deponent.

(2) The determination shall not be made and any hearing under paragraph (3) shall not take place before the expiry of—

(*a*) 10 days after the expiry of the period allowed under rule 8(1), or

(*b*) where the court has made an order under rule 9(3), 10 days after the expiry of any period allowed by that order.

(3) The Court may, of its own motion, or on the application of the prosecution or acquitted person, order a hearing of the application if it thinks fit.

(4) An application under paragraph (3) shall state whether a hearing is desired in order for a deponent for the other party to attend and be cross-examined and, if so, the reasons for wishing the deponent to attend.

(5) An application under paragraph (3) shall be made no later than 7 days—

(*a*) after the expiry of the period allowed under rule 8(1); or

(*b*) where the court has made an order under rule 9(3), after the expiry of any period allowed by that order.

(6) Where a hearing is ordered, the court may, of its own motion or on the application of the prosecution or acquitted person, order a deponent to attend in order to be cross-examined.

(7) The prosecution or the acquitted person, as the case may be, shall within 4 days after lodging an application under paragraph (3) serve a copy of it on the other party and file in the Central Office an affidavit of service.

(8) A party served under paragraph (7) shall, within 5 days of service, file any representations he wishes to make as to whether or not a hearing should be ordered.

(9) The Court shall not determine an application for a hearing under paragraph (3) unless—

(*a*) an affidavit of service has been filed as required by paragraph (7); and

(*b*) the period for filing representations allowed under paragraph (8) has expired, or

(*c*) representations have been filed under paragraph (8).

The requirements imposed by sub-paragraphs (*a*) and (*c*) are satisfied even though the affidavit of service or, as the case may be, the representations are filed outside the time limits allowed.

(10) The Central Office shall serve notice on the prosecution and the acquitted person of an order made under the foregoing paragraphs of this rule and where a hearing is ordered, the notice shall—

(*a*) set out the date, time and place of the hearing; and

(*b*) give details of any deponent ordered to attended for cross-examination.

(11) A hearing ordered under paragraph (3) above shall be in open court unless the Court otherwise directs.

(12) The Central Office shall serve notice of any order made under section 54(3) of the Act quashing the acquittal or of a decision not to make such an order on the prosecution, the acquitted person; and

(*a*) where the court before which the acquittal or conviction occurred was a magistrates' court, on the clerk of petty sessions [(**a**) . . .];

(*b*) where the court before which the acquittal or conviction occurred was the Crown Court, on the chief clerk of the Crown Court sitting at the place where the acquittal or conviction occurred.]

(**a**) Words omitted by S.R. 2016 No. 299 with effect from 31.10.16

[(a) ORDER 119

THE PROTECTION FROM HARASSMENT (NORTHERN IRELAND) 1997

Interpretation

1. In this Order "the Order" means the Protection from Harassment (Northern Ireland) Order 1997(**b**).

Assignment of Proceedings

2. Proceedings under Article 5 of the Order shall be assigned to the Queen's Bench Division.

Warrants of arrest

3. An application for the issue of a warrant for the arrest of the defendant under Article 5(3) of the Order shall—

(*a*) state that it is an application for the issue of a warrant for the arrest of the defendant;

(*b*) set out the grounds for making the application and be supported by affidavit or evidence on oath;

(*c*) state whether the plaintiff has informed the police of the defendant's conduct on which the application is grounded; and

(*d*) state whether, to the plaintiff's knowledge, criminal proceedings are being pursued.

Form of Warrant

4. A Warrant of Arrest issued in accordance with Article 5(3) shall be in Form 66 in Appendix A.

Proceedings

5. The court before whom a person is brought following his arrest may:

(*a*) determine whether the facts and the circumstances which led to the arrest amounted to disobedience of the injunction, or

(*b*) adjourn the proceedings and where such an order is made, the arrested person shall be released and—

(i) may be dealt with within 14 days of the day on which he was arrested; and

(ii) be given not less than 2 days notice of the adjourned hearing.

Saving

6. This Order shall apply to injunctions granted on or after the date of the commencement of this Order and injunctions granted before that date shall be treated as if this Order had not come into operation.]

(**a**) Order 119 inserted by S.R. 1999 No. 19 with effect from 12.04.99
(**b**) S.I. 1997/1180 (N.I. 9)

[(a)Order 120

[*Supplt. No. 32 (Jan. 2000)*]

DEVOLUTION ISSUES UNDER SCHEDULE 10 TO THE NORTHERN IRELAND ACT 1998

PART I

INTRODUCTORY

Interpretation

1. In this Order—

"the appropriate Minister or department" means—

(*a*) the First Minister and the deputy First Minister acting jointly; or

(*b*) where they, acting jointly, determine under paragraph 36 of Schedule 10 that any power conferred on them by that Schedule in relation to any specified proceedings may be exercised by a specified Minister or Northern Ireland department, that Minister or department; and for this purpose "specified" means specified in a determination under that paragraph;

"the Court" means the High Court or the Court of Appeal;

"devolution issue" has the same meaning as in Schedule 10;

"the Judicial Committee" means the Judicial Committee of the Privy Council;

"originating process" means a writ, originating summons, originating motion, petition or any other method of beginning civil proceedings in the High Court;

"Schedule 10" means Schedule 10 to the Northern Ireland Act 1998(**b**).

PART II

DEVOLUTION ISSUES RAISED IN THE HIGH COURT AND THE COURT OF APPEAL

Specification of devolution issue

2.—(1) A party raising a devolution issue shall specify—

(*a*) if he is a plaintiff or petitioner in the originating process or, in the case of an action begun by writ, the statement of claim;

(*b*) if he is a defendant or a respondent to a petition, in the defence, counterclaim or answer;

(*c*) if he is an appellant under Order 59 or an appellant from a county court, in the notice of appeal;

(**a**) Order 120 inserted by S.R. 1999 No. 493 with effect from 17.1.00

(**b**) 1998 c.47

(*d*) in any other case, in a notice filed in the Central Office and served on each of the other parties to the proceedings,

the facts and circumstances and points of law on the basis of which it is alleged that the devolution issue arises in sufficient detail to enable the Court to determine whether a devolution issue arises in the proceedings.

Notice of devolution issue

3.—(1) Where a devolution issue has been raised in accordance with rule 2, the proper officer shall as soon as is practicable cause the matter to be drawn to the attention of the Court for the making of an order under paragraph 5 of Schedule 10 requiring notice of the devolution issue to be given to the Attorney General, the Attorney General for Northern Ireland and the appropriate Minister or department.

(2) Notice of a devolution issue shall specify 14 days, or such longer period as the Court may direct, as the period within which the person receiving notice may enter an appearance as a party in the proceedings so far as relating to the devolution issue.

Response to notice of devolution issue

4. Where the Attorney General, the Attorney General for Northern Ireland or the appropriate Minister or department enters an appearance as a party in the proceedings, he or it shall, within 21 days after the date when he or it entered the appearance, or such longer period as the Court may direct, file a document summarising his or its legal arguments in respect of the issue.

PART III

REFERENCES TO THE COURT OF APPEAL

Reference of devolution issue by High Court to Court of Appeal

5.—(1) An Order paragraph 7 of Schedule 10 referring a devolution issue to the Court of Appeal shall set out in a schedule the devolution issue, which shall be settled by the judge after such directions to the parties as he may think desirable as to its manner and form.

(2) The proper officer shall transmit the order to the Court of Appeal.

(3) The proceedings in which a reference to the Court of Appeal is made shall, unless the High Court otherwise orders, be stayed until the issue has been determined.

Signing of reference by tribunal

6. A reference from a tribunal for the determination of a devolution issue by the Court of Appeal must be signed by the chairman or president of the tribunal.

Copies of determinations of Court of Appeal

7. The proper officer shall transmit a copy of the determination of the Court of Appeal to the court or tribunal which made the reference.

PART IV

REFERENCES OF DEVOLUTION ISSUE TO THE JUDICIAL COMMITTEE

Reference of devolution issue to the Judicial Committee

8.—(1) Where—

(*a*) the Court of Appeal decides in accordance with paragraph 9 of Schedule 10 to refer a devolution issue to the Judicial Committee; or

(*b*) the High Court or the Court of Appeal in accordance with paragraph 33 of Schedule 10 is required by the Attorney General, the Attorney General for Northern Ireland, the appropriate Minister or department to refer a devolution issue to the Judicial Committees;

the Court shall make an order, which shall include a schedule setting out the devolution issue, referring the issue to the Judicial Committee.

(2) The Court may give directions to the parties as to the manner and form in which the schedule to the order is to be drafted.

(3) When the schedule has been settled by the Court, the Master (Queen's Bench and Appeals) shall send the order for the reference to the Registrar of the Judicial Committee.

Stay of proceedings pending reference to Judicial Committee

9. The proceedings in which a reference is made shall, unless the Court otherwise orders, be stayed until the Judicial Committee has determined the devolution issue.]

[(a) ORDER 121

THE HUMAN RIGHTS ACT 1998

Interpretation

1. In this Order—

"the Act" means the Human Rights Act 1998(**b**);

"appropriate person" has the same meaning as in section 9(5) of the Act;

"Convention rights" has the same meaning as in section 1 of the Act;

"the Court" means the High Court or the Court of Appeal as appropriate;

"declaration of incompatibility" means a declaration of incompatibility under section 4 of the Act;

"judicial act" has the same meaning as in section 9(5) of the Act;

"originating process" means a writ, originating summons, originating motion or any other method of bringing civil proceedings in the High Court;

"public authority" has the same meaning as in section 6(3) of the Act;

[(**c**) "subordinate legislation" has the same meaning as in section 21 of the Act].

Declaration of incompatibility: Notice to the Crown

2.—(1) Where at any time in proceedings before the High Court or the Court of Appeal, the Court is considering whether to make a declaration of incompatibility it shall give notice—

(*a*) to the Crown; and

(*b*) to each of the parties to the proceedings as soon as practicable thereafter.

(2) Notice to the Crown under paragraph (1) shall be given by the Court having had regard to the list of authorised Northern Ireland Departments or authorised Departments of the Government of the United Kingdom published in pursuance of section 17 of the Crown Proceedings Act 1947(**d**).

(3) The notice referred to in paragraph (1) shall contain such information and be in such form as the Court considers necessary.

Declaration of incompatibility: Notice of intention to be joined as a party

3.—(1) In any case to which section 5(1) of the Act applies, a Minister, Northern Ireland Department or other person entitled under section 5(2) of the Act to be joined as a party to the proceedings shall be so joined on giving notice in accordance with paragraph (2).

(2) The notice referred to in paragraph (1)—

(*a*) shall be in writing and shall be filed in the Central Office and a copy shall be served as soon as practicable thereafter on each of the parties to the proceedings;

(*b*) where a Minister has nominated a person under section 5(2)(*a*) of the Act, shall be accompanied by a copy of that nomination in writing.

(3) Where a party has been joined to the proceedings under paragraph (1), the Court may give such directions as it considers necessary for the further conduct of the proceedings.

(**a**) Order 121 inserted by S.R. 2000 No. 243 with effect from 02.10.00
(**b**) 1998 c. 42
(**c**) Words inserted by S.R. 2002 No. 15 with effect from 15.02.02
(**d**) 1947 c. 44 (applied to Northern Ireland by S.I. 1981/233)

[(a) *Subordinate Legislation: Notice to the Crown*

3A.—(1) Where at any time in proceedings before the High Court or the Court of Appeal the Court is considering the compatibility of subordinate legislation with the Convention rights it shall give notice—

(*a*) to the Crown; and

(*b*) to each of the parties to the proceedings as soon as practicable thereafter.

(2) Notice to the Crown under paragraph (1) shall be given by the Court having regard to the list of authorised Northern Ireland Departments or authorised Departments of the Government of the United Kingdom published in pursuance of section 17 of the Crown Proceedings Act 1947(**b**).

(3) The notice referred to in paragraph (1) shall contain such information and be in such form as the Court considers necessary.

(4) Where notice has been given under paragraph (1) the Court may on application or of its own motion order that the Crown be joined as a party and may give such directions as it considers necessary for the further conduct of the proceedings.]

Commencement of proceedings

4.—(1) Subject to paragraph (2), proceedings under section 7(1)(*a*) of the Act may be brought in the High Court in accordance with such provisions of these rules as relate to the application or other type of proceeding which it is sought to bring.

(2) Proceedings under section 7(1)(*a*) of the Act in respect of a judicial act, other than proceedings referred to in section 9(1)(*a*) and (*b*) of the Act, shall be brought in the High Court and may be commenced by writ or originating summons.

Proceedings

5.—(1) A party who intends to rely on a Convention right or rights in proceedings before the High Court or the Court of Appeal shall state that fact and shall specify such details as are referred to in paragraph (2)—

(*a*) if he is a plaintiff or petitioner, in the originating process or in the case of an action begun by writ, the statement of claim;

(*b*) if he is a defendant or a respondent to a petition, in the defence, counterclaim or answer;

(*c*) if he is an applicant for leave to apply for judicial review, in the statement required under Order 53, rule 3(2)(*a*);

(*d*) subject to paragraph (3), if he is an appellant under Order 59 or an appellant from the County Court, in the notice of appeal;

(*e*) subject to paragraph (3), if he is an appellant under Order 55 Part II [(**c**)...], in the notice of motion;

(*f*) in any other case, in a notice filed in the Central Office and served on each of the other parties to the proceedings.

(2) The following shall be specified in accordance with paragraph (1)—

(*a*) details of the Convention right or rights which it is alleged have been (or would be) infringed and details of the alleged infringement;

(*b*) the relief sought;

(*c*) whether the relief sought includes—

(**a**) Rule 3A inserted by S.R. 2002 No. 15 with effect from 15.02.02
(**b**) 1947 c. 44 (applied to Northern Ireland by S.I. 1981/233)
(**c**) Words omitted by S.R. 2014 No. 220 with effect from 05.09.14

(i) a declaration of incompatibility; or

(ii) damages in respect of a judicial act to which section 9(3) of the Act applies;

(*d*) where the relief sought includes a declaration of incompatibility, details of the legislative provision (or provisions) alleged to be incompatible and the grounds on which it is (or they are) alleged to be incompatible;

(*e*) where the proceedings are brought following a finding by another court or tribunal that a public authority has acted in a way which is made unlawful by section 6(1) of the Act, details of that finding;

(*f*) where the proceedings relate to a judicial act which is alleged to have infringed a Convention right or rights of a party as provided by section 9 of the Act, details of the judicial act complained of and of the court or tribunal which is alleged to have performed that act.

(3) Paragraph (1) shall not apply to an appellant in any appeal brought to the Court of Appeal or the High Court, except where such an appellant intends to rely on a Convention right or rights or grounds of incompatibility not relied upon by him before the court or tribunal from whose decision the appeal is brought.

Proceedings in respect of judicial act: Notice to appropriate person

6.—(1) Where proceedings under section 7(1)(*a*) of the Act in respect of a judicial act are brought in accordance with section 9(1)(*a*) or (*b*) of the Act or rule 4(2), the Court shall give notice to those proceedings to the appropriate person.

(2) The notice referred to in paragraph (1) shall be given by the Court having had regard to the list of authorised Northern Ireland Departments or authorised Departments of the Government of United Kingdom published in pursuance of section 17 of the Crown Proceedings Act 1947.

(3) The notice referred to in paragraph (1) shall contain such information and be in such form as the Court considers necessary.

Proceedings in respect of judicial act: joinder of appropriate person

7.—(1) Subject to paragraph (3), where notice has been given under rule 6, the appropriate person shall be joined as a party on giving notice in accordance with paragraph (2).

[(**a**) (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.]

(3) Where the appropriate person does not give notice within the time allowed by paragraph (2), the Court may direct that the appropriate person be joined as a party to the proceedings.

(4) Where the appropriate person is joined as a party to the proceedings under paragraphs (2) or (3), the Court may give such directions as it considers necessary for the future conduct of the proceedings.]

(**a**) Paragraph 2 substituted by S.R. 2000 No. 393 with effect from 08.01.01

Turn To other Side of Page.

[(a) ORDER 121

THE HUMAN RIGHTS ACT 1998

Interpretation

1. In this Order—

"the Act" means the Human Rights Act 1998(**b**);

"appropriate person" has the same meaning as in section 9(5) of the Act;

"Convention rights" has the same meaning as in section 1 of the Act;

"the Court" means the High Court or the Court of Appeal as appropriate;

"declaration of incompatibility" means a declaration of incompatibility under section 4 of the Act;

"judicial act" has the same meaning as in section 9(5) of the Act;

"originating process" means a writ, originating summons, originating motion or any other method of bringing civil proceedings in the High Court;

"public authority" has the same meaning as in section 6(3) of the Act.

Declaration of incompatibility: Notice to the Crown

2.—(1) Where at any time in proceedings before the High Court or the Court of Appeal, the Court is considering whether to make a declaration of incompatibility it shall give notice—

(*a*) to the Crown; and

(*b*) to each of the parties to the proceedings as soon as practicable thereafter.

(2) Notice to the Crown under paragraph (1) shall be given by the Court having had regard to the list of authorised Northern Ireland Departments or authorised Departments of the Government of the United Kingdom published in pursuance of section 17 of the Crown Proceedings Act 1947(**c**).

(3) The notice referred to in paragraph (1) shall contain such information and be in such form as the Court considers necessary.

Declaration of incompatibility: Notice of intention to be joined as a party

3.—(1) In any case to which section 5(1) of the Act applies, a Minister, Northern Ireland Department or other person entitled under section 5(2) of the Act to be joined as a party to the proceedings shall be so joined on giving notice in accordance with paragraph (2).

(2) The notice referred to in paragraph (1)—

(*a*) shall be in writing and shall be filed in the Central Office and a copy shall be served as soon as practicable thereafter on each of the parties to the proceedings;

(*b*) where a Minister has nominated a person under section 5(2)(*a*) of the Act, shall be accompanied by a copy of that nomination in writing.

(3) Where a party has been joined to the proceedings under paragraph (1), the Court may give such directions as it considers necessary for the further conduct of the proceedings.

(**a**) Order 121 inserted by S.R. 2000 No. 243 with effect from 2.10.00
(**b**) 1998 c. 42
(**c**) 1947 c. 44 (as applied to Northern Ireland by S.I. 1981/233)

Commencement of proceedings

4.—(1) Subject to paragraph (2), proceedings under section 7(1)(*a*) of the Act may be brought in the High Court in accordance with such provisions of these rules as relate to the application or other type of proceeding which it is sought to bring.

(2) Proceedings under section 7(1)(*a*) of the Act in respect of a judicial act, other than proceedings referred to in section 9(1)(*a*) and (*b*) of the Act, shall be brought in the High Court and may be commenced by writ or originating summons.

Proceedings

5.—(1) A party who intends to rely on a Convention right or rights in proceedings before the High Court or the Court of Appeal shall state that fact and shall specify such details as are referred to in paragraph (2)—

(*a*) if he is a plaintiff or petitioner, in the originating process or in the case of an action begun by writ, the statement of claim;

(*b*) if he is a defendant or a respondent to a petition, in the defence, counterclaim or answer;

(*c*) if he is an applicant for leave to apply for judicial review, in the statement required under Order 53, rule 3(2)(*a*);

(*d*) subject to paragraph (3), if he is an appellant under Order 59 or an appellant from the Country Court, in the notice of appeal;

(*e*) subject to paragraph (3), if he is an appellant under Order 55 Part II or Order 60, in the notice of motion;

(*f*) in any other case, in a notice filed in the Central Office and served on each of the other parties to the proceedings.

(2) The following shall be specified in accordance with paragraph (1)—

(*a*) details of the Convention right or rights which it is alleged have been (or would be) infringed and details of the alleged infringement;

(*b*) the relief sought;

(*c*) whether the relief sought includes—

(i) a declaration of incompatibility; or

(ii) damages in respect of a judicial act to which section 9(3) of the Act applies;

(*d*) where the relief sought includes a declaration of incompatibility, details of the legislative provision (or provisions) alleged to be incompatible and the grounds on which it is (or they are) alleged to be incompatible;

(*e*) where the proceedings are brought following a finding by another court or tribunal that a public authority has acted in a way which is made unlawful by section 6(1) of the Act, details of that finding;

(*f*) where the proceedings relate to a judicial act which is alleged to have infringed a Convention right or rights of a party as provided by section 9 of the Act, details of the judicial act complained of and of the court or tribunal which is alleged to have performed that act.

(3) Paragraph (1) shall not apply to an appellant in any appeal brought to the Court of Appeal or the High Court, except where such an appellant intends to rely on a Convention right or rights or grounds of incompatibility not relied upon by him before the court or tribunal from whose decision the appeal is brought.

Proceedings in respect of judicial act: Notice to appropriate person

6.—(1) Where proceedings under section 7(1)(*a*) of the Act in respect of a judicial act are brought in accordance with section 9(1)(*a*) or (*b*) of the Act or rule 4(2), the Court shall give notice to those proceedings to the appropriate person.

(2) The notice referred to in paragraph (1) shall be given by the Court having had regard to the list of authorised Northern Ireland Departments or authorised Departments of the Government of United Kingdom published in pursuance of section 17 of the Crown Proceedings Act 1947.

(3) The notice referred to in paragraph (1) shall contain such information and be in such form as the Court considers necessary.

Proceedings in respect of judicial act: joinder of appropriate person

7.—(1) Subject to paragraph (3), where notice has been given under rule 6, the appropriate person shall be joined as a party on giving notice in accordance with paragraph (2).

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

(*a*) 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; and

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

(3) Where the appropriate person does not give notice within the time allowed by paragraph (2), the Court may direct that the appropriate person be joined as a party to the proceedings.

(4) Where the appropriate person is joined as a party to the proceedings under paragraphs (2) or (3), the Court may give such directions as it considers necessary for the future conduct of the proceedings.].

[(a) ORDER 122

THE COMPETITION ACT 1998

Interpretation

1. In this Order—

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

"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.

(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.]

(**a**) Order 122 inserted by S.R. 2000 No. 393 with effect from 08.01.01
(**b**) 1998 c. 41

[(a) ORDER 123

PROCEEDS OF CRIME ACT 2002 – CIVIL RECOVERY

PART I

INTRODUCTORY

[(b) *Interpretation*

1. In this Order—

"the Act" means the Proceeds of Crime Act 2002 and a section referred to by a number means the section so numbered in the Act, and expressions used have the same meaning in this Order as in the Act;

"the Order in Council" means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(**c**), and expressions used have the same meaning in this Order as in the Order in Council;

"civil recovery proceedings" means proceedings under Part 5 of the Act or, as the case may be, Part 5 of the Order in Council;

[(**d**) "management receiver" means a receiver appointed under section 245E of the Act, or, as the case may be, under Article 150A of the Order in Council;

"management receiving order" means an order made under section 245E of the Act, or, as the case may be, under Article 150A of the Order in Council;]

"Master" means the Master (Queen's Bench and Appeals);

"the Regulations" means the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) (Regulations) 2005(**e**);

"taxing master" means the Master (Taxing Office)].

Assignment of Proceedings

2. In this Order the jurisdiction of the High Court under the Act [(**f**) or Part 5 of the Order in Council] shall be assigned to the Queen's Bench Division and shall be exercised by a judge in chambers.

[(**g**) *Pseudonyms*

3. Where a member of staff—

(i) of the Serious Organised Crime Agency in relation to whom a direction under section 449 has effect, or

(ii) of the relevant Director in relation to whom a direction under section 449A has effect,

gives written or oral evidence under this Order, a copy of the certificate issued under section 449(3) or 449A(3) shall be filed in the appropriate office.]

PART II

[(**h**) CIVIL RECOVERY PROCEEDINGS UNDER PART 5 OF THE ACT OR PART 5 OF THE ORDER IN COUNCIL]

Title of proceedings

4.—(1) An originating summons under this Part of this Order shall be entitled in the matter of the defendant, naming him, and in the matter of the Act [(**f**) or, as

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(**a**) Order 123 inserted by S.R. 2003 No. 54 with effect from 28.02.03
(**b**) Rule substituted by S.R. 2006 No. 10 with effect from 13.02.06
(**c**) S.I. 2005/3181
(**d**) Words inserted by S.R. 2009 No. 207 with effect from 30.06.09
(**e**) S.I. 2005/3382
(**f**) Words inserted by S.R. 2006 No. 10 with effect from 13.02.06
(**g**) Rule 3 substituted by S.I. 2008 No. 574 with effect from 01.04.08
(**h**) Title substituted by S.R. 2006 No. 10 with effect from 13.02.06

the case may be, Part 5 of the Order in Council] and all subsequent documents in the matter shall be so entitled.

(2) An originating summons shall be regarded as the claim form referred to in Part 5 of the Act, the plaintiff shall be regarded as the claimant referred to in that Part and the defendant shall be regarded as the respondent referred to in that Part.

[(a) *Application for a recovery order*

5.—(1) An application by [(b) the enforcement authority] for a recovery order under section 243 shall be made by originating summons.

(2) An application for a recovery order based on an external order shall include an application to register the external order (a copy of which shall accompany the application under paragraph (1)).

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

(*a*) full particulars of the matters relied upon in support of the application;

(*b*) identify the property in respect of which the order is sought;

(*c*) a statement of whether each piece of property is alleged to be recoverable or associated property;

(*d*) details of any person who is alleged to hold the property; and

(*e*) details of the person nominated by [(b) the enforcement authority] under section 267 or Article 178 of the Order in Council to act as trustee for civil recovery.

(4) The application and affidavit in support shall be served in accordance with section 243(2) or, as the case may be, Article 143(2) of the Order in Council not less than seven days before the date fixed for the hearing of the application.

(5) Where the application under paragraph (1) includes an application to register an external order, and—

(*a*) the sum specified in the external order is expressed in a currency other than sterling; and

(*b*) there are not sufficient funds held in the United Kingdom in the currency in which the sum specified is expressed to satisfy the external order,

the application shall state the sterling equivalent of the sum specified (which shall, in accordance with Article 145(2) of the Order in Council, be calculated in accordance with the exchange rate prevailing at the end of the day on which the external order is made).]

6. An application for an order dispensing with service under section 243(2)(*b*) [(c) or, as the case may be, Article 143(2)(*b*) of the Order in Council,] may be made by an affidavit stating the facts on which the application is founded.

[(a) *Application for a property freezing order* [(d),] *an interim receiving order* [(e) *or a management receiving order*]

7.—(1) An application by [(b) the enforcement authority] for—

(*a*) a property freezing order under section 245A or, as the case may be, Article 147 of the Order in Council; or

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(a) Rule substituted by S.R. 2006 No. 10 with effect from 13.02.06
(b) Words substituted by S.R. 2009 No. 207 with effect from 30.06.09
(c) Words inserted by S.R. 2006 No. 10 with effect from 13.02.06
(d) Punctuation mark substituted by S.R. 2009 No. 207 with effect from 30.06.09
(e) Words inserted by S.R. 2009 No. 207 with effect from 30.06.09

(*b*) an interim receiving order under section 246 or, as the case may be, Article 151 of the Order in Council [(**a**); or]

[(**b**) (*c*) a management receiving order,]

may be made by summons.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall:

(*a*) give full particulars of the matters relied upon in support of the application;

(*b*) to the best of the deponent's ability, give full particulars of the property in respect of which the order is sought;

(*c*) state whether each piece of property is alleged to be recoverable or associated property and the matters relied upon in support of those allegations;

(*d*) state who is believed to hold the property or, if [(**a**) the enforcement authority] has not established the identity of the person who holds it, specify the steps that have been taken to do so.

(3) In the case of an application for an interim receiving order, [(**b**) or for a management receiving order,] the affidavit under paragraph (2) shall also—

[(**c**) (*a*) specify the person nominated by the enforcement authority ("the nominee") under section 246 of the Act or Article 151 of the Order in Council to act as interim receiver, or, as the case may be, under section 245E of the Act or Article 150A of the Order in Council to act as a management receiver;]

(*b*) where [(**a**) the enforcement authority] wishes the Court to authorise the nominee to act without the giving of security or before he has given security, specify the reasons why [(**a**) the enforcement authority] considers this to be necessary;

(*c*) have exhibited thereto, the written consent of the nominee to act, if appointed; and

(*d*) have exhibited thereto, an affidavit by a deponent who knows the nominee, stating that he believes that the nominee is a suitable person to be appointed as receiver and the grounds for that belief.

(4) Where a property freezing order [(**d**),] an interim receiving order [(**b**), or a management receiving order] is made, unless the Court directs otherwise, [(**a**) the enforcement authority] shall serve a copy of the order and the affidavit in support [(**a**) on] the defendant and any other person of whom [(**a**) the enforcement authority] is aware who may be affected by the order.]

[(**e**) *Initial exclusion from property freezing order or interim receiving order*

7A.—(1) Where the Court makes a property freezing order or interim receiving order on an ex parte application, it may make an exclusion from the order (in this rule referred to as an "initial exclusion") for the purpose of enabling a person to meet his reasonable legal expenses so that he may—

(*a*) take advice in relation to that order;

(*b*) prepare a statement of assets in accordance with rule 10A(3); and

(*c*) apply for the order to be varied or set aside.

(2) The total amount specified in the initial exclusion shall not, unless the Court otherwise directs, exceed £3,000.

(**a**) Word(s) substituted by S.R. 2009 No. 207 with effect from 30.06.09
(**b**) Words inserted by S.R. 2009 No. 207 with effect from 30.06.09
(**c**) Sub-paragraph (*a*) substituted by S.R. 2009 No. 207 with effect from 30.06.09
(**d**) Punctuation mark substituted by S.R. 2009 No. 207 with effect from 30.06.09
(**e**) Rule 7A inserted by S.R. 2006 No. 10 with effect from 13.02.06

(3) Where the Court makes a property freezing order or interim receiving order before an application for a recovery order has been made, it may make an exclusion from that order for the purpose of enabling a person to meet his reasonable legal expenses so that—

(*a*) when an application for a recovery order is made, he may enter an appearance and file any affidavit evidence on which he intends to rely;

(*b*) he may apply for a further exclusion for the purpose of enabling him to meet his reasonable legal expenses in respect of any civil recovery proceedings.]

[(**a**)...] *Receivers*

8.—(1) Subject to rules 9 to 11, the provisions of Order 30 rules 2 to 7 shall apply where an interim receiver [(**b**) or a management receiver] is appointed by virtue of an interim receiving order [(**b**) or a management receiving order.]

(2) A receiver may apply for an order to discharge him from office by making an application, which shall be served, together with any evidence of support, on all persons affected by his appointment not less than seven days before the date fixed for the hearing of the application.

Application for directions

9.—[(**c**) (1) An application for directions as to the exercise of the functions of—

(*a*) an interim receiver under section 251 of the Act or Article 156 of the Order in Council; or

(*b*) a management receiver under section 245G of the Act or Article 150C of the Order in Council,

shall be made by way of summons.]

(2) The summons and any affidavit in support shall, not less than two days before the date fixed for the hearing of the summons, be lodged with the Court and served on—

(*a*) the interim receiver [(**b**) or, as the case may be, the management receiver], where he is not the applicant;

(*b*) the other party or parties to the proceedings; and

(*c*) any other person of whom the applicant is aware who may have an interest in the application.

[(**d**) *Application to vary or set aside property freezing order* [(**e**),] *interim receiving order* [(**b**) *or management receiving order*]

10.—(1) An application to vary or set aside a property freezing order or an interim receiving order (which may include an application for an exclusion from the order) [(**b**), or a management receiving order] shall be made by summons.

(2) Unless the Court otherwise directs, the summons and any affidavit in support shall, not less than two days before the date fixed for the hearing of the summons, be filed in the Central Office and be served on—

(*a*) the other party or parties to the proceedings;

(*b*) in the case of an application to vary or set aside an interim receiving order, the interim receiver (where he is not the applicant); [(**a**)...]

(**a**) Word deleted by S.R. 2009 No. 207 with effect from 30.06.09
(**b**) Words inserted by S.R. 2009 No. 207 with effect from 30.06.09
(**c**) Paragraph substituted by S.R. 2009 No. 207 with effect from 30.06.09
(**d**) Rule substituted by S.R. 2006 No. 10 with effect from 13.02.06
(**e**) Punctuation mark substituted by S.R. 2009 No. 207 with effect from 30.06.09

[(**a**) (*ba*) in the case of an application to vary or set aside a management receiving order, the management receiver (where he is not the applicant); and]

(*c*) any other person of whom the applicant is aware who may be affected by the Court's decision.

(3) Where the application under paragraph (1) includes an application for an exclusion for the purpose of enabling a person to meet his reasonable legal expenses, the affidavit in support shall—

(*a*) contain full details of the stage or stages in civil recovery proceedings in respect of which the expenses in question have been or shall be incurred;

(*b*) include an estimate of the expenses which the person has incurred and shall incur in relation to each stage to which the application relates;

(*c*) include a statement of assets containing the information set out in rule 10A(3), unless the person has previously filed such a statement in the same civil recovery proceedings);

(*d*) where the Court has previously made an exclusion in respect of any stage to which the application relates, explain why the person's expenses shall exceed the amount specified in the exclusion for that stage; and

(*e*) state whether the terms of the exclusion have been agreed with [(**b**) the enforcement authority].

[(**c**) *Exclusions for the purpose of meeting legal expenses: general provisions*

10A.—(1) Where the Court makes or varies a property freezing order or an interim receiving order, it shall at the same time consider whether it is appropriate to make an exclusion for the purpose of enabling any person to meet his reasonable legal expenses.

(2) Before making an exclusion for the purpose of enabling a person to meet his reasonable legal expenses, other than an initial exclusion under rule 7A(1), the Court shall require that person to file in the Central Office a statement of assets.

(3) A statement of assets shall be contained in an affidavit and shall set out all the assets which the maker of the statement owns, holds or controls, giving the value, location and details of those assets, and information given in any such statement shall only be used for the purpose of the civil recovery proceedings.

(4) The Court shall normally refer to the taxing master any question relating to the amount which an exclusion should allow for reasonable legal expenses in respect of proceedings or a stage in proceedings.

(5) An exclusion for the purpose of enabling a person to meet his reasonable legal expenses shall be made subject to the required conditions specified in Part 2 of the Regulations.

(6) An exclusion made for the purpose of enabling a person to meet his reasonable legal expenses shall specify—

(*a*) the stage or stages in civil recovery proceedings to which it relates;

(*b*) the maximum amount which may be released in respect of legal expenses for each specified stage; and

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(**a**) Sub-paragraph (*ba*) inserted by S.R. 2009 No. 207 with effect from 30.06.09
(**b**) Words substituted by S.R. 2009 No. 207 with effect from 30.06.09
(**c**) Rules 10A-10C inserted by S.R. 2006 No. 10 with effect from 13.02.06

(*c*) the total amount which may be released in respect of legal expenses pursuant to that exclusion.

(7) Where the person to whose legal expenses an exclusion relates becomes aware that—

(*a*) his legal expenses in respect of any stage in civil recovery proceedings have exceeded or shall exceed the total amount specified in the exclusion for that stage; or

(*b*) his total legal expenses in respect of all the stages to which the exclusion applies have exceeded or shall exceed the total amount that may be released pursuant to the exclusion,

he shall, as soon as reasonably practicable, make an application under rule 10(1) for a further exclusion.

Assessment of expenses where recovery order is made

10B.—(1) Where the Court—

(*a*) makes a recovery order in respect of property which was the subject of a property freezing order or interim receiving order; and

(*b*) had made an exclusion from the property freezing order or interim receiving order for the purpose of enabling a person to meet his reasonable legal expenses;

the Court shall make provision under section 266(8A) or, as the case may be, Article 177(10) of the Order in Council in the recovery order for the payment of those expenses.

(2) Where the Court makes a recovery order which provides for the payment of the reasonable legal expenses which a person has incurred in civil recovery proceedings, it shall direct that the expenses be taxed by the taxing master.

Registers

10C. There shall be kept in the Central Office, under the direction of the Master a register of external orders which the High Court has ordered to be registered.]

Leave

11.—(1) An application for leave under section 253(3) shall be made by summons.

(2) The summons and any affidavit in support shall be served, not less than two days before the date for the hearing of the application on:

(*a*) the tenant;

(*b*) the person against whom the interim receiving order has been made;

(*c*) the interim receiver (if appointed); and

(*d*) any other person of whom the applicant is aware who may be affected by the court's decision.

Compensation

12. An application for an order under section 283 shall be made by summons which shall be served, with any supporting evidence, on [(**a**) the enforcement authority] not less than seven days before the date fixed for hearing.

(**a**) Words substituted by S.R. 2009 No. 207 with effect from 30.06.09

PART III

PART 8 OF THE ACT

Title and service of proceedings

13.—(1) Subject to rules 20 and 22, an originating summons under this Part of this Order shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.

(2) Any originating summons, or other document, required to be served under this Part of this Order may be served outside the jurisdiction with the leave of the Court.

Confidentiality

14. No documents filed in the Central Office in connection with proceedings under this Part of this Order shall be open to inspection without the leave of the Court and no copy of any such document or an extract thereof shall be taken by or issued to any person without such leave.

Production Order

15.—(1) An application for a production order under section 345 may be made ex parte by originating summons and shall name as defendant the person believed to be in possession or control of the material in relation to which the order is sought.

(2) An application under paragraph (1) shall be supported by an affidavit which shall include—

(*a*) full particulars of the matters relied upon in support of the application; and

(*b*) confirmation of whether the order sought is under section 345(4)(*a*) or section 345(4)(*b*).

16. Any copy of a production order which is served on the defendant shall have indorsed thereon a statement of the right of any person affected by the order to apply for its variation or discharge.

Order to grant entry

17.—(1) An application for an order to grant entry under section 347 (which may be joined with an application for a production order) may be made ex parte by summons and shall name as defendant the occupier of the premises in relation to which the order is sought.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall include full particulars of the grounds for the application.

18. Any copy of an order to grant entry which is served on the defendant shall have indorsed thereon a statement of the right of any person affected by it to apply for its variation or discharge.

Search and seizure warrant

19.—(1) An application for a search and seizure warrant under section 352 may be made ex parte by originating summons and shall name as defendant the occupier of the premises in relation to which the order is sought.

(2) An application under paragraph (1) shall be supported by an affidavit which shall include—

(*a*) full particulars of the matters relied upon in support of the application;

(*b*) the address or other identification of the premises to which the application relates;

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

(*d*) the name and position of the [(**a**) appropriate person] who will execute the warrant; [(**b**)...] and

(*e*) the name and position of any [(**a**) other person] who is authorised by [(**a**) the senior appropriate officer] to accompany the [(**a**) appropriate person] ("authorised officer"); and

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

(3) A copy of the authorisation containing the name of any authorised officer shall be annexed to the affidavit.

(4) A search and seizure warrant issued under section 352 shall be in Form No. 72.

Application for disclosure order

20.—(1) An application by [(**a**) the relevant authority] for a disclosure order under section 357 may be made ex parte by originating summons and shall—

(*a*) wherever possible, name as defendant any person on whom [(**a**) the relevant authority] intends to serve notice in accordance with section 357(4); and

(*b*) be entitled in the matter of the Act and in the name of the defendant, naming him or, where the defendant is not named in the application, in the matter of the property which is the subject of the civil recovery investigation, and all subsequent documents in the matter shall be so entitled.

(2) The application shall be supported by an affidavit which shall include—

(*a*) full particulars of the matters relied upon in support of the application; and

(*b*) details of the action to be taken under section 357(4) for which the order is sought.

Disclosure order

21. Where, pursuant to a disclosure order, [(**a**) the appropriate officer] gives notice to a person under section 357(4), he shall at the same time serve on that person a copy of the disclosure order which shall—

(*a*) be indorsed with a statement of the right of any person affected by the order to apply for its variation or discharge; and

(*b*) have prominently displayed on the front thereof a warning in Form No. 73 in Appendix A.

Application for customer information order

22.—(1) An application by [(**a**) an appropriate officer] for a customer information order under section 363 may be made ex parte by originating summons and shall—

(**a**) Words substituted by S.R. 2009 No. 207 with effect from 30.06.09
(**b**) Words deleted by S.R. 2009 No. 207 with effect from 30.06.09

(*a*) wherever possible, name as a defendant any financial institution which the order sought is intended to cover; and

(*b*) be entitled in the matter of the Act and in the matter of the defendant, naming him, or if the defendant is not named in the application, in the matter of the property which is the subject of the civil recovery investigation, and all subsequent documents in the matter shall be so entitled.

(2) An application under paragraph (1) shall be supported by an affidavit which shall include—

(*a*) full particulars of the matters relied upon in support of the application; and

(*b*) the name and position of the [(**a**) appropriate officer] to whom the customer information is to be given.

Customer information order

23. Where pursuant to a customer information order, [(**a**) an appropriate officer] gives notice under section 363(5) to a financial institution, he shall at the same time serve on that financial institution a copy of the customer information order which shall—

(*a*) be indorsed with a statement of the right of any person affected by the order to apply for its variation or discharge; and

(*b*) have prominently displayed on the front thereof a warning in Form No. 74 in Appendix A.

Account monitoring order

24.—(1) An application by [(**a**) an appropriate officer] for an account monitoring order under section 370 may be made ex parte by originating summons and shall name as defendant the financial institution against which the order is sought.

(2) The application shall be supported by an affidavit which shall include—

(*a*) full particulars of the matters relied upon in support of the application;

(*b*) the name of any person who holds an account to which the application relates;

(*c*) details of each account, or description of account, in relation to which the order is sought, in particular, the number of each account and the address of the branch at which it is held, if known;

(*d*) details of the information that is sought about each account;

(*e*) the period of time for which the order is sought; and

(*f*) the manner in which and the frequency with which it is proposed that the defendant should provide the information.

25. Any copy of an account monitoring order which is served by [(**a**) an appropriate officer] shall have indorsed thereon a statement of the right of any person affected by the order to apply for its variation or discharge.

Discharge and variation

26.—(1) In this Rule, "an investigation order" shall mean an order made under section 345(1), section 347(1), section 357(1), section 363(1) and section 370(1).

(**a**) Words substituted by S.R. 2009 No. 207 with effect from 30.06.09

(2) An application by a person affected by an investigation order for its variation or discharge may be made by summons which, together with any evidence in support, shall be lodged with the Court and served on [(**a**) the appropriate officer] not less than two days before the date fixed for the hearing of the summons.

(3) An application by [(**a**) an appropriate officer] to have an investigation order varied or discharged may be made ex parte by summons which shall, together with any affidavit in support, be lodged with the Court not less than two days before the date fixed for hearing the summons.]

(**a**) Words substituted by S.R. 2009 No. 207 with effect from 30.06.09

[(a) ORDER 124

SERIOUS CRIME ACT 2007 – SERIOUS CRIME PREVENTION ORDERS

Interpretation

1. In this Order—

"the 2007 Act" means the Serious Crime Act 2007(b), a section referred to by number means the section so numbered in the Act, and expressions used have the same meaning as in the Act.

Assignment of proceedings

2. In this Order, the jurisdiction of the High Court under the Act shall be assigned to the Queen's Bench Division.

Application for a serious crime prevention order

3.—(1) An application under section 8(*b*) for a serious crime prevention order shall be made by originating summons.

(2) The application shall be supported by an affidavit which shall—

(*a*) specify the provisions of section 3(1) relied upon, and in respect of each such provision, give full particulars of the allegations that the defendant has been involved in serious crime (whether in Northern Ireland or elsewhere);

(*b*) state the plaintiff's grounds for contending that the proposed terms of the serious crime prevention order are appropriate for the purpose of protecting the public in accordance with section 1(3); and

(*c*) give full particulars of any third party whom the plaintiff believes is likely to be significantly affected by the serious crime prevention order and the nature of that adverse effect.

(3) The application shall be accompanied by a draft of the serious crime prevention order for which the application is made and shall specify the dates upon which the plaintiff proposes that the serious crime prevention order should come into force and cease to be in force.

(4) Where it is alleged that the defendant has been convicted of a serious offence in Northern Ireland, the application shall be accompanied by a certificate of conviction.

(5) Where it is alleged that the defendant has been convicted of an offence in another jurisdiction, the plaintiff shall attach—

(a) a document from the appropriate public authority in the jurisdiction concerned certifying that the defendant has, after due process of law, been convicted of the offence; and

(b) where the document is not in English, a translation of that document into English—

(i) certified by a notary public or other qualified person; or

(ii) authenticated by affidavit.

(a) Order 124 inserted by S.R. 2009 No. 207 with effect from 30.06.09
(b) 2007 c. 27

(6) The plaintiff shall serve a copy of the application, affidavit in support and any other documents required under paragraphs (3)-(5) as soon as is practicable upon—

(*a*) the Court;

(*b*) the defendant; and

(*c*) any person on whom the making of the order would be likely to have a significant adverse effect.

(7) The Court shall not determine an application under paragraph (1) unless—

(*a*) the defendant has had an opportunity to make representations at the hearing of that application; and

(*b*) any person on whom the making of the order would be likely to have a significant adverse effect has had an opportunity to make representations before the Court about the making of the order.

Application to vary or discharge a serious crime prevention order

4.—(1) An application to vary a serious crime prevention order under section 17(2) or to discharge a serious crime prevention order under section 18(1)(*b*) shall be made by way of notice of motion.

(2) An application under paragraph (1) shall be supported by an affidavit which shall include—

(*a*) where the applicant is the defendant, details of the change of circumstances affecting the serious crime prevention order;

(*b*) where the application is to vary a serious crime prevention order, particulars of how the terms of the order as varied would protect the public in accordance with section 17(2);

(*c*) where the plaintiff seeks to vary a serious crime prevention order—

(i) details of any third party whom he believes is likely to be significantly adversely affected by the proposed variation of the serious crime prevention order; and

(ii) details of the nature of that adverse effect;

(*d*) where a third party seeks to vary a serious crime prevention order—

(i) particulars of why he believes that he is significantly adversely affected by the order;

(ii) particulars of how condition A or B in section 17 is met; and

(iii) particulars relied upon to establish that the purpose of the application is not to make the serious crime prevention order more onerous on the person who is the subject of the order; and

(*e*) where a third party applies for the discharge of a serious crime prevention order, particulars of—

(i) why he believes that he is significantly adversely affected by the order; and

(ii) how condition A or B in section 18 is met.

(3) Where the application is to vary or discharge a serious crime prevention order made by the Crown Court, the application must be accompanied by a copy of that order.

(4) Unless the Court otherwise directs, the summons and affidavit in support shall, not less than two days before the date fixed for the hearing of the summons, be filed in the Central Office and be served upon—

(*a*) the Court; and

(*b*) where he is not the party bringing the application—

(i) the defendant;

(ii) the plaintiff; and

(iii) any person on whom the applicant is aware the variation or discharge of the order would be likely to have a significant adverse effect.

(5) The Court shall not determine an application under paragraph (1) unless—

(*a*) the defendant;

(*b*) the plaintiff; and

(*c*) any person on whom the order would be likely to have a significantly adverse effect, in accordance with section 17(5) or 18(4),

has had an opportunity to make representations at the hearing of that application.

Application by a third party to make representations in relation to a serious crime prevention order

5.—(1) An application by a third party under section 9 to make representations in proceedings in relation to a serious crime prevention order shall contain details of why the third party believes the proposed order would be likely to have a significant adverse effect on him.

(2) An application under paragraph (1) shall be made as soon as is practicable by serving written notice upon—

(*a*) the Court;

(*b*) the plaintiff;

(*c*) the defendant; and

(*d*) any other person on whom the order would be likely to have a significant adverse effect.

Appeals in relation to serious crime prevention orders

6.—(1) Where an appeal is made under either section 35 of the Act or section 23(1) of the 2007 Act in respect of a serious crime prevention order, the appellant shall serve a copy of the notice of appeal on any party to the proceedings which are the subject of the appeal, including any person who was given the opportunity to make representations in these proceedings.

(2) Order 59 (Appeals to the Court of Appeal) applies to an appeal to the Court of Appeal in respect of a serious crime prevention order made by the High Court.]

[(a) ORDER 125

CORONERS AND JUSTICE ACT 2009 – EXPLOITATION PROCEEDS ORDERS

Interpretation

1. In this Order—

"defendant" has the same meaning as "respondent" in the Act;

"Master" means the Master (Queen's Bench and Appeals)

"the Act" means the Coroners and Justice Act 2009(**b**), a section referred to by number means the section so numbered in the Act, and expressions used have the same meaning as in the Act;.

Assignment of proceedings

2. In this Order, the jurisdiction of the High Court under the Act shall be assigned to the Queen's Bench Division and shall be exercised by a judge in chambers.

Title of proceedings

3. An originating summons under this Order shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents shall be so entitled.

Application for an exploitation proceeds order

4.—(1) An application under section 161 for an exploitation proceeds order shall be made by originating summons in Form No. 7 of Appendix A.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall—

(a) provide evidence that the Advocate General for Northern Ireland has consented to the application being brought;

(b) provide evidence that the defendant is a qualifying offender in accordance with sections 156, 157 or 158(3) by attaching—

(i) a certificate of conviction or finding by a United Kingdom court in respect of a relevant offence; or

(ii) where the defendant falls under section 156(3), a document from a court or authority, in the jurisdiction concerned, confirming the conviction or finding by that court in respect of a relevant offence;

(c) specify how the defendant has obtained exploitation proceeds from the relevant offence;

(d) identify the benefits derived by the defendant from such exploitation; and

(e) specify the reasons why an exploitation proceeds order should be made, having regard to the matters mentioned in section 162(3).

(3) Where a document provided in accordance with paragraph (2)(b)(ii) is not in English, it shall be accompanied by a translation of that document into English and shall be certified by the translator to be a correct translation; and the certificate shall contain a statement of that person's full name, his address and qualifications for making the translation.

(**a**) New Order 125 inserted by S.R. 2011 No. 62 with effect from 25.03.11

(**b**) 2009 c. 25

Application following conviction being quashed

5.—(1) An application under section 166(3) or (5) shall be made by way of summons.

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

(a) specify how the conditions in sections 166(1), 166(2) or 166(4) are satisfied; and

(b) attach—

(i) a certificate of order as evidence of the conviction in respect of the relevant offence having been quashed; or

(ii) a document from a court or authority in the jurisdiction concerned, confirming that the conviction in respect of the relevant offence has been quashed.

(3) Where a document provided in accordance with paragraph (2)(b)(ii) is not in English, it shall be accompanied by a translation of that document into English and shall be certified by the translator to be a correct translation; and the certificate shall contain a statement of that person's full name, his address and qualifications for making the translation.

Repeat applications

6. An application under section 167 shall be made by way of summons, supported by affidavit, which shall—

(a) give full particulars of the grounds of the application in accordance with rule 4(2); and

(b) attach a transcript of the earlier application along with a copy of the earlier order.

Additional proceeds reporting order

7.—(1) Where an additional proceeds reporting order is sought under section 168, an application for an order may be included in the originating summons under rule 4(1), and the affidavit in support shall specify the reasons as to why the order is sought having regard to section 168(2).

(2) An application to vary or discharge an additional proceeds reporting order may be made by—

(a) the defendant; or

(b) the person to whom financial reports are to be made under the order.

(3) An application under paragraph (2) shall be made by way of summons supported by affidavit, which shall—

(a) attach a copy of the order made under section 168; and

(b) specify the reasons for the variation or discharge sought.]

[(a) ORDER 126

CLOSED MATERIAL PROCEDURE

PART 1

APPLICATION OF THIS ORDER

Scope and interpretation

1.—(1) This Order contains rules—

(*a*) about—

(i) applications under sections 6(2), 7(4) and 18(1) of the Justice and Security Act 2013;

(ii) closed material applications in section 6 proceedings;

(iii) section 6 proceedings; and

(*b*) about appeals to the Court of Appeal where there have been proceedings on or in relation to any matter within sub-paragraph (*a*) in the High Court.

(2) Subject to paragraph (3), in this Order—

(*a*) "the Act" means the Justice and Security Act 2013;

(*b*) "closed material application" means an application of the kind mentioned in section 8(1)(a) of the Act;

(*c*) "legal representative" is to be construed in accordance with section 14(1) of the Act;

(*d*) "relevant person" is to be construed in accordance with section 14(1) of the Act;

(*e*) "section 6 proceedings" is to be construed in accordance with section 14(1) of the Act;

(*f*) "sensitive material" has the meaning given by section 6(11) of the Act;

(*g*) "special advocate" means a person appointed under section 9(1) of the Act;

(*h*) "specially represented party" means a party whose interests a special advocate represents.

(3) In relation to proceedings arising by virtue of section 18 of the Act (review of certification)—

(*a*) a reference to the relevant person is to be read as a reference to the Secretary of State; and

(*b*) a reference to the interests of national security includes a reference to the interests of the international relations of the United Kingdom.

Modification to the overriding objective

2.—(1) Where any of the rules in this Order applies, the overriding objective in Order 1, and so far as possible any other rule, must be read and given effect in a way which is compatible with the duty set out in paragraph (2).

(2) The Court must ensure that information is not disclosed in a way which would be damaging to the interests of national security.

(3) Subject to paragraph (2), the Court shall satisfy itself that the material available to it enables it properly to determine the proceedings.

Rules to apply subject to this Order

3.—(1) Subject to paragraph (2), in relation to proceedings to which this Order applies, these Rules apply subject to this Order.

(2) Order 24 (discovery and inspection of documents) applies to proceedings to which this Order applies, subject only to rule 2 and the Court's permission for material not to be disclosed otherwise than to—

(a) Order 126 inserted by S.R. 2013 No. 175 with effect from 27.06.13

(*a*) the Court;

(*b*) any person appointed as a special advocate; and

(*c*) where the Secretary of State is not the relevant person but is a party to the proceedings, the Secretary of State.

PART II

GENERAL PROVISIONS

Scope of this Part

4. This Part applies, except where otherwise indicated, to all proceedings mentioned in rule 1(1).

Hearings in private

5.—(1) If the Court considers it necessary for any party and that party's legal representative to be excluded from any hearing or part of a hearing in order to secure that information is not disclosed where disclosure would be damaging to the interests of national security, it shall—

(*a*) direct accordingly; and

(*b*) conduct the hearing, or that part of it from which that party and that party's legal representative are excluded, in private but attended by a special advocate to represent the interests of the excluded party.

(2) The Court may conduct a hearing or part of a hearing in private for any other good reason.

Notification of hearings

6. Unless the Court directs otherwise, it shall serve notice of the date, time and place fixed for any hearing on—

(*a*) every party, whether or not entitled to attend that hearing; and

(*b*) the special advocate or those instructing the special advocate.

Proceedings which must be determined at a hearing

7. The following proceedings shall, unless the court directs otherwise, be determined at a hearing—

(*a*) an application by the Secretary of State under section 6(2) of the Act for a declaration;

(*b*) a closed material application;

(*c*) a review of the Court's own motion under section 7 of a declaration made under section 6 of the Act;

(*d*) a formal review under section 7(3) of the Act of a declaration made under section 6 of the Act;

(*e*) an application under section 7 of the Act for revocation of a declaration made under section 6 of the Act;

(*f*) an application under section 18(1) of the Act to have a certificate issued under section 17(3)(*e*) of the Act set aside;

(*g*) an appeal to the Court of Appeal from a decision or order of the High Court made in any of the proceedings mentioned in paragraphs (*a*) to (*f*) above.

Appointment of a special advocate

8.—(1) Subject to paragraphs (2) and (3), on—

(*a*) the Secretary of State deciding to make an application under section 6(2) of the Act; or

(*b*) the Secretary of State receiving written notice under rule 20 (notification of intention to make application for a declaration) that a party other than the Secretary of State intends to make such an application; or

(*c*) the Secretary of State receiving written notice under rule 30 (review of certification) of an application under section 18(1) of the Act to have a certificate issued under section 17(3)(*e*) of the Act set aside,

the Secretary of State must immediately give notice of the proceedings to the Advocate General for Northern Ireland (who, under section 9(1) of the Act, has the power to appoint a special advocate).

(2) Paragraph (1) applies unless a special advocate has already been appointed to represent the interests of the specially represented party in the proceedings and that special advocate is not prevented from communicating with that party by virtue of rule 10 (special advocate: communicating about proceedings).

(3) Paragraph (1) applies whether the proceedings are in the High Court or the Court of Appeal.

(4) Where any proceedings to which this Part applies are pending but no special advocate has been appointed, any party or the Secretary of State may request that the Advocate General for Northern Ireland appoint a special advocate.

Functions of a special advocate

9. The functions of a special advocate are to represent the interests of a specially represented party by—

(*a*) making submissions to the court at any hearing or part of a hearing from which the specially represented party and the specially represented party's legal representatives are excluded;

(*b*) adducing evidence and cross-examining witnesses at any such hearing, or part of a hearing;

(*c*) making applications to the Court or seeking directions from the Court where necessary; and

(*d*) making written submissions to the Court.

Special advocate: communicating about proceedings

10.—(1) The special advocate may communicate with the specially represented party or the specially represented party's legal representative at any time before a relevant person serves sensitive material on the special advocate.

(2) After the relevant person serves sensitive material on the special advocate, the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (3) or (6)(*b*) or with a direction of the Court pursuant to a request under paragraph (4).

(3) The special advocate may, without directions from the Court, communicate about the proceedings with—

(*a*) the Court;

(*b*) the relevant person (where this is not the Secretary of State);

(*c*) the Secretary of State or any person acting for the Secretary of State;

(*d*) the Advocate General for Northern Ireland or any person acting for the Advocate General for Northern Ireland; or

(*e*) any other person, except the specially represented party or the specially represented party's legal representative, with whom it is necessary for administrative purposes for the special advocate to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from the court authorising the special advocate to communicate with the specially represented party or the specially represented party's legal representative or with any other person.

(5) Where the special advocate makes a request for directions under paragraph (4)—

(*a*) the Court shall notify the relevant person and (where the relevant person is not the Secretary of State) the Secretary of State of the request, and of the content of the proposed communication and the form in which it is proposed to be made; and

(*b*) the relevant person or the Secretary of State or each of them (where each wishes to object) shall, within a period specified by the Court, file with the Court and serve on the special advocate notice of any objection which the relevant person or the Secretary of State has to the proposed communication or to the form in which it is proposed to be made.

(6) Paragraph (2) does not prohibit the specially represented party from communicating with the special advocate after the relevant person has served material on the special advocate but—

(*a*) the specially represented party may only communicate with the special advocate through the specially represented party's legal representative in writing; and

(*b*) the special advocate must not reply to the communication other than in accordance with directions of the Court, except that the special advocate may without such directions send a written acknowledgment of receipt to the specially represented party's legal representative.

Evidence in proceedings to which this Order applies

11.—(1) Subject to the other rules in this Order, the evidence of a witness may be given either—

(*a*) orally before the Court; or

(*b*) in writing, in which case it shall be given in such manner and at such time as the Court directs.

(2) The Court may also receive evidence in documentary or any other form.

(3) The Court may receive evidence that would not, but for this rule, be admissible in a court of law.

(4) Every party is entitled to adduce evidence and to cross-examine witnesses during any hearing or part of a hearing from which that party and that party's legal representatives are not excluded.

(5) A special advocate is entitled to adduce evidence and to cross-examine a witness only during a hearing or part of a hearing from which the specially represented party and the specially represented party's legal representatives are excluded.

(6) The Court may require a witness to give evidence on oath.

Sensitive material

12.—(1) The relevant person—

(*a*) shall apply to the Court for permission to withhold sensitive material from a specially represented party or the specially represented party's legal representative in accordance with this rule; and

(*b*) may not rely on sensitive material at a hearing on notice unless a special advocate has been appointed to represent the interests of the specially represented party.

(2) The relevant person shall file with the Court and, at such time as the Court directs, serve on the special advocate—

(*a*) the sensitive material; and

(*b*) a statement of the relevant person's reasons for withholding that material from the specially represented party and the specially represented party's legal representatives.

(3) The relevant person may at any time amend or supplement material filed under this rule, but only with—

(*a*) the agreement of the special advocate; or

(*b*) the permission of the Court.

Consideration of closed material application or of objection to special advocate's communication

13.—(1) This rule applies where the relevant person or, as the case may be, the Secretary of State has—

(*a*) applied under rule 12 (sensitive material) for permission to withhold sensitive material; or

(*b*) objected under rule 10(5)(*b*) (special advocate: communicating about proceedings) to a proposed communication by the special advocate.

(2) The Court shall fix a hearing for the relevant party, the Secretary of State and the special advocate to make oral representations, unless—

(*a*) the special advocate gives notice that he or she does not challenge the application or objection;

(*b*) the Court has previously, in determining the application for a declaration under section 6 of the Act, found that the first condition in section 6 of the Act is met in relation to the same or substantially the same material and is satisfied that it would be just to give permission without a hearing;

(*c*) the Court has previously considered—

(i) an application under rule 12(1) for permission to withhold the same or substantially the same material; or

(ii) an objection under rule 10(5)(*b*) to the same or substantially the same proposed communication; and

is satisfied that it would be just to give permission or uphold the objection without a hearing; or

(*d*) the relevant person, the Secretary of State and the special advocate consent to the Court deciding the application or objection without a hearing.

(3) If the special advocate does not challenge the application or the objection, he or she must give notice of that fact to the Court, the relevant person and the Secretary of State no later than the end of—

(*a*) 14 days after the date on which the relevant person or the Secretary of State serves on the special advocate the notice under rule 10(5)(*b*) or the material under rule 12(2), or

(*b*) such other period as the Court may direct.

(4) Where the Court fixes a hearing under this rule, the relevant person, the Secretary of State and the special advocate shall before the hearing file with the Court a schedule identifying the issues which cannot be agreed between them, which shall also—

(*a*) give brief reasons for their contentions in relation to each issue; and

(*b*) set out any proposals for the Court to resolve those issues.

(5) A hearing under this rule shall take place in the absence of the specially represented party and the specially represented party's legal representative.

(6) Where the Court has, in determining an application for a declaration under section 6 of the Act, found that the first condition in section 6 of the Act is met in relation to any material, it may give permission to withhold that material without a hearing in relation to that material, whether or not a hearing is required in relation to any other material.

(7) Where the Court gives permission to the relevant person to withhold sensitive material, the Court —

(*a*) shall consider whether to direct the relevant person to serve a summary of that material on the specially represented party and the specially represented party's legal representative; but

(*b*) shall ensure that any such summary does not contain material the disclosure of which would be damaging to the interests of national security.

(8) If the Court is satisfied that—

(*a*) the relevant person does not intend to rely on sensitive material, and

(*b*) that material does not adversely affect the relevant person's case or support the case of another party to the proceedings,

the Court may direct that the relevant person must not rely in the proceedings on that material, without the Court first requiring the relevant person to serve a summary of that material on the specially represented party and the specially represented party's legal representative.

(9) Where the Court has not given permission to the relevant person to withhold sensitive material from, or has directed the relevant person to serve a summary of that material on, the specially represented party and the specially represented party's legal representative—

(*a*) the relevant person shall not be required to serve that material or summary; but

(*b*) if the relevant person does not do so, at a hearing on notice the Court may—

(i) if it considers that the material or anything that is required to be summarised might adversely affect the relevant person's case or support the case of another party to the proceedings, direct that the relevant person is not to rely on such points in the relevant person's case, or that the relevant person makes such concessions or takes such other steps as the Court may direct; and

(ii) in any other case, direct that the relevant person shall not rely in the proceedings on that material or (as the case may be) on what is required to be summarised.

(10) The Court shall give permission to the relevant person to withhold sensitive material where it considers that disclosure of that material would be damaging to the interests of national security.

Failure to comply with directions

14.—(1) Where a party or the special advocate fails to comply with a direction of the Court, the Court may serve on that person a notice which states—

(*a*) the respect in which that person has failed to comply with the direction;

(*b*) a time limit for complying with the direction; and

(*c*) that the Court may proceed to determine the proceedings before it on the material before it if that person fails to comply with the direction within that time limit.

(2) Where a party or the special advocate fails to comply with the direction after such a notice, the Court may proceed in accordance with paragraph (1)(*c*).

Judgments

15.—(1) Where the Court gives judgment in any proceedings to which this Part applies, it may withhold any, or any part, of its reasons if and to the extent that it is not possible to give those reasons without disclosing information the disclosure of which would be damaging to the interests of national security.

(2) Where the judgment of the Court does not include the full reasons for its decision, the Court shall serve on the relevant person, the Secretary of State (where not the relevant person) and the special advocate a separate written judgment giving those reasons.

Application by the Secretary of State or relevant person for reconsideration of decision

16.—(1) If the Court proposes, in any proceedings to which this Order applies, to serve on a specially represented party—

(*a*) notice of any order or direction made or given in the absence of the Secretary of State or, if the relevant person is not the Secretary of State, the absence of the relevant person; or

(*b*) any written judgment;

then before the Court serves any such notice or judgment on the specially represented party, it shall first serve notice on the Secretary of State and, if the relevant person is not the Secretary of State, on the relevant person, of its intention to do so.

(2) The Secretary of State or relevant person may, within 5 days of being served with notice under paragraph (1), apply to the Court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if the Secretary of State or relevant person considers that—

(*a*) the Secretary of State or relevant person's compliance with the order or direction; or

(*b*) the notification to the specially represented party of any matter contained in the judgment, order or direction,

would cause information to be disclosed where such disclosure would be damaging to the interests of national security.

(3) Where the Secretary of State or relevant person makes an application under paragraph (2), the Secretary of State or relevant person must at the same time serve on the special advocate—

(*a*) a copy of the application; and

(*b*) a copy of the notice served on the Secretary of State or relevant person pursuant to paragraph (1).

(4) Rule 13 (consideration of closed material application or of objection to special advocate's communication), except for paragraphs (6) to (8) of that rule, applies with any necessary modifications to the consideration of an application under paragraph (2) of this rule.

(5) The Court shall not serve notice or a written judgment on the specially represented party as mentioned in paragraph (1) before the time for the Secretary of State or relevant person to make an application under paragraph (2) has expired.

Supply of Court documents

17. Unless the Court otherwise directs, Order 66, rule 3 (Copies of documents for other party), and Order 66, rule 5 (Right to inspect, etc., certain documents filed in Court Offices) do not apply to any proceedings to which this Order applies.

PART III

APPLICATIONS UNDER SECTION 6(2) OF THE ACT

Scope of this Part

18. This Part contains rules about applications under section 6(2) of the Act (application for a declaration that the proceedings are proceedings in which a closed material application may be made).

Possible application for declaration under section 6 of the Act by Secretary of State: notification to Secretary of State if not a party

19.—(1) This rule applies where the Secretary of State is not a party to relevant civil proceedings but—

(*a*) it appears to—

(i) a party to those proceedings; or

(ii) the Court

that the party may be required to disclose material the disclosure of which would be damaging to the interests of national security, and

(*b*) either—

(i) the party does not intend to make an application for a declaration under section 6 of the Act; or

(ii) the Court does not consider it appropriate to make such a declaration of its own motion.

(2) Where this rule applies by virtue of paragraph (1)(*a*)(i) and (*b*)(i)—

(*a*) the party shall—

(i) notify the Secretary of State and the Court in writing; and

(ii) not disclose the material in question unless and to the extent that the Court directs; and

(*b*) the Court shall on receiving notification give such directions as appear necessary pending the Secretary of State's response.

(3) Where this rule applies by virtue of paragraph (1)(*a*)(ii) and (*b*)(ii), the Court shall—

(*a*) direct the party in question not to disclose the material in question unless and to the extent the Court directs otherwise;

(*b*) notify the Secretary of State in writing; and

(*c*) give such directions as appear necessary pending the Secretary of State's response.

(4) Within 14 days of being notified in accordance with paragraph (2) or (3), the Secretary of State must respond in writing to the Court—

(*a*) confirming that the Secretary of State intends to apply for a declaration under section 6 of the Act;

(*b*) confirming that the Secretary of State does not intend to apply for such a declaration; or

(*c*) requesting further time to consider whether to apply for such a declaration.

(5) The Court—

(*a*) may stay the proceedings either on application by a party or of its own motion where the Secretary of State has been notified under paragraph (2) or (3); and

(*b*) shall stay the proceedings where the Secretary of State responds in accordance with paragraph (4)(*a*) or (*c*).

(6) Any stay may be subject to conditions, including a condition that the application shall be made, or confirmation given that no application shall be made, within a time specified by the Court.

Notification of intention to make application for a declaration

20.—(1) Any person who intends to make an application under section 6(2) of the Act—

(*a*) shall, at least 14 days before making the application, serve written notice of that intention on the Court and on every other party to the relevant civil proceedings and (if the Secretary of State is not a party) on the Secretary of State;

(*b*) may at any time apply to the Court for the relevant civil proceedings to which the declaration would relate to be stayed pending—

(i) the application; or

(ii) the person's consideration of whether to make an application.

(2) The Court may stay the relevant civil proceedings to which the declaration would relate on an application under paragraph (1)(*b*) or of its own motion.

(3) Any stay may be subject to conditions, including a condition that the application shall be made, or confirmation given that no application will be made, within a time specified by the Court.

Application for a declaration

21.—(1) An application under section 6(2) of the Act shall be made by the applicant filing with the Court—

(*a*) a statement of reasons to support the application and any additional written submissions;

(*b*) material in relation to which the Court is asked to find that the first condition in section 6 of the Act is met;

(*c*) the details of any special advocate already appointed under rule 8 (appointment of a special advocate).

(2) Where the applicant is the Secretary of State, the statement of reasons required by paragraph (1)(*a*) must include the Secretary of State's reasons for not making, or not advising another person to make, a claim for public interest immunity in relation to the material on which the application would be based.

Directions for hearing of an application

22.—(1) When a party to the relevant civil proceedings or (if the Secretary of State is not a party) the Secretary of State has submitted an application for a declaration under section 6 of the Act, the Court must serve notice of the application on—

(*a*) all other parties and (if the Secretary of State is neither a party nor the applicant) the Secretary of State;

(*b*) the legal representatives of all other parties and (where relevant) the Secretary of State; and

(*c*) the special advocate,

and must give directions for a directions hearing unless it considers that the application can be determined on the papers, in which case it shall give directions as it considers appropriate.

(2) Any directions hearing shall take place in the absence of the specially represented party and the specially represented party's legal representative.

(3) At the directions hearing the Court shall give directions—

(*a*) for the hearing of the application; and

(*b*) specifying a date and time by the parties and special advocate must file and serve any written evidence or written submissions.

(4) The hearing of the application shall take place in the absence of the specially represented party and the specially represented party's legal representative.

Notification by applicant following hearing of application

23.—(1) When the Court has determined an application made under section 6(2) of the Act, the applicant shall within 7 days of that determination serve written notice of the outcome of the application on every other party to the relevant civil proceedings and (if the Secretary of State is not a party) on the Secretary of State.

(2) The notice shall be limited to stating whether the application was granted or refused.

Secretary of State to be joined where declaration made

24. If the Court makes a declaration under section 6 of the Act and the Secretary of State is not already a party to the proceedings in relation to which the declaration is made, the Court must order the Secretary of State to be joined as a party to those proceedings, unless the Secretary of State does not wish to be joined and notifies the Court in writing accordingly.

Directions following declaration

25.—(1) If the Court makes a declaration under section 6 of the Act, it shall give directions for a directions hearing,

(2) The Court shall, either when giving directions under paragraph (1) or at the directions hearing, give directions—

(*a*) for a hearing of a closed material application; and

(*b*) specifying a date and time by which the parties and special advocate shall file and serve any written evidence or written submissions.

(3) Rules 12 and 13 shall apply where any sensitive material is filed by a relevant person.

PART IV

REVIEW AND REVOCATION OF DECLARATIONS MADE UNDER SECTION 6 OF THE ACT

Scope of this Part

26. This Part contains rules about—

(*a*) revocation—

(i) of the Court's own motion; or

(ii) on application,

of a declaration made under section 6 of the Act; and

(*b*) the Court's formal review of such a declaration.

Possible revocation of declaration: Court's own motion

27.—(1) This rule applies if the Court at any time considers that a declaration made under section 6 of the Act may no longer be in the interests of the fair and effective administration of justice in the proceedings.

(2) The Court shall in writing—

(*a*) notify the parties (and the Secretary of State if not a party) and the special advocate that it is considering whether to revoke the declaration; and

(*b*) invite them to make submissions.

(3) Each party (and the Secretary of State if not a party) and the special advocate shall within 28 days of the date of notification under paragraph (2) file a response either—

(*a*) containing written submissions either supporting or opposing revocation of the declaration and giving reasons; or

(*b*) confirming that the party (or Secretary of State, or special advocate, as appropriate) does not wish to make any submissions.

(4) The Court shall, on receipt of the responses under paragraph (3), either—

(*a*) give directions—

(i) for a hearing to determine whether the declaration should be revoked; and

(ii) specifying a date and time by which the parties (and Secretary of State if not a party) and special advocate must file and serve any written evidence or written submissions; or

(*b*) determine the issue without a hearing.

(5) A hearing under this rule shall take place in the absence of the specially represented party and the specially represented party's legal representative.

Application for revocation of declaration

28.—(1) An application under section 7(4)(*a*) of the Act for revocation of a declaration made under section 6 of the Act shall be made by the applicant filing with the Court—

(*a*) a statement of reasons to support the application; and

(*b*) any written submissions.

(2) When such an application has been made, the Court shall serve notice of the application on—

(*a*) all other parties and (if the Secretary of State is neither a party nor the applicant) the Secretary of State;

(*b*) the legal representatives of those parties and (where relevant) the Secretary of State; and

(*c*) the special advocate,

and shall give directions for a hearing unless it considers that the application can be determined on the papers, in which case it shall give directions as it considers appropriate.

(3) Each party (and the Secretary of State if neither a party nor the applicant) and the special advocate shall within 28 days of the date of notification under paragraph (2) file a response either—

(*a*) containing written submissions either supporting or opposing revocation of the declaration and giving reasons; or

(*b*) confirming that the party (or Secretary of State, or special advocate, as appropriate) does not wish to make any submissions.

(4) The Court shall, after receipt of the responses under paragraph (3), either—

(*a*) give directions—

(i) for a hearing to determine whether the declaration should be revoked; and

(ii) specifying a date and time by which the parties (and Secretary of State if not a party) and special advocate must file and serve any written evidence or written submissions; or

(*b*) determine the issue without a hearing.

(5) A hearing under this rule shall take place in the absence of the specially represented party and the specially represented party's legal representative.

Review of declaration: formal review

29.—(1) Once the pre-trial disclosure exercise in proceedings where there has been a declaration under section 6 of the Act has been completed, the Court shall review whether the declaration continues to be in the interests of the fair and effective administration of justice in the proceedings.

(2) If the Court considers that the declaration may no longer be in the interests of the fair and effective administration of justice in the proceedings, it shall proceed in accordance with paragraphs (2) to (5) of rule 27.

(3) If the Court considers that the declaration continues to be in the interests of the fair and effective administration of justice in the proceedings, it may so declare without a hearing.

(4) For the purposes of section 7(3) of the Act and this rule, the pre-trial disclosure exercise in the proceedings is to be considered to have been completed when—

(*a*) where Order 24, rule 2 or 3 applies to the proceedings, discovery under those rules has been completed in accordance with this Order;

(*b*) where Order 24, rule 2 or 3 does not apply to the proceedings, the equivalent applicable discovery to that required by those rules has been completed in accordance with this Order.

PART V

REVIEW, UNDER SECTION 18 OF THE ACT, OF A CERTIFICATE UNDER SECTION 17(3)(E) OF THE ACT

Review of certification

30.—(1) An application under section 18(1) of the Act to have a certificate issued under section 17(3)(e) of the Act set aside shall be made by the applicant filing with the Court—

(*a*) a statement of reasons to support the application; and

(*b*) any written submissions.

(2) The Court with which the documents in paragraph (1)(*a*) and (*b*) must be filed is—

(*a*) the High Court, if the Court seised of the proceedings in relation to which the certificate was issued is the High Court or county court; or

(*b*) the Court of Appeal, if the Court seised of the proceedings in relation to which the certificate was issued is the Court of Appeal.

(3) When such an application has been made, the Court must serve notice of the application on the Secretary of State and the Secretary of State's legal representative, and on the special advocate when a special advocate has been appointed pursuant to rule 8.

(4) The Secretary of State shall, within 28 days of the date of notification under paragraph (3), file, and serve upon the special advocate, a response either—

(*a*) containing written submissions opposing the setting aside of the certificate and giving reasons; or

(*b*) confirming that the Secretary of State does not oppose the setting aside of the certificate.

(5) The special advocate shall within 28 days of being served under paragraph (4) file, and serve on the Secretary of State, a response either—

(*a*) containing written submissions supporting the setting aside of the certificate and giving reasons; or

(*b*) confirming that the special advocate does not wish to make any submissions.

(6) The Court shall, after receipt of the responses under paragraphs (4) and (5), either—

(*a*) give directions—

(i) for a hearing to determine whether the certificate should be revoked; and

(ii) specifying a date and time by which the parties (and Secretary of State if not a party) and special advocate shall file and serve any written evidence or written submissions; or

(*b*) determine the issue without a hearing.

(7) A hearing under this rule shall take place in the absence of the specially represented party and the specially represented party's legal representative.

PART VI

APPEALS TO THE COURT OF APPEAL

Modification of Order 59 (Appeals to the Court of Appeal)

31.—(1) Order 59 applies to an appeal to the Court of Appeal—

(*a*) against an order of the High Court on or in relation to an application under section 6(2), 7(4) or 18(1) of the Act, or section 6 proceedings;

(*b*) where the order under appeal was not made on or in relation to a matter within sub-paragraph (*a*) but the appeal proceedings involve such a matter or are section 6 proceedings.

(2) Paragraph (1) is subject to—

(*a*) rule 2;

(*b*) Part 2 of this Order; and

(*c*) paragraph (3) of this rule.

(3) The appellant shall serve a copy of the appellant's notice on any special advocate.]

[(a) ORDER 127

INTERPRETATION AND TRANSLATION IN CRIMINAL CAUSES AND MATTERS

1. This Order has effect in relation to proceedings in criminal causes or matters to which these Rules apply.

2. In this Order—

(*a*) references to a person who needs interpretation mean—

(i) a party to the proceedings who needs interpretation because he does not speak or understand English; or

(ii) a party to the proceedings who needs assistance because he has a speech or hearing impediment;

(*b*) where a person who needs interpretation has a hearing or speech impediment, references to an interpreter include a person appointed—

(i) to communicate to the person who needs interpretation anything said at the hearing and explain it so far as is necessary for him to understand it; or

(ii) to communicate any answers given by the person who needs interpretation, and any other matters that he seeks to convey, and explain them so far as is necessary to enable the court and others at the hearing to understand them,

and references to interpretation shall be construed accordingly;

(*c*) references to acting at a hearing include assisting the person who needs interpretation to communicate with his legal representative during the hearing and in relation to such assistance, rule 2(*b*)(ii) has effect as if the reference to the court and others present at the hearing were to the legal representative.

3. Where a person who needs interpretation is due to be present at any hearing of, or relating to, the proceedings, the proper officer shall appoint an interpreter to act at the hearing.

4. Before an interpreter begins to act at a hearing, an oath or affirmation shall be administered to the interpreter.

5. Before an interpreter is sworn or makes his affirmation, the interpreter's name shall be read out, and any party to the proceedings may object to the interpreter on any reasonable ground.

6. If the court upholds an objection made under rule 5, the interpreter shall not be sworn or make his affirmation and the proper officer shall appoint another interpreter.

7. Where, on application or of its own motion, the court is satisfied that a document is essential, it shall order that a written translation of the document, or a relevant passage thereof, is provided to a person who needs interpretation unless—

(*a*) the person unequivocally and voluntarily waives his right to translation and has had legal advice or otherwise has full knowledge of the consequences of such a waiver; or

(*b*) provision of an oral translation or oral summary of the document, or the passage thereof, would not prejudice the fairness of the proceedings.

(a) Order 127 inserted by S.R. 2014 No. 220 with effect from 05.09.14

8. On application, the court may give any direction which it considers appropriate where—

(*a*) no interpreter has been appointed by the proper officer;

(*b*) on a previous application under rule 7, the court determined that there was no need for translation of the document, or a passage thereof, specified in the application; or

(*c*) the person who needs interpretation submits that the quality of interpretation or translation is not sufficient to safeguard the fairness of the proceedings.

9. The proper officer shall record—

(*a*) the identity of any interpreter appointed to act at a hearing;

(*b*) any decision to provide an oral translation or oral summary of an essential document or a passage thereof;

(*c*) any waiver of his right to translation by a person who needs interpretation; and

(*d*) any direction given under rule 8.]

ARRANGEMENT OF FORMS

APPENDIX A

GENERAL FORMS

Form

No. 1 General form of writ of summons for issue out of Central Office or Chancery Office.

No. 2 Writ of summons indorsed with statement of claim.

No. 3 General form of writ of summons for use in probate action.

No. 4 Writ of summons which, or notice of which, is to be served out of jurisdiction.

No. 5 Notice of writ of summons to be served out of jurisdiction.

No. 6 Originating summons — appearance required.

No. 7 Originating summons — appearance not required.

No. 8 Ex parte originating summons.

[(**a**) No. 8A Arbitration application]

No. 9 Originating summons for possession under Order 113.

[(**b**) No. 9A Originating summons for an application under section 1 of the Presumption of Death Act (Northern Ireland) 2009]

No. 10 Notice of appointment to hear originating summons.

[(**c**) No. 10A Notice to defendant in lender's action for possession of dwelling house.]

No. 10B [(**d**)...]

[(**e**) No. 10C Notice to occupier in lender's action for possession of land.]

[(**f**) No. 11 Notice of originating motion.]

[(**g**) No. 11A Notice of application for Order under s.103A of the Nationality, Immigration and Asylum Act 2002

No. 11B Notice of application under paragraph 30(5)(*b*) of Schedule 2 to the Asylum and Immigration (Treatment of Claimants) Act 2004 for order under s. 103A of the Nationality, Immigration and Asylum Act 2002.]

No. 12 Memorandum of appearance.

[(**h**) No. 12A Memorandum of Appearance to Arbitration Application]

No. 13 Memorandum of appearance in action begun in county court and removed to High Court.

No. 14 Notice to be indorsed on copy of counterclaim.

No. 15 Memorandum of appearance to counterclaim.

No. 16 Memorandum of appearance of person added as defendant.

No. 17 Third party notice claiming contribution or indemnity or other relief or remedy.

No. 18 Third party notice where question or issue to be determined.

No. 19 Memorandum of appearance of third party.

(**a**) Form No. 8A inserted by S.R. 1997 No. 70 with effect from 17.03.97
(**b**) Form No. 9A inserted by S.R. 2009 No. 345 with effect from 09.11.09
(**c**) Form No. 10A substituted by S.R. 2005 No. 163 with effect from 18.04. 05
(**d**) Form No. 10B revoked by S.R. 2005 No. 163 with effect from 18.04.05
(**e**) Form No. 10C substituted by S.R. 2002 No. 202 with effect from 21.06.02
(**f**) Words substituted by S.R. 1982 No. 217 with effect from 01.09.82
(**g**) Forms 11A and 11B inserted by S.R. 2005 No. 146 with effect from 18.04.05
(**h**) Form No. 12A inserted by S.R. 1997 No. 70 with effect from 17.03. 97

Form

[(a) No. 19A Notice to insurer.]
No. 20 Notice of payment into court.
No. 21 Notice of acceptance of money paid into court.
No. 22 List of documents.
No. 23 Affidavit verifying list of documents.
No. 24 Writ of Subpoena
No. 25 Writ of subpoena: proceedings in chambers.
No. 26 Writ of subpoena issued under statutory provision.
No. 27 Notice of motion.
No. 28 Summons (General Form).
No. 29 Default judgment in action for liquidated demand.
No. 30 Default judgment in action for liquidated damages.
No. 31 Default judgment in action relating to detention of goods.
No. 32 Default judgment in action for possession of land.
No. 33 Order for possession under Order 113.
No. 34 Request for trial.
No. 35 Notice of setting down.
[(b) No. 35A Notice of Action.]
No. 36 Notice of judgment or order.
No. 37 Notice of appeal under County Courts (Northern Ireland) Order 1980.
No. 37A Particulars of County Court Appeals.
[(c) No. 37B Notice of Appeal under s.10 of the Prevention of Terrorism Act 2005.]
[(d) No. 38 Notice of application to High Court for bail.]
No. 39 Notice of application to High Court for bail (other than by defendant).
No. 40 Application to Court of Appeal for bail.
No. 41 Notice of application for bail on appeal to House of Lords etc.
No. 42 Local registration of bills of sale.
No. 43 Notice of entry of satisfaction of bill of sale.
No. 44 [(e)...]
No. 45 [(e)...]
No. 46 [(e)...]

(a) Form No. 19A inserted by S.R. 1981 No. 166 with effect from 01.07.81
(b) Form inserted by S.R. 1999 No. 19 with effect from 15.02.99
(c) Form inserted by S.R. 2005 No. 314 with effect from 27.06.05
(d) Form substituted by S.R. 2005 No. 163 with effect from 18.04.05
(e) Forms revoked by S.R. 1991 No. 232 with effect from 01.10.91

Form

No. 47 [(**a**) . . .]

No. 48 [(**b**) Form of Notice to Appear in Petition for Declaration as to [(**c**) . . .] [Adoption Effected Overseas]]

[(**d**) No. 48A Certificate of readiness.

No. 48B [(**e**) . . .]

No. 48C Declaration as to adoption effected overseas.]

[(**f**)No. 48D [(**e**) . . .]

No. 49 Attachment of earnings order.

[(**g**) No. 49A Notice for examination of contentious business agreement].

No. 50 Memorial for appointment as a commissioner for oaths.

No. 51 Certificate in support of memorial: commissioner for oaths.

No. 52 Warrant of appointment as commissioner for oaths.

No. 53 Memorial for appointment as a notary public.

No. 54 Certificate in support of memorial: notary public.

No. 55 Warrant of appointment as notary public.

No. 56 Judgment summons.

No. 57 Certificate of satisfaction.

No. 58 Bond.

No. 59 Writ of habeas corpus ad subjiciendum.

No. 60 Notice to be served with writ of habeas corpus ad subjiciendum.

No. 61 Writ of habeas ad testificandum.

No. 62 Writ of habeas corpus ad respondendum.

[(**h**) No. 63 Certificate under section 12 of the Civil Jurisdiction and Judgments Act 1982.

No. 64 Certificate of money provisions contained in a judgment for registration under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982.

No. 65 Certificate issued under Schedule 7 to the Civil Jurisdiction and Judgments Act 1982 in respect of non-money provisions.]

No. 66 [(**i**) Warrant of arrest]

[(**j**)No. 67 Penal Notice

No. 68 Penal Notice]

(**a**) Forms revoked by S.R. 1991 No. 232 with effect from 1.10.91
(**b**) Heading substituted by S.R. 1996 No. 321 with effect from 4.11.96
(**c**) Words deleted from heading in Form No. 48 by S.R. 2002 No. 202 with effect from 21.6.02
(**d**) Forms Nos. 48A, 48B and 48C inserted by S.R. 1987 No. 287 with effect from 1.9.89
(**e**) Forms No. 48B and 48D revoked by S.R. 2002 No. 202 with effect from 21.6.02
(**f**) New Form 48D inserted by S.R. 1996 No. 321 with effect from 4.11.96
(**g**) Form 49A inserted by S.R. 1989 No. 498 with effect from 1.2.90
(**h**) Form Nos. 63, 64 and 65 added by S.R. 1984 No. 110 with effect from 1.1.87
(**i**) Form No. 66 added by S.R. 1999 No. 19 with effect from 15.2.99
(**j**) Form Nos. 67 and 68 inserted by S.R. 2000 No. 42 with effect from 27.3.00

Form

[(a) No. 69 Warrant for entry of Premises issued under section 28 of the Competition Act 1998

No. 70 Warrant for Entry of Premises issued under section 62 of the Competition Act 1998.

No. 71 Warrant for Entry of Premises issued under section 63 of the Competition Act 1998.]

[(b) No. 72 Warrant issued under section 352 of the Proceeds of Crime Act 2002.

No. 73 Penal Notice.

No. 74 Penal Notice.]

[(c) No. 75 Warrant for entry of premises issued under paragraph 2 of Schedule 3 to the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.]

[(d) No. 76 Form of advertisement on an application for a [declaration][variation of a declaration] of presumed death under [section 1(1)][section 5(1)] of the Presumption of Death Act (Northern Ireland) 2009.

No. 77 Declaration of presumed death under section 2 of the Presumption of Death Act (Northern Ireland) 2009.

No. 78 Notice of the making of a variation order under section 5 of the Presumption of Death Act (Northern Ireland) 2009.

No. 79 Variation Order under section 5 of the Presumption of Death Act (Northern Ireland) 2009.

No. 80 Notice of Intention to make an Order for Disclosure of Information under section 11 of the Presumption of Death Act (Northern Ireland) 2009.

No. 81 Order for Disclosure of Information under section 11 of the Presumption of Death Act (Northern Ireland) 2009.

No. 82 Order for Discharge/Variation of Disclosure Order under section 11 of the Presumption of Death Act (Northern Ireland) 2009.]

APPENDIX B

SPECIAL ADMIRALTY FORMS

Form

No. 1 Writ of summons in action in rem.

No. 2 Warrant of arrest.

No. 3 Praecipe for warrant of arrest.

No. 4 Praecipe for caveat against arrest.

No. 5 Praecipe for service of writ in rem by Marshal.

No. 6 Release.

No. 7 Praecipe for issue of release.

No. 8 Praecipe for caveat against release and payment.

No. 9 Praecipe for withdrawal of caveat.

No. 10 Bail Bond.

No. 11 Praecipe for commission for appraisement and sale.

No. 12 Commission for appraisement and sale.

No. 13 Release and warrant of possession.

No. 14 Notice to consular officer of intention to apply for warrant of arrest.

(a) Forms Nos. 69-71 inserted by S.R. 2000 No. 393 with effect from 08.01.01
(b) Forms Nos. 72-74 inserted by S.R. 2003 No. 54 with effect from 28.02.03
(c) Form No. 75 inserted by S.R. 2008 No. 22 with effect from 25.02.08
(d) Forms Nos. 76-82 inserted by S.R. 2009 No. 345 with effect from 09.11.09

APPENDIX C

[*Supplt. No. 13 (Aug. 1986)*]

PROBATE FORMS

Form

No. 1 Surety's guarantee.

No. 2 Surety's guarantee: on application for resealing under Colonial Probates Acts 1892 and 1927.

No. 3 Certificate of delivery of Inland Revenue affidavit.

No. 4 Caveat.

No. 5 Warning to caveator.

No. 6 Appearance to warning or citation.

[(a) APPENDIX D

PATIENTS' AFFAIRS FORMS

Form

No. 1 Notice under Article 107 of the Mental Health (Northern Ireland) Order 1986.

No. 2 First application for the appointment of a Controller.

No. 3 General Form of application.

No. 4 Consent of proposed new trustees to act.

No. 5 Witness summons.

No. 6 Notice of appeal.

No. 7 Request for leave to give security by lodgment in Court.

(a) Appendix D added by S.R. 1986 No. 184 with effect from 31.7.86

[(**a**) APPENDIX E

ENDURING POWERS OF ATTORNEY FORMS

Forms

EP1 — Notice of Intention to Apply for Registration.
EP2 — Application for Registration.
EP3 — General Form of Application.
EP4 — Application for Search/Office Copy.
EP5 — Certificate of Result of Search 19 No.
EP6 — Witness Summons.]

[(**b**) APPENDIX F

ADOPTION FORMS]

[(**c**) APPENDIX G

MATTERS TO BE COVERED IN REPORTS AND ADDITIONAL INFORMATION FOR A CONVENTION ADOPTION APPLICATION]

[(**d**) APPENDIX H

PARENTAL ORDER FORMS

Forms

No. 1 Originating summons for a Parental Order.
No. 2 Agreement to a Parental Order.
No. 3 Notice of Hearing of an Application for a Parental Order.
No. 4 Notice of Objection to the Making of a Parental Order.
No. 5 Parental Order.
No. 6 Application, in Respect of, or for Return of, Child.]

(**a**) Appendix E added by S.R. 1989 No. 79 with effect from 10.4.89
(**b**) Appendix F revoked, with savings by S.R. 2003 No. 263 with effect from 1.6.03
(**c**) Appendix G revoked, with savings by S.R. 2003 No. 263 with effect from 1.6.03
(**d**) Appendix H added by S.R. 1995 No. 2 with effect from 2.2.95

APPENDIX A

GENERAL FORMS

No. 1

General Form of writ of summons for issue out of Central Office or Chancery Office

(O.6 r.1)

In the High Court of Justice in Northern Ireland 19 , No.
Division

Between A.B. Plaintiff

and

C.D. Defendant

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith:

To C.D. of in the of

We command you that within 14 days after the service of this writ on you, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of A.B.; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness , Lord Chief Justice of Northern Ireland, the day of 19 .

Note:— This writ may not be served later than 12 calendar months beginning with the above date unless renewed by Order of the Court.

DIRECTIONS FOR ENTERING APPEARANCE

The defendant may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Central Office or Chancery Office [*as appropriate*], Royal Courts of Justice, Chichester Street, Belfast BT1 3JF, or (2) by sending them to that Office by post. The appropriate forms may be purchased from H.M. Stationery Office, Chichester House, Chichester Street, Belfast BT1 1PS.

Indorsements to be made on writ before issue
indorsement of claim

The plaintiff's claim is for

[*If the plaintiff's claim is for a debt or liquidated demand only, the following indorsement must be added at the foot of that claim:*]

And £ (or such as may be allowed on taxation) for costs, and also, if the plaintiff obtains an order for substituted service, the further sum of £ (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the plaintiff or his solicitor within 14 days after service hereof (inclusive of the day of service), further proceedings will be stayed.

[*If the plaintiff sues, or the defendant is sued, in a representative capacity, this must be stated in the indorsement of claim.*]

Indorsement as to solicitor and address

This writ was issued by of solicitor for the said plaintiff whose address is

[or *where the plaintiff sues in person* This writ was issued by the said plaintiff who resides at and is (*state occupation*) and (*if the plaintiff does not reside within the jurisdiction*) whose address for service is].

No. 2

Writ of summons indorsed with statement of claim

(O. 6 r.1)

[*As in No. 1 except that the following note shall be inserted after the directions for entering an appearance and that a statement of claim in the following form shall be substituted for the indorsement of claim.*]

Note:–If the defendant enters an appearance, then, unless a summons for judgment is served on him in the meantime, he must also serve a defence on the solicitor for the plaintiff within [(**a**) 6 weeks] after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

Statement of claim

The plaintiff's claim is

Particulars:—

(Signed)

[*If the plaintiff's claim is for a debt or liquidated demand only, the indorsement in Form No. 1 beginning "And £" must be added.*]

(**a**) Words substituted by S.R. 2009 No. 345 with effect from 06.01.10

No. 3

General form of writ of summons for use in probate action

(O. 6 r. 1)

In the High Court of Justice in Northern Ireland 20 .
[(a) Chancery Division] (Probate)
In the estate of E.F. deceased
Between A.B. Plaintiff
and
C.D Defendant

ELIZABETH THE SECOND, etc. [*as in No.* 1].

To C.D. of in the of
We command you etc. [*as in No.* 1].
Witness [*as in No.* 1].
Note:– This writ etc. [*as in No.* 1].

DIRECTIONS FOR ENTERING APPEARANCE

The defendant may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the [(a) Chancery Office], Royal Courts of Justice, Chichester Street, Belfast BT1 3JF, or (2) by sending them to that Office by post. The appropriate forms may be purchased from H.M. Stationery Office.

Indorsements to be made on writ before issue
Indorsement of claim

The plaintiff claims [to be executor of the last will dated the day of *or as case may be*] of E.F., late of ,
deceased who died on the day of and to have
[the said will established *or as case may be*].‡

This writ is issued against you as [the lawful brother and one of the persons entitled to share in the estate of the said deceased in the event of an intestacy and because you have entered a caveat *or as may be*].

Indorsement as to solicitor and address
[*As in No.* 1]

‡[Note. *The plaintiff's statement of claim may be indorsed on the writ. If this is done it should be clearly indicated because the time for service of the defendant's defence is affected. It is sufficient to add below the statement of the nature of the plaintiff's interest in the indorsement of claim either* (1) *the words "The above is the plaintiff's statement of claim" or* (2) *the heading "Plaintiff's statement of claim" followed by the statement, whichever is appropriate.*]

(a) Words substituted by S.R. 2008 No. 401 with effect from 03.11.08

No. 4

Writ of summons which, or notice of which, is to be served out of jurisdiction

(O. 6 r. 1)

[*Heading as in No.* 1 *or* 3]

ELIZABETH THE SECOND, etc. [*as in No.* 1].

To C.D. of

We command you, C.D., that within [*insert here the number of days fixed by the order of the Court giving leave for service out of the jurisdiction*] days after service of this writ [or notice of this writ] on you, inclusive of the day of service, you do cause an appearance to be entered for you in our High Court of Justice in Northern Ireland in an action at the suit of A.B., and take notice that in default of your so doing the plaintiff may proceed therein and judgment may be given in your absence.

Witness [*as in No.* 1].

Note:– This writ may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

DIRECTIONS FOR ENTERING APPEARANCE

[*As in No.* 1 *or* 3, *whichever is appropriate*]

Indorsements to be made on writ before issue

‡*Indorsement of claim*

The plaintiff's claim is for

[*If the plaintiff's claim is for a debt or liquidated demand only, the following indorsement must be added at the foot of that claim:*]

And £ (or such sum as may be allowed on taxation) for costs, and also, if the plaintiff obtains an order for substituted service, the further sum of £ (or such sum as may be allowed on taxation). If the amount claimed and cost be paid to the plaintiff or his solicitor within [*insert here the number of days limited for appearing*] days after service [of notice] hereof (inclusive of the day of service), further proceedings will be stayed.

[*If the plaintiff sues, or the defendant is sued, in a representative capacity, this must be stated in the indorsement of claim.*]

Indorsement as to solicitor and address

[*As in No.* 1]

‡[*If writ is indorsed with a statement of claim, the form should be modified to comply with the directions given in No.* 2 *or* 3, *whichever is appropriate.*]

No. 5

Writ of summons to be served out of jurisdiction

(O. 11 r. 3)

[*Heading as in action*]

To C.D. of

Take notice that A.B. of has begun an action against you, C.D., in Her Majesty's High Court of Justice in Northern Ireland by writ of summons dated the day of 20 ; which writ is indorsed as follows [*copy the indorsements*] and you are required within days after receipt of this notice, inclusive of the day of receipt, to cause an appearance to be entered for you in the said court to the said action, and in default of your so doing the said A.B. may proceed therein and judgment may be given in your absence.

You may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Central Office, the Chancery Office or the Probate and Matrimonial Office [*as appropriate*] Royal Courts of Justice, Chichester Street, Belfast BT1 3JF, or (2) by sending them to the appropriate office by post.

The appropriate forms may be purchased from H.M. Stationery Office.

[*If writ is indorsed with a statement of claim, add:*

If you enter an appearance, then, unless a summons for judgment is served on you in the meantime, you must also serve a defence on the solicitor for the plaintiff within [(a) 6 weeks] after the last day of the time limited for entering an appearance, otherwise judgment may be entered against you without notice.]

(Signed) A.B.
or X.Y. of
Solicitor for A.B.

(a) Words substituted by S.R. 2009 No. 345 with effect from 06.01.10

No. 6

Originating summons — appearance required

(O. 7 r. 2)

In the High Court of Justice in Northern Ireland 20 , No.
Division
[In the matter of]
Between AB Plaintiff
and
CD Defendant
To C.D. of in the of

Let the defendant, within 14 days [*or it the summons is to be served out of the Jurisdiction, insert here the time for appearance fixed by the order giving leave to issue the summons and serve it out of the jurisdiction*] after service of this summons on him, inclusive of the day of service, cause an appearance to be entered to this summons, which is issued on the application of the plaintiff A.B. of

By this summons the plaintiff claims against the defendant [*or* seeks the determination of the Court on the following questions, namely, *or as may be*]

(a)[If the defendant does not enter an appearance, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.]

Dated the day of 20 .

Note:— This summons may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

This summons was taken out by
of solicitor for the said plaintiff whose address is

[*or where the plaintiff sues in person.*

This summons was taken out by the said plaintiff who resides at the above-named address *or as may be* and is (*state occupation*) *and* (*if the plaintiff does not reside within the jurisdiction*) whose address for service is].

DIRECTIONS FOR ENTERING APPEARANCE

The defendant may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Central Office or the Chancery Office or the Probate and Matrimonial Office [*as appropriate*] Royal Courts of Justice, Chichester Street, Belfast BTI 3JF, or (2) by sending them to that office by post. The appropriate forms may be purchased from HM Stationery Office.

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* In application of Order 116B, Part II, rule 5(1) this paragraph should be omitted.

No. 7

Originating summons — appearance not required

(O. 7 r. 2)

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

Division

[In the matter of]

Between AB Plaintiff

and

CD Defendant

Let C.D. of attend before the Master [*or Judge*] in chambers, at the Royal Courts of Justice, Chichester Street, Belfast BT1 3JF, on day, the day of 20 , at am/pm, *[or, if no application has yet been made for a day to be fixed,* on a day to be fixed] on the hearing of an application by the plaintiff that

Dated the day of 20 .

Note:— This summons may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

This summons was taken out by of solicitor for the said plaintiff whose address is

[*or where the plaintiff sues in person.*

This summons was taken out by the said plaintiff who resides at and is (*state occupation*) *and* (*if the plaintiff does not reside within the jurisdiction*) whose address for service is].

Note:— If a defendant does not attend personally or by his counsel or solicitor at the time and place above mentioned such order will be made as the Court may think just and expedient.

[*In the case of an application under Article 3 of the Inheritance (provision for Family and Dependants) (Northern Ireland) Order 1979.*

A defendant who is a personal representative must within 21 days after service of this summons on him, inclusive of the day of service, file in the Chancery Office an affidavit in answer, stating the particulars required by Order 99 rule 5.]

No. 8

Ex parte originating summons

(O. 7 r. 2)

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

In the matter of

Let all parties concerned attend before the Master [*or* Judge] in chambers, at the Royal Courts of Justice, Chichester Street, Belfast, on day, the day of 20 , at a.m./p.m. on the hearing of an application by A.B. that

This summons was taken out by the said plaintiff who resides at

Dated the day of 20 .

This summons was taken out by of

solicitor for the

applicant whose address is

[(a) No. 8A

Arbitration application
Guidance notes for Applicants

1. You should read the following notes carefully before completing the attached form. The form can be used to either:—

(*a*) make an application in existing proceedings;

or

(*b*) begin proceedings (as an originating document).

Notes 2 and 4 are relevant to an application as at 1(*a*); Notes 3 and 4 are relevant to an application as at 1(*b*).

2. No memorandum of appearance is required if the form is being used to make an application in existing proceedings. You should delete the notes relating to returning a memorandum of appearance. But you must still complete the address boxes at the end of the form as appropriate.

3. Service

(*a*) A completed memorandum of appearance must be served with the arbitration application. Notes for guidance attached to that form will tell you how to fill it in.

(*b*) The application **may not** be served more than 1 month from the date of issue **unless**:—

— it is to be served on a party outside Northern Ireland,

or

— the time for service has been extended by the Court.

(*c*) You must write in the appropriate time limit for returning the memorandum of appearance. The relevant number of days should be given in the box below paragraph 6 of the notes about service.

(*d*) If you are an applicant acting in person and you reside at an address which is not in Northern Ireland, you must give an address for service which is within the Court's jurisdiction [(b) or another part of the United Kingdom or any other EEA state.]

4. Detach the guidance notes before this form is served.

(a) Form 8A inserted by S.R. 1997 No. 70 with effect from 17.03.1997
(b) Words inserted by S.R. 2013 No. 202 with effect from 05.09.2013

Arbitration application

In the High Court of Justice **20 No.**

Queen's Bench Division

Central Office

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1. (i) In an arbitration application between

and **Applicant**

of **Respondent**

of **Respondent**

of **Respondent**

(ii) and in the matter of an (anticipated) arbitration between

Claimant

Respondent(s)

(iii) The arbitrator(s) to whom notice of this application is given are:

give name of any
arbitrator(s) listed
above as respondents

or

give full names
and addresses
where not named
as respondents

Hearing
(delete (i) or (ii) as applicable)

2. (i) This application is made on notice (ex parte).

(ii) The hearing of this application will take place in court (chambers) on a date and at a time to be fixed.

[*Supplt. No. 27 (March 1997)*]

Grounds for application and details of what is being claimed

The grounds for making the application and details of what is being claimed should be set out either in the box below or on a separate sheet attached to this application. The details should include those required by Order 73.

(Set out below the grounds and details of your claim)

The applicant seeks an order for the costs of this application against:

(Set out below the name of the person(s) against whom costs are sought)

Dated .....

Returning the memorandum of appearance

(See also "Notes for arbitrators", at paragraph 5 below)

1. If you are (a) named as a respondent to this application, and
(b) served with a copy of this application

you should complete and enter the accompanying memorandum of appearance to the court office which issued it. **You have only a limited time in which to do this.** Full details of the time allowed are set out in the notes for guidance to the form of memorandum of appearance. **Whether or not you enter the appearance, and how you complete it, if you decide to do so, will affect your right:**

- **to contest the application; and**
- **to be kept informed of any hearing or future hearings.**

2. If you **enter the memorandum of appearance** and **indicate that you intend to contest the application,** you will **be notified of all hearing dates** relating to this application and **will be entitled to put your case to the Court.** If you wish to put evidence before the Court in response to any affidavit filed by the applicant in support of the application, you must serve your affidavit on the applicant within 21 days after the time limited for entering the memorandum of appearance (see time for entering an appearance).

3. If you **enter the memorandum of appearance but do not indicate that you intend to contest the application,** you will be notified of all hearing dates relating to the application but, unless the court gives permission, you **will not be allowed to put your case to the Court.** The Court will make whatever order it feels is just in the circumstances. If, after entering the memorandum of appearance, you decide you **do** wish to contest the application, you must **ask the Court's permission to do so.**

4. If you **do not enter a memorandum of appearance,** you will **not be entitled to contest** the application**, or be notified of any hearing dates relating to it.** If you **fail to enter a memorandum of appearance** within the time allowed for the purpose (see the notes for guidance on the form of memorandum of appearance) you must ask the Court's permission to return the form of memorandum of appearance after the proper time. Unless the Court gives permission, you will not be allowed to put your case to the Court. The Court will make whatever order it feels is just in the circumstances.

Notes for arbitrators

5. If you were or are an arbitrator in the arbitration which gives rise to this application and you are named as a respondent to the application, paragraphs 1 to 4 above apply to you as to any other respondent.

6. If you were or are an arbitrator in the arbitration which gave rise to this application and you are not named as a respondent, the application has been sent to you for your information. You need not complete or return the memorandum of appearance. You may, if you wish, file an affidavit or make representations in writing to the Court. If you wish to do this, you should do so as soon as practicable. You should send a copy of the document which you have sent to the Court to all parties to the arbitration application. Alternatively, you may apply to be made a respondent to the application. Any such application should be made to the Court in writing.

[*Supplt. No. 27 (March 1997)*]

(write in 14 days, or where application is to be served out of the jurisdiction the time limit set by the Court)

The time limit for the respondents to enter a memorandum of appearance is days.

This summons was issued by

of

(Applicant) (Solicitor for the applicant)

(Complete only if you are an applicant in person and you reside at an address which is outside the Court's jurisdiction)

Applicant's address for service within the jurisdiction is]

No. 9

Originating summons for possession under Order 113

(O. 113 r. 21)

In the High Court of Justice in Northern Ireland 20 , No.
[(a) . . .] Division

In the matter of

[A.B. Plaintiff

C.D. Defendant (if any) whose name is known to the plaintiff]

To [C.D. and] every [other] person in occupation of .]

Let all persons concerned attend before the Judge in Chambers at the Royal Courts of Justice, Chichester Street, Belfast, on day, the day of 20 , at am/pm on the hearing of an application by A.B. for an order that he do recover possession of on the ground that he is entitled to possession and that the person(s) in occupation is(are) in occupation without licence or consent.

Dated the day of 20 .

This summons was taken out by of solicitor for the said plaintiff whose address is *[or when the plaintiff acts in person]* This summons was taken out by the said plaintiff who resides at and is *(state occupation)* and *(if the plaintiff does not reside within the jurisdiction)* whose address for service is

Note:— Any person occupying the premises who is not named as a defendant by this summons may apply to the Court personally or by counsel or solicitor to be joined as a defendant. If a person occupying the premises does not attend personally or by counsel or solicitor at the time and place above-mentioned, such order will be made as the Court may think just and expedient.

(a) Words deleted by S.R. 1985 No. 170 with effect from 02.09.85

[(a) No. 9A

Originating summons for an application under section 1 of the Presumption of Death Act (Northern Ireland) 2009

(O. 93A, r. 2(1))

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

Chancery Division

In the matter of an application for the presumed death of [ ]

Let all parties concerned attend before the Judge [*or* Master] in chambers, at the Royal Courts of Justice, Chichester Street, Belfast, on day, the day of 20 , at a.m./p.m. on the hearing of an application by [ ] for a declaration that [ ] is presumed to be dead.

Dated the day of 20 .

The summons was taken out by , solicitor for the said applicant whose address is

[*or when the applicant acts in person*] This summons was taken out by the said applicant who resides at

and (*if the applicant does not reside within the jurisdiction*) whose address for service is]

(a) Form 9A inserted by S.R. 2009 No. 345 with effect from 09.11.09

[(a) No. 10

Notice of appointment to hear originating summons

(O. 28 r. 2)

[*Heading as in summons*]

To [*name of the* defendant] of

(*a*) Take notice that the originating summons issued herein on day of 20 , will be heard by Judge/Master/at/Room No. , Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF, on day of 20 at a.m./p.m.

(*b*) And take notice that at that hearing [*name of plaintiff*] will seek [an order in the terms of paragraphs of the originating summons] [the following directions or orders:—

1.

2.

etc]

(*c*) You may attend in person or by your solicitor or counsel. If you fail to attend or to be represented, the Court may proceed in your absence.

Dated the day of 20 .

(Signed)

Solicitor for the Plaintiff
(address and telephone number with code and fax number)

Note:
At paragraph (*b*) above the notice must state the substance of the orders sought by setting out the proposed wording for these orders or by referring to the relevant paragraphs of the originating summons or to a draft order attached to the notice.
Failure to comply with this note renders the notice defective.]

(a) Form 10 substituted by S.R. 1993 No. 143 with effect from 19.04.93

[(a) No. 10A

Notice to defendant in lender's action for possession of dwelling house

(O. 88, r. 4A)

[*Heading as in Summons*]

To [*name of the* defendant]

General

This notice explains what you can do if you want the court to give you time to address the mortgage default in this application in which the plaintiff is seeking possession of residential premises by reason of your default. This notice does not deal with the procedure where you wish for any other reason to defend the plaintiff's claim or make a counterclaim. At the hearing the court will decide whether to make an order for possession and if so on what terms. In making that decision the court will take into account the information provided by the plaintiff and by you.

What are the court's powers to allow time to address mortgage default?

Under agreements not regulated under the Consumer Credit Act 1974

The court's powers are set out in detail in the Administration of Justice Act 1970 section 36 and the Administration of Justice Act 1973 section 8. Broadly if the court is satisfied you are likely to be able to remedy the default in payment by discharging within a reasonable time the relevant sum or sums (which in a mortgage involving payment by instalments normally means either the arrears of those instalments or the entire mortgage debt) the court may—

- adjourn the proceedings for a time to enable you to make payment;
- make an order for possession but suspend it on terms as to payment;
- make an order for possession, but put a stay on it for a time to allow you to discharge the entire mortgage debt, normally by sale or remortgage of the premises;
- where an order for possession has already been made but the circumstances have since changed, vary the terms or stay execution of the order.

Under agreements regulated under the Consumer Credit Act 1974

Broadly if the court is satisfied that it is just to do so having regard to the means of the debtor and any surety and the interests of the creditor it may—

- make a time order (an order providing for the payment of any sum due under either a regulated agreement or a security for that agreement by such instalments payable at such times as the court considers reasonable);
- vary the terms of the regulated agreement or the mortgage or other security (for the purpose of a time order or any other order relating to a regulated agreement);
- suspend or make conditional (for the same purpose) the operation of any order relating to the regulated agreement.

What steps should you take if you want the Court to exercise such powers on the hearing of the plantiff's claim?

You should *immediately* consider taking the following steps—

(a) Form 10A substituted by S.R. 2005 No. 163 with effect from 18.04.05

(a) **consulting a solicitor or taking other advice** (e.g., from Housing Rights Service or a branch of the Citizens Advice Bureau);

(b) **preparing (or having your advisers prepare) a detailed written budget** setting out your income and outgoings and indicating the resources available to discharge the relevant sum or sums — *you should complete the form of budget attached to this Notice, or a similar form, and bring it with you to the hearing;*

(c) **working out carefully what you consider to be your best realistic proposal** to address the relevant sum or sums;

(d) **if you intend to sell the mortgaged premises but have not yet found a purchaser, bringing with you a letter from an estate agent establishing—**

(i) that the premises are on the market;

(ii) the asking price and whether it is realistic in the light of comparable prices in the area;

(iii) the ease or difficulty envisaged in the sale;

(iv) whether offers have been received; and

(v) the agent's opinion as to the likely timescale for entering into a contract;

(e) **attending the hearing** where you should be in a position to provide—

(i) an explanation for the default;

(ii) details of your financial and other relevant circumstances;

(iii) your best realistic proposal;

(f) **bringing to the hearing documents** to vouch details of your circumstances (for example, your current prospective salary, employment prospects and/or state benefits) together with a completed budget form and, where appropriate, documents relating to your endeavours to sell the premises or obtain a new loan on the security of the premises.

Your attention is drawn to the notes appended to this Notice.

Dated the day of 20 .

Solicitor for the Plaintiff
(Signed)

Notes:

Details of the matters set out in paragraphs (*b*), (*c*), (*d*) and (*e*) should wherever possible be provided to the Court and to the Plaintiff's solicitor in advance of your attendance at the hearing, preferably by way of affidavit or affidavits exhibiting copies of all relevant documents and sworn by you or any other witnesses whose evidence you wish the Court to consider. Affidavits should be filed in the Chancery Office, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF.

IF YOU DO NOT TAKE APPROPRIATE STEPS PURSUANT TO THIS NOTICE YOUR FAILURE TO DO SO IS AT YOUR OWN RISK

[*Supplt. No. 42 (April 2005)*]

DATE OF HEARING: CASE RECORD No.

DATE FORM COMPLETED:

FINANCIAL STATEMENT/BUDGET FORM FOR COMPLETION IN ADVANCE OF HEARING OF MORTGAGE ACTION FOR POSSESSION OF RESIDENTIAL PROPERTY

	Weekly*	Monthly*
INCOME		
Net Wages of Defendant 1		
Net Wages of Defendant 2		
Child Benefit		
Other State Benefits (excluding any mortgage assistance) or Tax Credits (not already included in the above figures):		
1.		
2.		
3.		
Pensions		
Contributions from other members of household		
Maintenance		
Mortgage assistance		
Total weekly/monthly income		
OUTGOINGS		
1st Mortgage		
2nd Mortgage		
Rates		
Rent		
Insurance — house/contents		
Insurance — life/endowment		

NB: ** All weekly figures for income or outgoings should be expressed also as monthly amounts.

	Weekly*	Monthly*
Unsecured loan(s): (1)[date of expiry:] (2)[date of expiry:]		
Childminding		
Credit Card Payment		
Credit Union Loan [date of expiry:]		
Maintenance		
Food		
Milk		
Prescription Charges/Medicine		
Landline Phone		
Mobile Phone		
Heating: oil/gas/coal/other fuel		
Electricity		
Car: Tax: Insurance: Maintenance:		
Petrol/Diesel		
Television/TV Licence		
Bus/train/taxi		
School fees		
School lunches		
Pocket money		
Clothes		
Catalogue		
Pet Food/Veterinary fees		
Toiletries/Nappies		

	Weekly*	Monthly*
Cigarettes		
Alcohol		
Hobbies		
Sundries		
TOTAL weekly/monthly outgoings		
TOTAL Income		
TOTAL Outgoings Including Mortgage		
Surplus out of which to address arrears (But see note below)		

NOTE — In addition to the above-mentioned details, the Court must be given details of the following which you must also consider when working out your best realistic proposal to address the default in mortgage payments—

(a) any source of income or assets not mentioned above;

(b) any debts or liabilities not mentioned above; and

(c) any change in circumstances (including any anticipated future change) which may affect your ability to make payments in respect of the plaintiff's mortgage.]

(a) Form No. 10B revoked by S.R. 2005 No. 163 with effect from 18.04.05

Notice to occupier in lender's action for possession of land

(O.88, r.4B)

[Heading as in summons]

To: The Occupier or occupiers of the property [address of the mortgaged property].*

Take notice that:—

1. In these proceedings the plaintiff is claiming delivery by the defendant(s) of possession of the above-mentioned property pursuant to a mortgage/charge between the parties. [By an order of this Court on the defendant(s) was/were required to deliver possession of the property to the plaintiff but the order was stayed or suspended and the plaintiff has now issued a summons asking the Court to remove the stay or suspension and give the plaintiff permission to enforce the order against the defendant(s)].

2. If you are not already a defendant but consider you have a right which should be determined in these proceedings you may apply to be added as a defendant in accordance with the Rules of the Supreme Court (Northern Ireland) 1980 and, in particular, Order 15 of those rules. Any such application should be made as soon as possible.

3. The plaintiff's application is listed for hearing before the Master (Chancery), First Floor, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF at am/pm on day of 20 . If you wish to be added as a defendant but it is not possible for you to comply with the relevant rule or rules by the filing of an application and an affidavit in the Chancery Office, Room 1-19A, First Floor, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF, in advance of the hearing, the Court may be prepared to consider oral evidence as to your claim (if any) at the hearing and, if appropriate, add you as a defendant or may adjourn the hearing to give you time to file an application to be added as a defendant and your affidavit evidence.

Dated the day of 20 .

(Signed)

Solicitor for the plaintiff

[address]

*If you are already a defendant in these proceedings you are asked to bring this notice to the attention of every other person who might be regarded as being in occupation of the above-mentioned property.]

(a) New Form No. 10C inserted by S.R. 2002 No. 202 with effect from 21.6.02

No. 11

Notice of originating motion

(O. 8 r. 3)

In the High Court of Justice in Northern Ireland 19 , No.
Division

In the matter of

and

In the matter of

Take notice that the High Court of Justice in Northern Ireland.
Division, at the Royal Courts of Justice, Chichester Street, Belfast, will be moved at the expiration of days from the service upon you of this notice [*or* on day, the day of 19 , at the sitting of the Court] or so soon thereafter as counsel can be heard, by counsel on behalf of A.B. for an order that [*or* for the following relief, namely]

And that the costs of and incidental to this [application] [appeal] may be paid by

[And further take notice that the grounds of this [application] [appeal] are:

Dated the day of 19 .
(Signed)

C.D. of solicitor for the above named [applicant] [appellant] A.B. whose address is
[applicant] [appellant] in person

To of

[(a) No. 11A

Notice of application for order under s.103A of the Nationality, Immigration and Asylum Act 2002

(O. 53A r. 3)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

20 , No.

IN THE MATTER OF

AND

IN THE MATTER OF

Take notice that the High Court of Justice in Northern Ireland, Queen's Bench Division, at the Royals Courts of Justice, Chichester Street, Belfast will be moved by Counsel on behalf of A.B. for an order that a decision of the Asylum and Immigration Tribunal on an appeal under s.82/83* of the Nationality, Immigration and Asylum Act 2002 be reconsidered.

* Delete as appropriate

PART A

Full name of Applicant .....

Address .....

Date of Birth .....

Home Office Ref No. .....

AIT Ref No. .....

Date of Tribunal decision on appeal .....

Deemed date of receipt of AIT decision (1) .....

And further take notice that the grounds of this application are as follows: (2)

PART B – Grounds for Extension of Time (3)

(I believe) (The applicant believes) that the facts contained under Part B in this application notice are true.

* I am duly authorised by the applicant to sign this statement

Full name .....

Name of applicant's Solicitor's firm* .....

Signed .....

* Applicant/Applicant's Solicitor

* Delete as appropriate

Signed .....

Applicant/Applicant's Solicitor

Dated .....

(a) Form inserted by S.R. 2005 No. 146 with effect from 18.04.05

Notes

(1) Where the applicant was the respondent to the appeal and was required to serve the notice of the Tribunal's determination on the appellant, state the date on which and the means by which the notice from the Tribunal was so served.

(2) You must file with this notice—

(a) the notice of the immigration, asylum or nationality decision to which the appeal to the Tribunal related;

(b) any other document which was served on you giving reasons for that decision;

(c) the grounds of appeal to the Tribunal;

(d) the Tribunal's determination on the appeal;

(e) any other documents material to the application which were before the Tribunal; and

(f) written evidence in support of the grounds set out at Part A, where applicable.

(3) If you are seeking to lodge this application outside the time limit specified in s.103A(5)(*b*) of the 2002 Act, you must apply for an extension of time. Your grounds for extension of time should be set out in Part B and should be verified by affidavit.]

[(a) No. 11B

Notice of application under paragraph 30(5)(*b*) of Schedule 2 to the Asylum and Immigration (Treatment of Claimants) Act 2004 for order under s.103A of the Nationality, Immigration and Asylum Act 2002.

(O. 53A r. 3)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

20 , No.

IN THE MATTER OF

AND

IN THE MATTER OF

Take notice that the High Court of Justice in Northern Ireland, Queen's Bench Division, at the Royal Courts of Justice, Chichester Street, Belfast will be moved by Counsel on behalf of A.B. for an order that a decision of the Asylum and Immigration Tribunal on an appeal under s.82/83* of the Nationality, Immigration and Asylum Act 2002 be reconsidered following the refusal of reconsideration by the Tribunal.

* Delete as appropriate

PART A

Full name of Applicant .....

Address .....

Date of Birth .....

Home Office Ref No. .....

Reporting Centre (if applicable) .....

AIT Ref No. .....

Date of Tribunal decision on appeal .....

Deemed date of receipt of AIT decision (1) .....

And further take notice that the grounds of this application are as follows: (2) and (3)

PART B – Grounds for Extension of Time (4)

(I believe) (The applicant believes) that the facts contained under Part B in this application notice are true.

* I am duly authorised by the applicant to sign this statement

Full name .....

Name of applicant's Solicitor's firm* .....

Signed .....

Applicant/Applicant's Solicitor*

Signed .....

Applicant/Applicant's Solicitor

Dated .....

* Delete as appropriate

(a) Form inserted by S.R. 2005 No. 146 with effect from 18.04.05

[*Supplt. No. 42 (April 2005)*]

Notes

(1) Where the applicant was the respondent to the appeal and was required to serve the notice of the Tribunal's determination on the appellant, state the date on which and the means by which the notice from the Tribunal was so served.

(2) You must file with this application notice—

(a) a copy of the Tribunal's decision on your application for reconsideration;

(b) any other document which was served on you giving reasons for that decision;

(c) written evidence in support of the grounds stated in Part A, where applicable.

(3) If you also wish to respond to the reasons given by the Tribunal for its decision that it does not propose to make an order for reconsideration, you should also set out in this Part the grounds upon which you dispute any of the reasons given by the Tribunal and give reasons in support of those grounds.

(4) If you are seeking to lodge this application outside the time limit specified in paragraph 30(5)(*b*) of Schedule 2 to the 2004 Act, you must apply for an extension of time. Your grounds for extension of time should be set out in Part B and should be verified by affidavit.]

No. 12

Memorandum of appearance
(O. 12. r. 3(2))

This and the two attached copies to be completed and delivered or sent to the appropriate office, Royal Courts of Justice, Chichester Street, Belfast.

In the High Court of Justice in Northern Ireland

20 , No.[1]

[2]Division

Between

[3]Plaintiff(s)

and

[4]Defendant(s)

Please enter an Appearance for [5]

[Sued as [6]]

in this action

Dated the day of , 20

Signed[7]

Whose address for service is [8]

[1] Copy year and number from writ.

[2] Enter name of Division as shown in writ.

[3] Copy name(s) of plaintiff(s) from writ

[4] Copy name(s) of defendant(s) from writ

[5] Give full name of defendant wishing to appear (see Note 1 on back.)

[6] Give name by which defendant is described in writ if this differs from defendant's full name, otherwise delete words in square brackets.

[7] To be signed by the defendant or solicitor entering the appearance.

[8] A defendant appearing in person must give his residence and, if he does not reside in[(a)...] [(b) Northern Ireland] some other place in [(a)...] [(b) the United Kingdom or any other EEA state] to which communications for him should be sent. Where the defendant appears by solicitor, the solicitor's place of business [(a)...] should be given.

N.B. – Additional notes for the guidance of defendants seeking to enter an appearance are given on the back. Please read them carefully. **The form may have to be returned if any of the information required is omitted or given incorrectly.** The delay may result in judgment being entered against the defendant. If judgment is entered, the defendant or his solicitor may have to pay the costs of applying to set it aside.

(a) Words omitted by S.R. 2010 No. 381 with effect from 20.12.10
(b) Words inserted by S.R. 2013 No. 202 with effect from 05.09.13

(Back)

ADDITIONAL NOTES

1. The defendant must give his or her full name.

2. Where the defendant is a firm, the appearance must be entered by the individual partners by name with the description "Partner in the firm of..."

3. Where the defendant is an individual trading in a name other than his own, the appearance must be entered by him in his own name with the addition of the description "Trading as...".

4. Where the defendant is a limited liability company, or a minor or other person under disability, the appearance must be entered by a solicitor.

5. If the defendant has no defence or admits the plaintiff's claim, the entry of appearance will delay judgment and may increase the costs payable by the defendant. Any proposal for the payment of a debt by instalments or otherwise must be made direct to the plaintiff or his solicitor and not to the court.

6. A defendant who wishes to appear in person may obtain help in completing this form from the Central Office, the Chancery Office or the Probate and Matrimonial Office at the Royal Courts of Justice, Chichester Street, Belfast, as appropriate.

7. Where the defendant is unable to give the number of the action or any other information required to identify it, the writ served on the defendant should be produced for the court's inspection when the appearance is entered.

8. Where the appearance is being entered by leave of the court, a copy of the order granting leave must accompany this form.

9. These notes deal only with the more usual cases. In cases of any difficulty it is advisable to attend at the court office for the purpose of entering an appearance.

[(a) No. 12A

Memorandum of Appearance to Arbitration Application

(O. 73, r. 11(1))

Guidance notes for the Applicant

Read these notes carefully
The notes explain what you have to do before this form is sent to ("served" on) the respondent

Form heading
- You must fill in the heading of the form with:
- the number allocated to the application
- the names of the parties (the 'title') as they appear on the application.

Part 3 Please leave blank for respondent to complete

Part 4
Return address
Contains the full address of the office in the Royal Courts of Justice to which the form should be returned.

On the reverse of the memorandum of appearance (Applicant's (Applicant's solicitor's) details).
Fill in your name and the address to which papers about the case should be sent.
Detach these guidance notes before the form is sent to the respondent.

(a) Form 12A inserted by S.R. 1997 No. 70 with effect from 17.03.1997

[*Suppl. No. 27 (March 1997)*]

Memorandum of appearance to Arbitration application

Guidance notes for the Respondent

Read these notes carefully
They will help you to fill in the form attached and tell you what other steps you need to take.

Act quickly
You have only a limited time to return the form.

Help and advice
You can get help and legal advice from:
- a solicitor, or
- a Citizens' Advice Bureau

They will also tell you if you qualify for help with your legal costs ("legal aid").

Staff at the Central Office, Royal Courts of Justice, Belfast will help you to fill in the form.

Time for returning the memorandum of appearance

You have **14 days** from the day you receive the arbitration application to **return the completed memorandum of appearance to the court**. The day on which the 14 day period begins depends on how you received the application (how it was "served" on you).

If the application was:

- handed to you personally, the 14 days begins on the day you were given the application;
- delivered by post, the 14 days begins 7 days from the date of the postmark;
- put through your letter box, the 14 days begins 7 days from the day this was done.

If you are a limited company and the application was delivered by post, the 14 days begins:

- on the second working day from the date of the postmark if first class post was used;
- on the fourth working day from the date of the postmark if the second class post was used.

Note: You have less than 14 days to return the form in certain kinds of proceedings where an early hearing date has been fixed. If in doubt, seek advice.

If the arbitration application was served on you at an address outside Northern Ireland, the application will tell you how long you have to return the memorandum of appearance.

Filling in the form

Read these notes carefully

They will help you to fill in the form and tell you what other steps you need to take.

You can use the same form of memorandum of appearance for two (or more) respondents provided the form makes this clear and they all wish to reply in the same way.

If you are **under 18 or suffering certain mental disorders** ('under disability') you must ask another person to act for you. That person can be any friend or relative who is over 18 and not a co-defendant in the same claim. But they must act on your behalf with the help of a solicitor. **The solicitor must fill in the memorandum of appearance.**

Part 1	Write in your full name. If your name was incorrect on the summons, add the words "sued as" followed by the name stated on the application. If you are: • a person trading in a name other than your own, write in your name followed by the words "trading as" and the name under which you trade; • a partner in a firm, write in your name followed by the words "a partner in the firm of" and the name of the firm. **If you are sued as a partner but are not, say so.**
Part 2	Tick the appropriate box to show whether you intend to contest the application, the claim for costs, or neither. Read note 2 below.
Part 3	Unless your solicitor is filling in the form on your behalf, you must sign the form and give an address to which court documents should be sent, and any reference, telephone or fax numbers. If you are being sued as an individual (that is in your own name rather than of your firm or company) the address you give must be one in Northern Ireland [(**a**) or another part of the United Kingdom or any other EEA state]. If you are a **limited company**, the form may be filled in by an **authorised officer** who must state his position in that company, or a solicitor. A solicitor may give his firm's address, an authorised officer must give the registered or principal office of the company.

What to do when you have filled in the form.

1. Return the form

Detach these guidance notes and send or take the memorandum of appearance to the Central Office in the Royal Courts of Justice.

(**a**) Words inserted by S.R. 2013 No. 202 with effect from 05.09.13

2. Preparing your defence

If you are a respondent and wish to contest the application, you must set out your reasons in an affidavit (a sworn statement). You must send a copy of the affidavit to the applicant, the court and the other respondents. You must do this not more than 21 days after the last day for returning the memorandum of appearance, that is, 14 days after service.

If you are an arbitrator who is not named as a respondent, you may apply to be made a respondent or make representations to the court. If you wish to make representations, you may do so informally in writing or in an affidavit. You must send a copy to the court and all other parties as soon as practicable after you receive the application.

Memorandum of appearance to originating summons
Arbitration application

In the High Court of Justice **20** **No.**

Queen's Bench Division

Central Office **Use black Ink and capital letters**

Respondent

Applicant

Part 1 (Your) (Respondent's) full name _____

_____

Part 2 (Do you) (Does the respondent) intend to contest:

the application? _____

the claim for costs (if applicable)? _____

or neither? _____

Part 3 Please enter a memorandum of appearance for me in respect of this arbitration application

Signed _____ Date _____

Respondent (Solicitor for the respondent) (Authorised officer)
Address to which papers about this case should be sent.

_____

_____

Solicitor's ref. _____ Telephone No. _____ Fax No. _____

[*Supplt. No. 27 (March 1997)*]

Part 4 When completed this form should be returned to:
The Central Office
Royal Courts of Justice
Chichester Street
Belfast BT1 3JF

Applicant's (Applicant's solicitor's) details

Address to which papers about this case should be sent.

_____

_____

Solicitor's ref. _____ Telephone No. _____ Fax No. _____

No. 13

Memorandum of appearance in action begun in county court and removed to High Court

(O. 78 r. 9(4)

[*As in No. 12, but substituting for the request to enter appearance the following:*—]

Please enter an appearance for [*full name of defendant wishing to appear*] in this action which was begun in the county court of
and was removed to the High Court by order dated 19 .

No. 14

Notice to be indorsed on copy of counterclaim

(O. 15 r. 3(6))

To X.Y.

Take notice that, if you intend to defend this counterclaim, an appearance must be entered to the counterclaim on your behalf within 14 days [*or if the counterclaim is to be served out of the jurisdiction insert here the time fixed by the order giving leave to serve the counterclaim out of the jurisdiction*] after the service of this defence and counterclaim on you, inclusive of the day of service, otherwise judgment may be given against you without further notice.

DIRECTIONS FOR ENTERING APPEARANCE

The person served with this counterclaim may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, [*here insert the name and address of the appropriate office specified in O.* 15 *r.* 3(4)], or (2) by sending them to that office by post. The appropriate forms may be purchased from The Stationery Office, Chichester House, Chichester Street, Belfast BT1 1PS.

No. 15

Memorandum of appearance to counterclaim

(O. 15 r. 3(4))

[*As in No.* 12 *but substituting for the title of the action the following*:—]

Between

Plaintiff(s)

and

Defendant(s)

(by original action)
And between
the said

Plaintiff(s)

and

the said Defendant(s)
(by counterclaim)

[*and substituting for the request to enter appearance the following*:—]

Please enter an appearance for [*full name of defendant to counterclaim wishing to appear*] to the counterclaim of the above-named defendant in this action.

No. 16

Memorandum of appearance to persons added as defendant

(O. 15 r. 8)

[*As in No.* 12 *but substituting for the title of the action the following*:—]

Between

Plaintiff(s)

and

Defendant(s)

And between

Plaintiff(s)

and

Defendant(s)

(By original writ and by order)

[*and substituting for the request to enter appearance the following*:—]

Please enter an appearance for [*full name of added defendant*] who has been served with an order dated the day of 19 making him a defendant to the action.

No. 17

Third party notice claiming contribution of indemnity or other relief or remedy

(O. 16 r. 1)

In the High Court of Justice in Northern Ireland 19 , No.
Division

Between A.B. Plaintiff

and

C.D. Defendant

and

T.P. Third Party

THIRD PARTY NOTICE

[Issued pursuant to the order of [Master] dated the day of]

To T.P. of

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant [*here state the nature of the plaintiff's claim*] as appears from the writ of summons [*or* originating summons] a copy whereof is served herewith [together with a copy of the statement of claim].

The defendant claims against you [*here state the nature of the claim against the third party as for instance* to be indemnified against the plaintiff's claim and the costs of this action or contribution to the extent of [*one half*] of the plaintiff's claim *or* the following relief or remedy namely on the grounds that (*state the grounds of the claim*)].

And take notice that if you wish to dispute the plaintiff's claim against the defendant, or the defendant's claim against you, an appearance must be entered on your behalf within 14 days [*of if the notice is to be served out of the jurisdiction insert here the time for appearance fixed by the order giving leave to issue the notice and serve it out of the jurisdiction*] after the service of this notice on you, inclusive of the day of service, otherwise you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to [idemnify the defendant *or* to contribute to the extent claimed *or* to *stating the relief or remedy sought*] and will be bound by any judgment or decision given in the action, and the judgment may be enforced against you in accordance with Order 16 of the Rules of the Supreme Court (Northern Ireland) 1980.

Dated the day of 19 .

(Signed)

Solicitor for the defendant.

DIRECTIONS FOR ENTERING APPEARANCE

The person served with this notice may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the [*here insert the name and address of the appropriate office specified in O. 16 r. 3(3)*], or (2) by sending them to that office by post. The appropriate forms may be purchased from H.M. Stationery Office, Chichester House, Chichester Street, Belfast BT1 1PS.

No. 18

Third party notice where question or issue to be determined

(O. 16 r. 1)

[*Title etc. as in No.* 17 *down to end of first paragraph*]

The defendant requires that the following question or issue, viz. [*here state the question or issue required to be determined*] should be determined not only as between the plaintiff and the defendant but also as between either or both of them and yourself.

And take notice that if you wish to be heard on the said question or issue or to dispute the defendant's liability to the plaintiff or your liability to the defendant, an appearance must be entered on your behalf within 14 days [*or if the notice is to be served out of the jurisdiction, insert here the time for appearance fixed by the order giving leave to issue the notice and serve it out of the jurisdiction*] after the service of this notice on you, inclusive of the day of service, otherwise you will be bound by any judgment or decision given in the action in so far as it is relevant to the said question or issue, and the judgment may be enforced against you in accordance with Order 16 of the Rules of the Supreme Court (Northern Ireland) 1980.

Dated the day of 19 .

(Signed)
Solicitor for the defendant.

DIRECTIONS FOR ENTERING APPEARANCE

[*As in No.* 17]

No. 19

Memorandum of appearance of third party

(O. 16 r. 3)

[*As in No.* 12 *but substituting for the title of the action, the title on the third party notice and substituting for the request to enter appearance the following*:—]

Please enter an appearance for [*full name of third party*] to the third party notice issued in this action on 19 by the defendant and served on the said on 19 .

[(a) No. 19A

[*Supplt. No. 2 (May 1981)*]

Notice to Insurer
(O. 16 r. 13)

[*Heading as in action*]

TAKE NOTICE that the above named plaintiff (defendant) on the day of 19 caused a writ of summons to be issued against the above named defendant (served as a counterclaim in the above action) claiming against the above named defendant (plaintiff) [here set out the substance of the claim as appearing by the endorsement on the writ or in the counterclaim].

The accident in respect of which the proceedings are brought occurred on the day of 19 .

A motor vehicle numbered [give motor vehicle registration number] in respect of which the above named defendant (plaintiff) holds a policy of insurance issued by you [or as the case may be] was involved in the accident.

Dated:

Solicitor for the plaintiff (defendant)

To]

(a) New Form No. 19A added by S.R. 1981 No. 166 with effect from 1.7.81

[(a) No. 20

Notice of payment into court

(O. 22 rr 1, 2)

[*Heading as in action*]

Take notice that—

The defendant has paid £ into court.

The said £ is in satisfaction of [the cause of action] [all the causes of action] in respect of which the plaintiff claims [and after taking into account and satisfying the above-named defendant's cause of action for in respect of which he counterclaims].

or

The said £ is in satisfaction of the following causes of action in respect of which the plaintiff claims, namely, [and after taking into account *as above*].

or

Of the said £ , £ is in satisfaction of the plaintiff's causes[s] of action for
[and after taking into account *as above*].

For cases where the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 applies so that the payment in, following acceptance by the plaintiff, would be a compensation payment as defined by Article 3 of that Order add the following particulars—

The gross amount of the compensation is £ .

The defendant has reduced this sum by £ in accordance with Article 10 of and Schedule 2 to the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 calculated as follows:

Name of Benefit Amount

Accordingly, £ is the net sum paid into court.

Dated the day of]

(a) Form No. 20 substituted by S.R. 1999 No. 333 with effect from 6.9.99

No. 21

Notice of acceptance of money paid into court

(O. 22, r. 3)

[*Heading as in action*]

Take notice that the plaintiff accepts the sum of £ paid in by the defendant C.D. in satisfaction of the cause[s] of action in respect of which it was paid in and in respect of which the plaintiff claims [against that defendant] [and abandons the other causes of action in respect of which he claims in this action].

Dated the day of 19 .

No. 22

List of Documents

(O. 24 r. 3)

[*Heading as in cause or matter*]

List of documents

The following is a list of the documents relating to the matters in question in this action which are or have been in the possession, custody or power of the above-named plaintiff [*or* defendant] A.B. and which is served in compliance with the order herein dated the day of 19 .

1. The plaintiff [*or* defendant] has in his possession, custody or power the documents relating to the matters in question in this action enumerated in Schedule 1 hereto.

2. The plaintiff [*or* defendant] objects to produce the documents enumerated in part 2 of the said schedule 1 on the ground that [*stating the ground of objection*].

3. The plaintiff [*or* defendant] has had, but has not now, in his possession, custody or power the documents relating to the matters in question in this action enumerated in schedule 2 hereto.

4. Of the documents in the said schedule 2, those numbered in that schedule were last in the plaintiff's [*or* defendant's] possession, custody or power on [*stating when*] and the remainder on [*stating when*].

[*Here state what has become of the said documents and in whose possession they now are*].

5. Neither the plaintiff [*or* defendant], nor his solicitor nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description whatever relating to any matter in question in this action, other than the documents enumerated in schedules 1 and 2 thereto.

Schedule 1

Part 1

[*Here enumerate in a convenient order the documents (or bundles of documents, if of the same nature, such as invoices) in the possession, custody or power of the party in question which he does not object to produce, with a short description of each document or bundle sufficient to identify it.*]

Part 2

[*Here enumerate as aforesaid the documents in the possession, custody or power of the party in question which he objects to produce.*]

Schedule 2

[*Here enumerate as aforesaid the documents which have been, but at the date of service of the list are not, in the possession, custody or power of the party in question.*]

Dated the day of 19 .

Notice to inspect

Take notice that the documents in the above list, other than those listed in part of schedule 1 [and schedule 2], may be inspected at [the office of the solicitor of the above-named [plaintiff] [defendant] (*insert address*) *or as may be*] on the day of 19 , between the hours of and .

To the defendant [*or* plaintiff] C.D. and his solicitor.

Served the day of 19 , by of solicitor for the [plaintiff] [defendant].

No. 23

Affidavit verifying list of documents

(O. 24 r. 3)

[*Heading as in cause or matter*]

I, the above-named plaintiff [*or defendant*] A.B., make oath and say as follows—

(1) The statements made by me in paragraphs 1, 3 and 4 of the list of documents now produced and shown to me marked are true.

2. The statements of fact made by me in paragraph 2 of the said list are true.

3. The statements made by me in paragraph 5 of the said list are true to the best of my knowledge, information and belief.

Sworn, etc.

This affidavit is filed on behalf of the plaintiff [*or defendant*].

[(a)No. 24

Writ of subpoena

(O.38 r.12)

[*Headings as in cause or matter*]

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith:

To [*names of witnesses*]

We command you to attend [at the sittings of the Division of Our High Court of Justice in Northern Ireland at the Royal Courts of Justice, Chichester Street, Belfast, on the day fixed for the trial of the above-named cause, notice of which will be given to you, and from day to day thereafter until the end of the trial, to give evidence on behalf of the [plaintiff] *or* [defendant].*

Witness Lord Chief Justice of Northern Ireland the day of 20 .

An application to set aside this subpoena may be made to the court.

* *If duces tecum add:* And we also command you to bring with you and produce at the place aforesaid on the day notified to you [*here describe the documents or things to be produced*].

[Note: - If the writ is to be served in England and Wales or Scotland in pursuance of an order of the Court insert after We command you *the words* wherever you shall be within the United Kingdom, *and add at the foot of the writ the following:-* Take notice that this writ is issued by the special order of the High Court of Justice in Northern Ireland dated the day of 20 , pursuant to section 67 of the Judicature (Northern Ireland) Act 1978.]]

(a) Forms substituted by S.R. 2005 No. 449 with effect from 04.11.05

[(a)No. 25

Writ of subpoena: proceedings in chambers

(O.38 r.12)

[*Heading as in cause or matter*]

ELIZABETH THE SECOND [*as in No. 24*]

To [*names of witnesses*]

We command you to attend before [the Judge [or Master]] in chambers, Royal Courts of Justice, Chichester Street, Belfast, on the day of 20 at a.m./p.m. and so from day to day until your evidence shall have been taken, to give evidence on behalf of the [plaintiff] *or* [defendant] in the above-named cause [and we also command you to bring with you and produce at the time and place aforesaid *describe the documents or things to be produced.*]

Witness [*as in No. 24*]

An application to set aside this subpoena may be made to the court.]

No. 26

Writ of subpoena: issued under statutory provision

(O.38 r.12)

In the matter of

and

In the matter of

ELIZABETH THE SECOND [*as in No. 24*]

To [*names of witnesses*]

We command you to attend before the Disciplinary Committee constituted under the [Solicitors (Northern Ireland) Order 1976, Nurses and Midwives Act (Northern Ireland) 1970, or as may be at (*address where committee will be sitting*] on the day of 20 at a.m./p.m. and so from day to day until the application in the above matter is heard, to give evidence on behalf of

[And we also command you to bring with you and produce at the time and place aforesaid *describe the documents or things to be produced.*]

Witness [*as in No. 24*]

[*Note: See the note to No. 24*]

(a) Forms substituted by S.R. 2005 No. 449 with effect from 04.11.05

No. 27

Notice of Motion

(O. 8 r.3)

[*Heading as in cause or matter*)

Take notice that [pursuant to the leave of given on the day of 20] the Court will be moved on the day of 20 at a.m./p.m., or so soon thereafter as counsel for the [(**a**) [plaintiff][defendant][(*name*) third party]] may be heard that and that the costs of the application be

Dated the day of 20 .

(signed)

Solicitor for the

To

Solicitor for the

No. 28

Summons (General Form)

(O. 32 r. 3)

[*Heading as in cause or matter*)

Let all parties concerned attend the Judge [*or* Master] in Chambers [(**b**) at the Royal Courts of Justice, Chichester Street, Belfast.] on day, the day of 20 , at a.m./p.m. in the noon, on the hearing of an application on the part of

Dated the day of 20 .

This summons was taken out by

of , solicitor for

To:

[(**c**) No. 28A

Summons

[(**d**) (O. 24 r.8(2)]

[Heading as in cause or matter]

Let all parties concerned attend the Master in Chambers at the Royal Courts of Justice, Chichester Street, Belfast on day, the day, of

---

(**a**) Words substituted by S.R. 2009 No. 207 with effect from 30.06.09
(**b**) Words substituted by S.R. 1982 No. 217 with effect from 01.09.82
(**c**) Form 28A added by S.R. 1983 No. 5 with effect from 28.02.83
(**d**) Reference substituted by S.R. 1991 No. 330 with effect from 02.09.91

20 , at a.m./p.m. on the hearing of an application on the part of the for an Order pursuant to Order 24 rule 6(2) requiring to disclose and produce

(*here specify documents required*)

Dated the day of 20 .

This summons was taken out by

of , solicitor for

To:

Notice to person in possession of documents who is not a party to the proceedings

If you have no objection to the Court making an order for the production of the medical notes or records or other documents mentioned above *you need not attend Court in answer to this summons.*]

No. 29

Default judgment in action for liquidated demand

(O. 13 r. 1; O. 19 r. 2; O. 42 r. 2(4))

[*Heading as in action*]

The day of 20 .

No appearance having been entered [*or* no defence having been served] by the defendant herein, it is this day adjudged that the defendant do pay the plaintiff £ and £ costs

No. 30

Default judgment in action for unliquidated damages

(O.13 r. 2; O. 19 r. 3; O. 42 r. 2(4))

[*Heading as in action*]

The day of 20 .

No appearance having been entered [*or* no defence having been served] by the defendant herein, it is this day adjudged that the defendant do pay the plaintiff damages to be assessed.

No. 31

Default judgment in action relating to detention of goods

(O.13 r. 3; O. 19 r. 4; O. 42 r. 2(4))

[*Heading as in action*]

The day of 20 .

No appearance having been entered [*or* no defence having been served] by the defendant herein.

It is this day adjudged that the defendant to deliver to the plaintiff the goods described in the writ of summons (*or* statement of claim) as [description of goods] or

pay the plaintiff the value of the said goods to be assessed [and also damages for their detention to be assessed].

or

It is this day adjudged that the defendant do pay the plaintiff the value of the goods described in the writ of summons [*or* statement of claim] to be assessed [and also damages for the detention to be assessed].

No. 32

Default judgment in action for possession of land

(O. 13 r. 4; O. 19 r. 5; O. 42 r. 2(4))

[*Heading as in action*]

The day of 19 .

No appearance having been entered [*or* no defence having been served] by the defendant herein, it is this day adjudged that the defendant do give the plaintiff possession of the land described in the writ of summons [*or* statement of claim]

as

and pay the plaintiff £ costs.

No. 33

Order for possession under Order 113

(O. 113 r. 6)

[*Heading as in summons*]

Upon hearing and upon reading the affidavit of filed the day of 19 , it is ordered that the plaintiff A.B. do recover possession of the land described in the originating summons as [(a) [and the defendant do give possession of the said land on]] [and that the defendant do pay the plaintiff £ costs [*or* costs to be taxed]]

Dated the day of 19 .

No. 34

Request for trial

(O. 34 r. 3)

[*Heading as in summons*]

I/we request that this action be set down for trial.

*Delete this paragraph if the action is not one to which section 62(1) of the Judicature (Northern Ireland) Act 1978 applies

*I/we further request that the action be tried with a Jury/without a jury.

Dated day of 19

.....
Solicitor
for

No. 35

Notice of sétting down

(O. 34 r. 7)

[*Heading as in action*]

Take Notice that this action has been set down for trial*

*Insert "with a jury" or "without a jury" if the action is one to which section 62(1) of the Judicature (Northern Ireland) Act 1978 applies

Dated day of 19

.....
Solicitor
for

(a) Words inserted by S.R. 1982 No. 217 with effect from 1.9.82

[(a) No. 35A

Notice of Action

(O. 15, r. 13A)

[*Heading as in action*]

To:

Take notice that:

(1) An action has been commenced in this court in accordance with the [writ of summons] [originating summons] attached hereto.

(2) You are or may be one of the persons interested in the [estate] [trust property] to which the action relates.

(3) You may within 14 days after service of this notice enter an appearance to the [writ] [originating summons] by entering an appearance at the Chancery Office, Royal Courts of Justice, Chichester Street, Belfast in accordance with the directions for entering an appearance on the attached [writ] [originating summons].

(4) If you do not enter an appearance to be [writ] [originating summons] you will be bound by any judgment given in the action as if you were a party to it.

Dated

(Signed)

No. 36

Notice of judgment or order

(O. 44 r. 3)

[*Heading as in cause or matter*]

Take notice that a judgment [*or* order] of this Court was given [*or* made] on the day of 19 by which it was [*state substance of judgment or order*].

And also take notice that from the time of the service of this notice you [*or* the minor *or* the patient *as may be*] will be bound by the said judgment [*or* order] to the same extent as you [*or* he] would have been if you [*or* he] had originally been made a party.

And also take notice that without entering an appearance you [*or* the said infant *or* patient] may within one month after the service of this notice apply to the Court to discharge, vary or add to the said judgment [*or* order] and that after entering an appearance at the Chancery Office, Royal Courts of Justice, Chichester Street, Belfast, you [*or* the said minor *or* patient] may attend the proceedings under the said judgment [*or* order].

Dated the day of 19 .

To (signed)

(a) New Form inserted by S.R. 1999 No. 19 with effect from 15.2.99

No. 37

Notice of appeal under County Courts (Northern Ireland) Order 1980

(O. 55 r. 2)

20 No.

On appeal from the County Court [(a) . . .]
Between:

Plaintiff

and

Defendant

Take Notice that I, the above-named (Plaintiff) and appellant [*or* (defendant) and appellant] hereby appeal to the High Court from the whole of [*or* that part of the decree made by the County Court in this suit [*or* matter] on the of 20 whereby it was adjudged [*or* ordered] that (here state decree or part of decree complained of).

Dated 20

. . . . . .
Solicitor for the above-named (plaintiff) appellant [*or* (defendant) appellant].

To: The Principal Clerk, Appeals and Lists Office,
Central Office, Royal Courts of Justice, Belfast

Served a true copy of the notice of appeal on the solicitor for the respondent [*or* on the respondent] (here set out particulars of service).

Dated 20

Signed . . . . . .
Appellant or Solicitor for appellant.

(a) Words omitted by S.R. 2016 No. 299 with effect from 31.10.16

[(a) No. 37A

PARTICULARS OF COUNTY COURT APPEALS

(O. 55, R. 2(3))

Parties' names	Cause of action	Place and date of sitting	Order appealed from other than costs or expenses	Witnesses examined	Solicitors' and Counsel's names

[(a) No. 37B

NOTICE OF APPEAL UNDER S.10 OF THE PREVENTION OF TERRORISM ACT 2005

(O. 116A, r. 12)

In the High Court of Justice in Northern Ireland

20 , No.

IN THE MATTER OF

AND

IN THE MATTER

Take notice that I hereby appeal to the High Court against a decision of Secretary of State on the day of 20 [to renew a non-derogating control order] [to modify an obligation imposed by a non-derogating control order without my consent] [in respect of an application to revoke a non-derogating control order] [in respect of an application to modify an obligation imposed by a non-derogating control order][1]

*Delete as appropriate

Full name .....

Address .....

PART A

And further take notice that the grounds of this appeal are as follows:[2]

PART B – Other applications[3]

Dated 20

.....

Solicitor for the above-named appellant

To: The Principal Clerk, Appeals and Lists Office,
Central Office, Royal Courts of Justice, Belfast

Served a true copy of the notice of appeal on the solicitor for the respondent [or on the respondent] and on the Attorney General (here set out particulars of service).[4]

Dated 20

Signed .....

Appellant or solicitor for appellant

(a) Form inserted by S.R. 2005 No. 314 with effect from 27.06.05

NOTES

(1) Please complete this form in English. It is in your interests to complete this form as thoroughly as possible and state all of your grounds in order for your appeal to be dealt with efficiently.

(2) Please state the grounds on which you are appealing.

(3) If you are making an application for an extension of time to appeal or any other applications, please give details.

(4) Please send the original form to the High Court. Please send a sealed copy of the form to the Crown Solicitor (acting for the Secretary of State) at the following address:

Crown Solicitors Office
PO Box 410
Royal Courts of Justice
Belfast
BT1 3JY]

Please also send a sealed copy of this form to the Attorney General at the following address:

Attorney General's Office
Royal Courts of Justice
Belfast
BT1 3JY

[(a)Form 37C

NOTICE OF APPEAL UNDER SECTION 16 OF THE TERRORISM PREVENTION AND INVESTIGATION MEASURES ACT 2011

(Order 116C, r. 8)

In the High Court of Justice in Northern Ireland

20 , No

IN THE MATTER OF

Take notice that I hereby appeal to the High Court against a decision of the Secretary of State on the day of [to extend a TPIM] [revive a TPIM] [in relation to variation of a TPIM] [in relation to revocation of a TPIM] [in relation to permission in respect of a prohibition on a TPIM]*, in particular—

(please specify the grounds of the appeal)

*Delete as appropriate.

Full name .....

Address .....

Dated 20

.....

Solicitor for the above-named appellant

To: The Principal Clerk, Appeals and Lists Office,
Central Office, Royal Courts of Justice, Belfast, BT1 4JA.

Served a true copy of the notice of appeal on the solicitor for the respondent [or on the respondent] and on the Advocate General (here set out particulars of service)

Dated 20

Signed .....

Appellant or solicitor for appellant

(a) Form 37C inserted by S.R. 2011 No. 422 with effect from 15.12.11

NOTES

(1) Please complete this form in English. It is in your interests to complete this form as thoroughly as possible and state all of your grounds in order for your appeal to be dealt with efficiently.

(2) If you are making an application for an extension of time to appeal or any other application, please give details.

(3) Please send the original form to the High Court. Please send a sealed copy of the form to the Crown Solicitor (acting for the Secretary of State) at the following address:

Crown Solicitors' Office
PO Box 410
Royal Courts of Justice
Belfast
BT1 3JY

Please also send a sealed copy of this form to the Advocate General at the following address:

Advocate General's Office
Royal Courts of Justice
Belfast
BT1 3JY]

[(a) No. 38

Notice of Application to the High Court for bail

(O. 79, r. 2)

In the High Court of Justice in Northern Ireland

Queens Bench Division

(Crown Side)

In the matter of[1] _____ an applicant for bail of[2] _____

Date of Birth[3] _____

Take notice that the applicant ordered to be committed to/detained in[4] _____ hereby applies to the High Court for an order that he be released from custody[5]

* pending his trial
* pending the hearing of his appeal

upon such terms and conditions as the court may think just.

Case details[6]

Court Location and Date	Offences on which committed and/or detained	Scheduled/ non-scheduled/ Both[7]	Date and Court remanded to	Date of Committal and Court committed to

Name and Station of Police Officer in charge of the case _____

Name(s) of co-accused (if any) _____

Where application is made pending an appeal[8]

(a) Applicant is appealing against[5]:

* conviction
* sentence
* conviction and sentence

(b) Sentence imposed _____

(c) Court to which appeal lies _____

(d) Date fixed for hearing (if known) _____

(a) Form inserted by S.R. 2005 No. 163 with effect from 18.04.05

The grounds on which this application is made are as follows([9]):

_____

_____

First Applications Monday – Friday term time

First applications, lodged before noon, will normally be listed for hearing the next working day.

Please indicate if this application will be ready to proceed in this timeframe:

YES		NO	

If no please indicate preferred listing date: _____

First Applications for offences listed in Schedule 9 of the Terrorism Act 2000

First applications lodged in term time after noon on a Thursday and before noon on a Friday will be offered a Saturday morning hearing.

Please indicate if this application could be listed on a Saturday at 9.30 a.m.

YES		NO	

If no please indicate preferred listing date: _____

Second and Subsequent Applications

Second and subsequent applications, for all types of offences, will normally be listed a clear working day after time of receipt of application by the Bail Office.

Please indicate if this application will be ready to proceed in this timeframe:

YES		NO	

If no please indicate preferred listing date: _____

Previous applications (if any) for bail([10]) before a magistrates' court and/or the High Court in respect of this offence:

Date	Court	Result

[*Supplt. No. 42 (August 2005)*]

Sureties

In the event of the applicant being admitted to bail the following persons would be willing to stand as surety(ies) for due surrender of the applicant to his bail:

Name([11]) _____ Name _____

Address _____ Address _____

Occupation _____ Occupation _____

Solicitor details (For completion by the applicant's solicitor):

Name: Firm:

Address: E-mail address:

Telephone and fax number:

Personal Applicants

The Governor of the place of detention must facilitate the signature of this form by applicants who are not legally represented.

Signature of applicant([12]) _____

Date: _____

To: The Central Office, Royal Courts of Justice ([13]) (centraloffice@courtsni.gov.uk)

For office use only:

Date received	Time received

NOTES

(1) Insert full name of applicant.

(2) State home address of applicant.

(3) State date of birth of applicant.

(4) State place to which he/she has been committed or in which he/she is detained (specify if he/she is a new committal).

(5) Delete whichever is not applicable.

(6) It is essential that the correct court and remand date is stated otherwise the application may be delayed.

(7) Legal Aid will only be considered in respect of scheduled offences.

(8) If the application for bail is for purpose of appeal, copy notice of appeal MUST be lodged.

(9) Set out the grounds on which the application is made. No affidavit is required in support of this application.

(10) Here give date(s) of previous applications, the court to which they were made and the result.

(11) The name(s) of a surety or sureties may be inserted here although it is not necessary to give these details at this point. [*Supplt. No. 42 (August 2005)*]

(12) Where the applicant is not represented by a solicitor, the applicant must sign the application.

(13) Two copies of this form must be completed. Where completed by the applicant in person they must be sent to the Central Office, Royal Courts of Justice, by the Governor of the prison or other place where the applicant is detained.]

No. 39

Notice of application to High Court for bail (other than by defendant)

(O. 79, r. 2)

[*Heading as in Form*]

IN THE MATTER OF[1] .....

of[2] .....

TAKE NOTICE THAT[3] .....

of[2] .....

hereby applies to the High Court for an order[4]—

The ground on which this application is made[5] & [6]

Dated ..... 19 ..... Signed.....

[7]Applicant or solicitor for applicant.

To the Central Office, Royal Courts of Justice[8]

NOTES

(1) Insert full name of defendant.
(2) Here state home address.
(3) Prosecutor or surety.
(4) State order applied for.
(5) Set out the grounds on which the application is made.
(6) No affidavit is required in support of this application.
(7) Where the applicant is not represented by a solicitor, the applicant must sign the notice.
(8) Two copies of this form must be completed.

No. 40

Application to Court of Appeal for bail

(O. 79, r. 4(1))

[*Heading as in Form*]

To the Principal Clerk, Appeals and Lists Office,
Central Office,
Royal Courts of Justice,
Belfast, BT1 3JF.

Full names of appellant .....

Where detained .....

Prison No. .....

If bail was granted before trial or sentence, state

The names of the sureties .....

.....

The amounts of the recognizances of the appellant and the sureties .....

.....

What, if any, special conditions were imposed .....

.....

Give the name, address and occupations of two persons who might act as sureties if bail were granted, and the amount of the recognizances in which they and the appellant might agree to be bound:

.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

The appellant applies for bail pending appeal/retrial on the following grounds:

Signed

Date

NOTES

(1) This form must accompany or follow appeal forms. An application for bail may be made whether or not Form 2 contained an application for bail.

(2) An application for bail will be considered in the light of the grounds of appeal or application for leave to appeal. Accordingly, it is usual for the application for bail to be submitted to the court or judge together with the other applications. Generally strong grounds of appeal or application for leave to appeal have to be shown before bail is granted.

(3) Do not repeat the grounds of appeal or application for leave to appeal as the grounds for bail. Mention any special grounds which the court or judge might consider, e.g. medical reasons.

(4) Time spent on bail does not count towards sentence.

No. 41

Notice of application for bail on appeal to House of Lords etc.

(O. 79, r. 5(1))

In Her Majesty's Court of Appeal

IN THE MATTER OF[1]

an applicant for bail of[2]

TAKE NOTICE that[1]

at present detained in[3]

hereby applies to the Court of Appeal for an order that he be released from custody pending his appeal to the House of Lords [or pending his appeal to this Court][4] upon such terms and conditions as the Court may think just.

The grounds on which this application is made are as follows:[5] & [6]

.....

[7]Applicant or Solicitor for the applicant

NOTES:
(1) Insert full name of applicant.
(2) Here state home address of applicant.
(3) Here state place in which he is confined.
(4) Delete whichever is not applicable.
(5) Set out the grounds on which the application is made.
(6) No affidavit is required in support of this application.
(7) Where the applicant is not represented by a solicitor the applicant must sign.
(8) Two copies of this form must be completed. Where completed by the applicant in person they must be sent to the Central Office by the Governor of the prison or other place where the applicant is detained.

To the Principal Clerk, Appeals and Lists Office,
Central Office, Royal Courts of Justice[8]

No. 42

(Local registration of bills of sale)

(O. 95, r. 5(1))

ABSTRACT OF CONTENTS OF BILL OF SALE REQUIRED TO BE SENT TO CHIEF CLERK

Satisfaction entered	Number	Mortgagor or assignor	Residence and occupation	Mortgagee or Assignee	Nature of instrument and consideration	Nature of property assigned	Amount secured and how repayable	Rate of interest	Date of instrument	Date of registration	Date of filing affidavit of renewal
									20	20	20

To the Chief Clerk [(**a**) . . . at .....]

Sent on the ..... day of 20

(**a**) Words omitted / added by S.R. 2016 No. 299 with effect from 31.10.16

No. 43

Notice of entry of satisfaction of bill of sale

(O. 95, r. 5)

Bills of Sale Office,
Queen's Bench Division,
Room
Royal Courts of Justice, Belfast.

In the matter of a bill of sale made between A.B. and C.D. dated 20
Registered (*or* Re-Registered), 20
Abstract transmitted, 20
Satisfaction entered, 20

Take notice, that a memorandum of satisfaction to the above bill of sale was entered on the register of the above date.

Signed,

(L.S.)

To the Chief Clerk [(**a**) . . . at]

Sent on the day of 20

[(**b**) No. 44 . . .]

(**a**) Words omitted / added by S.R. 2016 No. 299 with effect from 31.10.16
(**b**) Form No. 44 revoked by S.R. 1991 No. 232 with effect from 1.10.91

[(a) No. 48

[*Supplt. No. 38 (June 2002)*]

[(b) FORM OF NOTICE TO APPEAR IN PETITION FOR DECLARATION AS TO [(c) . . .] [ADOPTION EFFECTED OVERSEAS]

(O.98 r. 9)

To of

Take notice that you the said are a respondent to this petition and further take notice that you are at liberty within 14 days after service hereof upon you inclusive of the day of service to enter an appearance either in person or by your solicitor at the Probate and Matrimonial Office [or the Office of Care and Protection], Royal Courts of Justice, Belfast, should you think fit so to do and thereafter to make answer to the said petition and further take notice that in default of your so doing the Court will proceed to hear the said petition and pronounce judgment in the cause your absence notwithstanding.

This petition is filed and this notice to appear is issued by

Dated the day of 19 .

Master.

Note:— Any person entering an appearance must at the same time furnish an address for service within the jurisdiction.

No. 48A

CERTIFICATE OF READINESS

(O.98 r. 16(1))

To the Master

Sir,

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

I/We certify on the part of the petitioner that—

(1) there are no pending interlocutory proceedings;

(2) the petitioner does not intend to commence any (further) interlocutory proceedings before trial;

(3) so far as concerns the petitioner, the cause is ready for trial.

(Signed)

Solicitor for petitioner.

(a) New Forms No. 48–No. 48C in Appendix A substituted by S.R. 1989 No. 287 with effect from 1.9.89
(b) Heading substituted by S.R. 1996 No. 321 with effect from 4.11.96
(c) Words deleted by S.R. 2002 No. 202 with effect from 21.6.02

[(**a**) No. 48B...]

No. 48C

DECLARATION AS TO AND ADOPTION AFFECTED OVERSEAS ARTICLE 33 OF THE MATRIMONIAL AND FAMILY PROCEEDINGS (NORTHERN IRELAND) ORDER 1989

(O.98 r.18(2))

In the High Court of Justice in Northern Ireland
Family Division
Office of Care and Protection

Upon the petition of (the petitioner)
and upon hearing the petitioner
and upon hearing (the respondent)

It is declared* that, because the said , the petitioner was [*or* was not] adopted for the purposes of section 4(3)of the Adoption (Hague Convention) Act (Northern Ireland) 1969 on the day of 19, in (*country where the adoption took place or did not take place*) by (*the actual or alleged adoptive parent*) then for the purposes of Article 40 of the Adoption (Northern Ireland) Order 1987 the said , the petitioner, is [*or* is not] the adopted child of the said (*the actual or alleged adoptive parent*).

Dated

* *or, where the adoption is or is not recognised by the law of Northern Ireland and was or was not effected under the law of any country outside the United Kingdom, the Channel Islands and the Isle of Man, the following form shall be followed:—*

. . . that, because of the said the petitioner was [*or* was not] adopted for the purposes of being recognised under the law of Northern Ireland on the day of 19 , in (*country where the adoption took place or did not take place*) by (*the actual or alleged adoptive parent*) then for the purposes of Article 40 of the Adoption (Northern Ireland) Order 1987 the said , the petitioner, is [*or* is not] the adopted child of the said (*the actual or alleged adoptive parent*).

[(**b**) No. 48D...]

(**a**) Form No. 48B revoked by S.R. 2002 No. 202 with effect from 21.6.02
(**b**) Form No. 48D revoked by S.R. 2002 No. 202 with effect from 21.6.02

[(a) No. 49A

(ORDER 106, RULE 2B)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

TAXING OFFICE

IN THE MATTER of the Solicitors (Northern Ireland) Order 1976

Applicant(s)

of

Respondent(s)

of

TAKE NOTICE that the above-named the applicant(s), will apply to the Master on the day of 20 , pursuant to Order 106 rule 2B, for the examination of the contentious business agreement, made with the above-named the respondent(s).

[The applicant made the said agreement as a representative of whose property will be chargeable with the whole part of the amount payable]*

The application is grounded on the affidavit of the applicant

Dated

Signature

*Delete if not applicable.]

(a) Form No. 49A inserted in Appendix A by S.R. 1989 No. 498 with effect from 1.2.90

No. 50

Memorial for appointment as a commissioner for oaths
Judicature (Northern Ireland Act 1978

(O.107, r. 2(1))

IN THE MATTER OF [*name of applicant*] seeking to be appointed a commissioner for oaths for the [(**a**) . . .] district of

AND IN THE MATTER of the Judicature (Northern Ireland) Act 1978.

To: The Right Honourable the Lord Chief Justice of Northern Ireland.

The Memorial of [*name of applicant*] shows:—

1. That [*name of applicant*] (hereinafter referred to as "the applicant") is a [*here describe applicant's profession or employment*] and has his principal address for business at [*state where*].

2. That the applicant was admitted as a solicitor in [*state when*] and has practised at [*state where*] [*or that the applicant has carried on business as a* at *since* (give particulars)].

3. That the population of [*name* [(**a**) . . .] *district to which the application relates*] is now about [*state population*].

4. That the names and addresses of the commissioners for oaths in [*refer to the* [(**a**) . . .] *district to which the application relates*] , are as follows:—

5. [*Give any further particulars which support the application*].

The applicant therefore prays that the Lord Chief Justice will be pleased to appoint him a commissioner for oaths under and by virtue of the Judicature (Northern Ireland) Act 1978 for [*here refer to the* [(**b**) *district*] *to which the application relates*].

Dated this day of 20 .

[*Signature of applicant*]

(**a**) Words omitted by S.R. 2016 No. 299 with effect from 31.10.16
(**b**) Word substituted by S.R. 2016 No. 299 with effect from 31.10.16

No. 51

Certificate in support of memorial: commissioner for oaths
Judicature (Northern Ireland) Act 1978

(O. 106, r. 2(1))

We, the undersigned, whose names, descriptions and residences are hereto attached, do certify that a commissioner for oaths is much needed for the [*specify relevant* [(**a**) . . .] *district*], and we further specify that [*name of applicant*] , of [*address and description*] is personally known to us, and we verily believe that he is a person well qualified by his skill and trustworthiness to fill the above-mentioned office.

No. 52

Warrant of appointment as commissioner for oaths
Judicature (Northern Ireland) Act 1978

(O. 107, r. 5(1))

I, Lord Chief Justice of Northern Ireland, pursuant to the powers conferred on me by the Judicature (Northern Ireland) Act 1978, and all other powers thereunto me enabling, do hereby appoint of in the county of a commissioner for oaths in and for the [(**a**) . . .] district of to hold the said office until further order, subject to the rules of court governing such appointments.

Dated this day of 20 .

Lord Chief Justice.

(a) Words omitted by S.R. 2016 No. 299 with effect from 31.10.16

No. 53

Memorial for appointment as a notary public
Judicature (Northern Ireland) Act 1978

(O. 107, r. 9(1))

IN THE MATTER of [*name of applicant*] seeking to be appointed to notary public.

AND IN THE MATTER of the Judicature (Northern Ireland) Act 1978.

To: The Right Honourable the Lord Chief Justice of Northern Ireland.

The Memorial of [*name of applicant*] shows:—

(1) That [*name of applicant*] (hereinafter referred to as "the applicant") is a solicitor of the Supreme Court and practises at [*state where*] and was admitted to practise in [*state when*].

(2) That since the date of the admission of the application to practise as a solicitor he has carried on practice in, among others, the [(**a**) . . .] district of [*state where*].

(3) That the number of notaries practising in Northern Ireland is, to the best of the applicant's knowledge and belief. [*state number*]

(4) That the appointment of the applicant as a notary public would be in the public interest for the following, among other, reasons:—

[*State reasons, e.g. increase in demand, growth of mercantile activity, deaths or retirements of notaries public in the* [(**b**) *district*] *which would be served by the applicant*].

The applicant therefore prays that the Lord Chief Justice will be pleased to admit him a notary public under and by virtue of the Judicature (Northern Ireland) Act 1978 to practise throughout Northern Ireland.

Dated this day of 20 .

[*Signature of applicant*]

(**a**) Words omitted by S.R. 2016 No. 299 with effect from 31.10.16
(**b**) Word substituted by S.R. 2016 No. 299 with effect from 31.10.16

No. 54

Certificate in support of memorial: notary public.
Judicature (Northern Ireland) Act 1978

(O. 107, r. 9(1))

We, the undersigned [(**a**) District Judges (Magistrates' Courts)], bankers, merchants and others residing in and about the [(**b**) . . .] district of [*state where*] have read the foregoing memorial of [*name of applicant*] and believe that the statements therein are true and that he is a fit and proper person to be appointed a notary public, and we join in the prayer thereof.

No. 55

Warrant of appointment as notary public
Judicature (Northern Ireland) Act 1978

(O. 107, r. 12(1))

I, . Lord Chief Justice of Northern Ireland, pursuant to the powers conferred on me by the Judicature (Northern Ireland) Act 1978, and all other powers thereunto me enabling, do hereby admit of in the county of a notary public for Northern Ireland, to hold the said office, together with all fees, profits, and advantages to the same belonging or in any wise appertaining until further order, subject to the rules of court governing such admission.

Dated this day of 20 .

Lord Chief Justice.

(**a**) Words substituted by S.R. 2014 No. 220 with effect from 05.09.14
(**b**) Words omitted by S.R. 2016 No. 299 with effect from 31.10.16

No. 56

Judgment Summons

(O. 111, r. 3)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION

Re a debtor

applicant

[*Title as in proceedings*]

(1) Or "order".
(2) Set forth style of court.
(3) Or "for the payment of the sum of £ per week" or as the case may be.
(4) Name the debtor against whom the summons is issued.

WHEREAS the applicant obtained a judgment[1] against you the above-named debtor[2] on the day of 20 , for the sum of £ [3] and there is now due and payable under the said judgment[1] the sum of £ .

YOU the above-named debtor[4] are therefore hereby SUMMONED to appear personally before a judge sitting in the Queen's Bench Division at the Royal Courts of Justice, Chichester Street, Belfast, on day, , 20 , at a.m./p.m. to be examined on oath touching the means you have or have had since the date of judgment[1] to pay the said sum in payment of which you have made default, and also to show cause why you should not be committed to prison for such default.

Dated this day of 20 .

	£	p
Amount of judgment[1]		
Costs of this summons		
Total sum due		

(5) Name, address and occupation of the debtor against whom the summons is issued

To[5]

This summons was taken out by solicitor for the applicant.

No. 57

Certificate of satisfaction

(O. 111, r. 12(5))

[*Title as in judgment summons*]

I certify that the sum of money for the non-payment whereof ..... is now in custody upon the order made by ..... on ..... together with the costs and witnesses expenses mentioned in such order has been satisfied.

Dated 19

(Signed)

No. 58

Bond

(O. 108, r. 4)

[*Title*]

In the High Court of Justice in Northern Ireland 19 No.
Division

KNOW ALL MEN BY THESE PRESENTS THAT WE [*full name, address and description of principal and name and registered office of surety company*] are jointly and severally bound unto [*appropriate master, by his official title*] in the sum of pounds, for the payment of which I [*the principal*] for myself and my executors and administrators and we [*the surety company*] for ourselves and our successors, jointly and severally bind ourselves by these presents.

SEALED with our seals this day of 19 .

[WHEREAS—*recital of order appointing principal, if appropriate, or other order requiring bond to be given*].

NOW THEREFORE THE CONDITION of this bond or obligation is such that if the above-named [*principal*] [*here set out conditions of the bond*] then this bond or obligation shall be void and of no effect, but shall otherwise remain in full force and effect.

PROVIDED ALWAYS [*here set out provisions for determination of liability of surety company in the event of default of payment of annual premium, if applicable, and any other special provisions as may be appropriate*].

PROVIDED ALWAYS and it is further agreed between [*the principal*] and [*the surety company*] that he [*the principal*] his executors or administrators shall and will from time to time and at all times save defend and keep harmless [*the surety company*] and their successors from and against all loss and damage costs and expenses which [*the surety company*] shall or may or otherwise might at any time sustain or be put unto for or by reason or in consequence of [*the surety company*] having entered into this bond for and at the request of [*the principal*].

SIGNED, SEALED AND DELIVERED

by [*the principal*] in the
presence of

SEALED with the Common Seal of [*the surety company*]

No. 59

Writ of habeas corpus ad subjiciendum
(O. 54, r. 10)

ELIZABETH THE SECOND [*as in No.* 24]

To greeting:

We command you that you have in the Queen's Bench Division of Our High Court of Justice in Northern Ireland, at the Royal Courts of Justice, Chichester Street, Belfast, on the day and at the time specified in the notice served with this writ, the body of A.B. being taken and detained under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, that Our court [or the Judge] may then and there examine and determine whether such cause is legal, and have you there then this writ.

Witness [*as in No.* 24[

Indorsement

By order of

This writ was issued by of solicitor for

No. 60

(O. 54, r. 10)

Notice to be served with writ of habeas corpus ad subjiciendum

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION

[*If in a cause already begun, here insert the title, not otherwise*]

Whereas this Court
has granted a writ of habeas corpus directed to
commanding him to have the body of A.B. before the said Court [or Judge] at the Royal Courts of Justice, Chichester Street, Belfast, on the day and at the time specified in the notice together with the day and cause of his being taken and detained.

Take notice that you are required by the said writ to have the body of the said A.B. before this Court [or before the Judge aforesaid] on the day of 19 at o'clock in the noon and to make a return to the said writ. In default thereof the said Court [or Judge] will then, or so soon thereafter as counsel can be heard, be moved to commit you to prison for your contempt in not obeying the said writ.

Dated the day of 19

(signed)

of

Solicitor for

To:

No. 61

Writ of habeas corpus ad testificandum

(O. 54, r. 10)

ELIZABETH THE SECOND [as in No. 24]

To the Governor of our prison at greeting:

We command you that you have before [*description of court*] on the day of 19 , at o'clock in the noon, the body of , being committed and detained in Our prison under your custody, as is said, then and there to testify the truth and give evidence [on Our behalf against A.B. for (*describe the offence*) or otherwise describing the proceedings] and so from day to day until the said shall have given his evidence as aforesaid. And when he shall have given his evidence, then you take him back without delay to Our prison under your custody, and cause him to be detained therein under safe custody, until he shall be from thence discharged by due course of the law.

Witness [*as in No.* 24]

Indorsement

By order of

This writ was issued by of solicitor for

No. 62

Writ of habeas corpus ad respondendum

(O. 54, r. 10)

ELIZABETH THE SECOND [as in No. 24]

To the Governor of Our prison at

greeting:

We command you that you have before [*description of Court*] on the day of 19 , at the body of , being commited and detained in Our prison under your custody, as it is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called, then and there to answer to a charge of to be then and there made against him, and so from day to day until he shall have answered the said charge, and to be dealt with according to law. And have you then and there this writ.

Witness [*as in No.* 24]

Indorsement

[as in No. 61]

[(a) No. 63

Certificate under section 12 of the Civil Jurisdiction and Judgments Act 1982
(O.71 r. 32(3))

In the High Court of Justice in Northern Ireland 19 , No.
Division

Between	AB	Plaintiff
and	CD	Defendant

I, a of the Supreme Court of Judicature of Northern Ireland hereby certify:—

1. That the Writ of Summons [*or as the case may be*], a copy of which is annexed, was issued out of the High Court of Justice in Northern Ireland on the day of , 19 , by AB the above-named plaintiff against CD, the above-named [*or state any other relief claimed*].
2. That the said writ [*or other originating process as the case may be*] was duly served on the day of , 19 , upon the said defendant CD by (*state mode of service*).
3. [That the said CD entered an appearance to the writ on the day of , 19].
4. That the said plaintiff [*or* defendant] obtained judgment against the said defendant [*or* plaintiff] in the Division of the High Court of Justice in Northern Ireland [for payment of the sum of £] [*or state any other relief ordered*], together with the sum of £ for costs.
5. That [no] objection has been made to the jurisdiction of the Court [on the grounds that *state ground of objection*],
6. That the judgment carries interest at the rate of ..... per cent per annum calculated on the judgment debt and costs from the date of judgment until payment.
7. That the judgment has been served on the defendant in accordance with the provisions of Order 65, rule 5.
8. [That no application to set the judgment aside] [*or* to appeal against the judgment] [has been brought within the time prescribed].
9. [That an application to set the judgment aside] [*or* to appeal against the judgment] [has been finally disposed of].
10. That enforcement of the judgment is not for the time being stayed or suspended and that the time available for its enforcement has not expired.
11. This certificate is issued under section 12 of the Civil Jurisdiction and Judgments Act 1982.

Dated the day of 19 .

(*Signed*) a of the Supreme Court of Judicature of Northern Ireland]

(a) Form No. 63 added by S.R. 1984 No. 110 with effect from 1.1.87

[(**a**) No. 64

Certificate of Money Provisions contained in a Judgment
for Registration under Schedule 6 to the
Civil Jurisdiction and Judgments Act 1982.

(O. 71 r. 33(3))

I, a of the Supreme Court of Judicature of Northern Ireland hereby certify:—

1. That AB (*state the name, address and description of plaintiff*) obtained judgment against CD (*state the name, address and description of defendant*) on the day of 20 in the Division of the High Court of Justice in Northern Ireland for payment of the sum of £ in respect of (*state shortly nature of claim*) together with £..... for costs.
2. That the judgment carries interest at the rate of.....per cent per annum calculated on the judgment debt and costs from the date of judgment until payment.
3. That the conditions specified in paragraph 3(*a*) and (*b*) of Schedule 6 to the Civil Jurisdiction and Judgments Act 1982 are satisfied in relation to the judgment.
4. That enforcement of the judgment is not for the time being stayed or suspended and that the time available for its enforcement has not expired.
5. This certificate is issued under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982.

Dated the day of 20 .

(*Signed*) a of the Supreme Court of Judicature of Northern Ireland]

Produced for registration under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982 by AB/CD.

No. 65

Certificate issued under Schedule 7 to the
Civil Jurisdiction and Judgments Act 1982
in respect of Non-Money Provisions

(O.71 r. 34(2))

I certify that the annexed copy judgment is a true copy of a judgment obtained in the High Court of Justice in Northern Ireland, that it is issued in accordance with section 18 of the Civil Jurisdiction and Judgments Act 1982 and that the conditions specified in paragraph 3(*a*) and (*b*) of Schedule 7 to that Act are satisfied in relation to the judgment.

This certificate is issued under paragraph 4(1)(*b*) of Schedule 7 to the Civil Jurisdiction and Judgments Act 1982.

Dated the day of 20 .

(*Signed*) a of the Supreme Court of Judicature of Northern Ireland]

(**a**) Form Nos. 64 and 65 added by S.R. 1984 No. 110 with effect from 1.1.87

[(**a**) No. 66

Warrant of arrest

(O. 119, r. 4)

[Heading as in action]

WHEREAS it is alleged that of has disobeyed an order made by the aforesaid court on the day of 20 .

THIS IS TO COMMAND YOU to whom this warrant is addressed to arrest the said of and bring him forthwith before the aforesaid Court that he may be further dealt with according to law and for your so doing this shall be your sufficient Warrant.

Dated this day of 20 .

(signed)

By the Court:

To: The Chief Constable of the Police Service of Northern Ireland, Belfast and to all other members of the Police Service of Northern Ireland to whom this Warrant may be delivered for execution.]

[(**b**) No. 67

Penal Notice

(O. 45 r. 5(4))

WARNING

If you, the within named ,[1] do not obey this [judgment] [order] [within the time stated][2], you may be held to be in contempt of court and [may be sent to prison] [liable to sequestration of your assets].[2]

[1] Insert the name of the person on whom the judgment/order is to be served or the body corporate, as appropriate.

[2] Delete as appropriate.

No.68

Penal Notice

(O. 45 r. 5(4))

WARNING

If the within named ,[1] does not obey this [judgment] [order] [within the time stated],[2] you ,[3] a director or officer of the said ,[1] may be held to be in contempt of court and may be sent to prison.

[1] Insert the name of the body corporate.

[2] Delete as appropriate.

[3] Insert the name of the person on whom the judgment/order is to be served.]

(**a**) Form No. 66 inserted by S.R. 1999 No. 19 with effect from 12.04.99

(**b**) Forms Nos 67 and 68 added by S.R. 2000 No. 42 with effect from 27.3.00

[(a) 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 20 , 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;

(a) Forms No. 69, 70 and 71 inserted by S.R. 2000 No. 393 with effect from 08.01.01

(*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 his 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 20 .

(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 Division 20 , No.

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 20 , 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 20 , 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 20 .

(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 Division 20 , No.

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 20 , 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 20 , 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 the day of 20 .

(signed)]

[(**a**) No. 72

Warrant issued under section 352 of the Proceeds of Crime Act 2002

(Order 123, rule 19(4))

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

Applicant: [(**b**) [*insert appropriate officer*]]

TO: [*insert name and address of respondent*]

1. This Warrant was issued by a Judge of the High Court on the day of 20 , on the application of the [(**b**)[*insert appropriate officer*]] under section 352 of the Proceeds of Crime Act 2002 ("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.

2. This warrant is issued in respect of [(**c**) [a civil recovery investigation] [a detained cash investigation] (*delete as appropriate*)] ("the investigation") by the [(**b**) [*insert appropriate officer*]] in relation to [*insert details of the premises to which the investigation relates*].

3. On production of this Warrant, [*insert name*], [(**b**) [who is a member of staff of the Director of Public Prosecutions for Northern Ireland] [who is a member of staff of the Serious Fraud Office] [who is a member of staff of the Serious Organised Crime Agency]. (*delete as appropriate*).] are authorised—

(a) to enter and search the premises at [*insert address*] ("the premises");

(b) to seize any material found there which in their opinion is likely to be of substantial value (whether or not by itself) to the investigation;

(**a**) Forms No. 72, 73 and 74 inserted by S.R. 2003 No. 54 with effect from 28.02.03

(**b**) Words substituted by S.I. 2008 No. 574 with effect from 01.04.08

(**c**) Words substituted by S.R. 2009 No. 207 with effect from 30.06.09

(c) to require any information which is held in a computer and is accessible from the premises and which they believe 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;

(d) to take copies of any material seized;

(e) to retain material seized under the warrant for so long as it is necessary to retain it in connection with the investigation; [and]

(f) (*insert any other powers which have been granted by the Court*)

NOTICE

You are entitled to apply to the court to vary or discharge this warrant.

WARNING

If you fail to comply with any requirement of a person exercising powers under this Warrant, you will be committing contempt of court for which you may be imprisoned or fined.

Dated the day of 20 .

(signed)

No. 73

Penal notice

(Order 123, rule 21(b))

WARNING

If, without reasonable excuse, you fail to comply with any requirement imposed on you under this disclosure order, you will be committing an offence under section 359(1) of the Proceeds of Crime Act 2002 and you may be liable on conviction to a fine and/or a term of imprisonment.

AND if, in purported compliance with a requirement imposed upon you by this disclosure order, you make a statement which you know to be false or misleading in a material particular or you recklessly make a statement which is false or misleading in a material particular, you will be committing an offence under section 359(3) of the Proceeds of Crime Act 2002 and you may be liable on conviction to a fine and/or a term of imprisonment.

[(a)No. 74

Penal Notice

(Order 123, rule 23(b))

WARNING

If, without reasonable excuse, you fail to comply with any requirement imposed on you under this customer information order, you will be committing an offence under section 366(1) of the Proceeds of Crime Act 2002 and you may be liable on conviction to a fine.

AND if, in purported compliance with a requirement imposed upon you by this customer information order, you make a statement which you know to be false or misleading in a material particular or you recklessly make a statement which is false or misleading in a material particular, you will be committing an offence under section 366(3) of the Proceeds of Crime Act 2002 and you may be liable on conviction to a fine."]

(a) Forms 74 added to Appendix A by S.R. 2003 No. 54 with effect from 28.2.2003

[(a) No.75

Warrant for entry of premises issued under paragraph 2 of Schedule 3 to the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007

(O.93 r.16(7))

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

Applicant: Northern Ireland Authority for Utility Regulation

TO: [*insert name and address of defendant 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 20 , on the application of the Northern Ireland Authority for Utility Regulation ("the Authority") under paragraph 2 of Schedule 3 to the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 ("the 2007 Order"). 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 Authority 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 Authority [*"named officer"*] and [*insert name*], who is an officer of the Authority authorised in writing by the Authority to accompany the named officer, are authorised—

(a) to enter the premises at [insert name] ("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.

(a) New Form 75 addded to Appendix A by S.R. 2008 No. 22 with effect from 25.02.2008

WARNING

4. Paragraph 4(1) of Schedule 3 to the 2007 Order provides that a person is guilty of an offence if he fails to comply with a requirement imposed on him under paragraph 1 or 2 of Schedule 3 to the 2007 Order.

5. If a person is charged with an offence under paragraph 4(1) of Schedule 3 to the 2007 Order 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 paragraph 4(1) of Schedule 3 to the 2007 Order 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 paragraph 4(1) of Schedule 3 to the 2007 Order is liable—

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

(b) on conviction on indictment, to a fine.

8. Under paragraph 4(7) of Schedule 3 to the 2007 Order, a person who intentionally obstructs any other person in the exercise of his powers under a warrant issued under paragraph 2 of Schedule 3 to the 2007 Order is guilty of an offence.

9. Under paragraph 4(8) of Schedule 3 to the 2007 Order, a person is guilty of an offence if, having been required to produce a document under paragraph 2 of Schedule 3 to the 2007 Order—

(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. Under paragraph 4(9) of Schedule 3 to the 2007 Order, if information is provided by a person to an investigating officer in pursuance of a requirement imposed under paragraph 2 of Schedule 3 to the 2007 Order, 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.

11. A person guilty of an offence under paragraph 4(7), 4(8) or 4(9) of Schedule 3 to the 2007 Order is liable—

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

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

12. 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 this day of 20

(signed)]

[(a) No. 76

Form of advertisement on an application for a [declaration][variation of a declaration] of presumed death under [section 1(1)][section 5(1)] of the Presumption of Death Act (Northern Ireland) 2009

(O. 93A, r. 4(4))

In the High Court of Justice in Northern Ireland, Chancery Division

In the matter of an application for the presumed death of (*insert name*)

An application will be heard on day, the day of 20 , at a.m./p.m. in the High Court of Justice in Northern Ireland, for a [declaration] [variation of a declaration] that (*insert name*), whose last known address was (*insert address*), is presumed to be dead. Any person having an interest may apply to the Court to be joined in the matter.

If you wish to apply to the Court, you must do so by (*insert date on which period of notice expires*) at the Chancery Office, Royal Courts of Justice, Chichester Street, Belfast, BT1 3LA.

(Signed)

Solicitor for the Applicant

(Address)

(a) Forms No. 76, 77, 78, 79, 80, 81 and 82 inserted by S.R. 2009 No. 345 with effect from 09.11.09

No. 77

Declaration of presumed death under section 2 of the Presumption of Death Act (Northern Ireland) 2009

(O. 93A, r. 5)

In the High Court of Justice in Northern Ireland

Chancery Division

Upon the application of (*the applicant*)

And upon hearing the applicant and (*any other person*)

It is hereby declared that it has been proved to the Court's satisfaction that (*insert name of missing person*) is presumed to be dead, and that the said (*insert name*) [is found to have died on (*date*) at (*time*)] [is found to have died at the end of the day occurring 7 years after the date on which he/she was last known to be alive, namely on (*date of presumed death*)]*

And it is further [directed][determined][ordered]* (here insert details of such further direction/determination/order of the Court made in accordance with sections 4, 7(1) or 12 of the Presumption of Death Act (Northern Ireland) 2009)

Dated the day of 20 .

To: The Registrar General

* delete as appropriate

No. 78

Notice of the making of a variation order under section 5 of the Presumption of Death Act (Northern Ireland) 2009

(O. 93A, r 6(7))

In the High Court of Justice in Northern Ireland

Chancery Division

Take notice that a variation order under section 5 of the Presumption of Death Act (Northern Ireland) 2009 was made on (*insert date*).

The terms of the variation order are as follows: (here insert details of the variation including any determination made under section 5(4) and the details of any further order made by the Court under section 6(2) or section 12 of the Presumption of Death Act (Northern Ireland) 2009).

Dated the day of 20 .

To: The Registrar General

And to any person who applied for the declaration of presumed death to which the application for a variation order relates.

No. 79

Variation Order under section 5 of the Presumption of Death Act (Northern Ireland) 2009

(O. 93A, r 6(8))

In the High Court of Justice in Northern Ireland

Chancery Division

Upon the application of (*insert name*)

And upon hearing the applicant and (*any other person*)

The declaration of presumed death made in respect of (*insert name*) on (*insert date*), is hereby varied in the following terms [or revoked] (here insert details of the variation including any determination made under section 5(4))

And the Court further orders (here insert details of any further order made by the Court under section 6(2) or section 12 of the Presumption of Death Act (Northern Ireland) 2009).

Dated the day of 20 .

To: The Registrar General.

No. 80

Notice of Intention to make an Order for Disclosure of Information under section 11 of the Presumption of Death Act (Northern Ireland) 2009

(O. 93A, r. 8(3))

In the High Court of Justice in Northern Ireland

Chancery Division

In the matter of an application for a declaration of the presumed death of (*insert name*)

Take notice that the Judge [*or Master*] [in Chambers] at the Royal Courts of Justice, Chichester Street, Belfast on day, the day of 20 , at am/pm [on the hearing of an application on the part of (*insert name*)] intends to make an order requiring you to disclose information under section 11(1) of the Presumption of Death Act (Northern Ireland) 2009.

The information required is (here specify the information required)

Dated the day of 20 .

To:

Notice to person in possession of information who is not a party to the proceedings

If you have no objection to the Court making an order for disclosure of the information specified above you need not attend Court in answer to this Notice.

No. 81

Order for Disclosure of Information under section 11 of the Presumption of Death Act (Northern Ireland) 2009

(O. 93A, r 8(5))

In the High Court of Justice in Northern Ireland

Chancery Division

In the matter of an application for a declaration of the presumed death of (*insert name*)

Take notice that the Judge [*or Master*] [in Chambers] at the Royal Courts of Justice, Chichester Street, Belfast on (*insert date*), made an order for disclosure of the following information under section 11(1) of the Presumption of Death Act (Northern Ireland) 2009: (*here insert terms of the order*)

Dated the day of 20 .

To:

No. 82

Order for Discharge/Variation of Disclosure Order under section 11 of the Presumption of Death Act (Northern Ireland) 2009

(O. 93A, r. 8(8))

In the High Court of Justice in Northern Ireland

Chancery Division

In the matter of an application for a declaration of the presumed death of (*insert name*)

Take notice that the order for disclosure of information made in this matter on (*insert date*), under section 11(1) of the Presumption of Death Act (Northern Ireland) 2009 is hereby varied as follows: [*or discharged*].

(*insert terms of order as varied*)

Dated the day of 20 .

To:]

APPENDIX C
Probate Forms
No. 1
Surety's guarantee
(O. 97, r. 38(4))
IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
[(a) Chancery Division]
[(a) Chancery Office[1]]

(1) Insert in brackets the name of the branch office if appropriate.

In the Estate of [2]deceased

Whereas [2]of [3]

(2) Full name of deceased.

died on the day of 20

(3) Address and description of deceased.

and [and][4]
(hereinafter called "the administrator(s)" is/are[5] the intended administrator(s) of his/her[5] estate;

(4) Full name(s) and address(es) of proposed administrator(s).

Now therefore

1. I/We[5] of

(5) Delete whichever is inapplicable.

[and of][6]
hereby [jointly and severally][7] guarantee that I/We[5] will, when lawfully required to do so[8] make good any loss which any person interested in the administration of the estate of the deceased in Northern Ireland may suffer in consequence of the breach by the administrator(s) of his/her/their[5] duty—

(6) Full name(s), address(es) and description(s) of Suret(y)(ies).

(7) Delete if only one surety.

(*a*) to collect and get in the estate of the deceased and administer it according to law;

(8) An action on the guarantee may only be brought with the leave of the Court.

(*b*) when required to do so by the court, to exhibit on oath in the court a full inventory of the estate and, when so required, to render an account of the estate; or

(*c*) when so required by the court, to deliver up the grant to the court.

(9) Insert gross value of estate (unless the Master has directed otherwise).

2. The giving of time to the administrator(s) or any other forbearance or indulgence shall not in any way affect my/our[5] liability under this guarantee.

(10) Attestation is not required in the case of a corporation.

3. The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above, but (my) (our aggregate) total liability shall not in any event exceed the sum of £ .[9]

Dated this day of 20

Signed, sealed and delivered by the above named
in the presence of
a Commissioner for oaths[10]

[Further attestation clauses]

The Common Seal of
was hereunto affixed in the presence of].

(**a**) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07

No. 2

Surety's guarantee

ON APPLICATION FOR RESEALING UNDER COLONIAL PROBATES ACTS 1892 AND 1927

(O. 97, r. 39(2))(*c*))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

[(**a**) Chancery Division]

[(**a**) Chancery Office]

In the Estate of [1] deceased

Whereas [1] of [2]

died on the day of 20

and letters of administration of his estate were on the day of 20 granted by the [3]

to

[and

][4] and are about to be sealed in Northern Ireland under the Colonial Probates Acts 1892 and 1927.

Now therefore

1. I/We[5] of

[and

of][6]

hereby [jointly and severally][7] guarantee that I/We[5] will, when lawfully required to do so[8] make good any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the administrator(s) of his/her/their[5] duty—

(*a*) to collect and get in the estate of the deceased which is situated in Northern Ireland and administer it according to law;

(*b*) when required to do so by the court, to exhibit on oath in the court a full inventory of the estate which is situated in Northern Ireland and, when so required, to render an account of the estate;

2. The giving of time to the administrator(s) or any other forbearance of indulgence shall not in any way affect my/our[5] liability under the guarantee.

3. The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above, but (my) (our aggregate) total liability shall not in any event exceed the sum of £ .[9]

Dated this day of 20 .

Signed, sealed and delivered by the above named

in the presence of

a Commissioner for oaths

[Further attestation clauses][10]

The Common Seal of

was hereunto affixed in the presence of].

(1) Full name of deceased.

(2) Address and description of deceased.

(3) Description of court by which grant was issued.

(4) Full name(s) and address(es) and description(s) of administrator(s).

(5) Delete whichever is inapplicable.

(6) Full name(s). address(es) and description(s) of Suret(y)(ies).

(7) Delete if only one surety.

(8) An action on the guarantee may only be brought with the leave of the Court.

(9) Insert gross value of estate in Northern Ireland (unless the Master has directed otherwise).

(10) Attestation is not required in the case of a corporation.

(**a**) Words substituted by S.R. 2007 No. 189 with effect from 16.04.07

No. 3

Certificate of delivery of Inland Revenue affidavit

(O. 97, r. 42)

And it is hereby certified that an Inland Revenue affidavit has been delivered wherein it is shown that the gross value of the said estate in the United Kingdom (exclusive of what the said deceased may have been possessed of or entitled to as trustee and not beneficially) amount to £ and that the net value of the estate amounts to £

And it is further certified that it appears by a receipt signed by an Inland Revenue officer on the said affidavit that £ on account of estate duty and interest on such duty has been paid.

No. 4

Caveat

(O. 97, r. 43(2)

(Heading as in Form 1)

Let no grant be sealed in the estate of A.B., late of deceased, who died on the day of 20 at without notice to me (C.D. being the solicitor of) E.F., of in the County of having interest.

Dated this day of 20 .

Signed, C.D.
(Add registered place of business)
or E.F.
(Add address for service within the jurisdiction)

No. 5

Warning to caveator

(O. 97, r. 43(8))

(*Heading as in Form 2*)

To of a party who has entered a caveat in the estate of deceased.

You are hereby warned within 8 days after service hereof upon you, inclusive of the date of such service,—

(1) To enter an appearance either in person or by your solicitor, at the [(**a**) Chancery Office], Chichester Street, Belfast, setting forth what interest you have in the estate of the above-named of deceased contrary to that of the party at whose instance this warning is issued; or

(2) If you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a summons for directions by the Master.

And take notice that in default of your so doing the Court may proceed to issue a grant of probate or administration in the said estate notwithstanding your caveat.

Dated the day of 20 .

Master

Issued at the instance of [Here set out the name and interest (including the date of the will, if any, under which the interest arises) of the party warning, the name of his solicitor and the address for service within the jurisdiction. If the party warning is acting in person, this must be stated.]

No. 6

Appearance to warning or citation

(O. 97, r. 43(10))

(*Heading as in Form 2*)

Enter an appearance for A.B.(1) in this matter.
(2)

Dated the day of 20

Signed (Solicitor or in person) whose address for service is:

(1) The caveator or person cited.

(2) Here set out the interest of the caveator or person cited stating the date of the will, if any, under which such interest arises.

(**a**) Words substituted by S.R. 2008 No. 401 with effect from 03.11.08

[(**a**) Appendix D

Patients' Affairs Forms

[(**b**) Form 1:

Mental Health (Northern Ireland) Order 1986

NOTIFICATION to the OFFICE OF CARE AND PROTECTION pursuant to Article 107 given on behalf of

[Board/Trust/Nursing Home]

I HEREBY GIVE NOTICE THAT THE BOARD/TRUST IS [I AM] SATISFIED:

(*a*) that the under-mentioned person (hereinafter referred to as "the patient") is considered to be incapable of managing his/her property and affairs by reason of mental disorder;

(*b*) that powers of the Court, specified in the supporting documents, ought to be exercised with respect to the property of the patient;

(*c*) that arrangements in that behalf have neither been made nor are being made;

and that it is necessary that the Office should consider the patient's case and arrange for appropriate steps to be taken with respect to his/her property and affairs of which relevant details are enclosed with this notification.

Date: Signed on behalf of

Board/Trust/Nursing Home

[Address] [telephone number]

INFORMATION ABOUT THE PATIENT

Surname Forename(s)

Present Address

Date of admission — if in a nursing home or hospital

Usual or Former Address

Marital Status Date of Birth (or approximate age)

Former Occupation Religion

National Insurance Number Retirement Pension Number

(**a**) Appendix D inserted by S.R. 1986 No. 184 with effect from 31.07.86

(**b**) Form 1 substituted by S.R. 1994 No. 286 with effect from 1.10.94

[*Supplt. No. 22 (October 1994)*]

MEDICAL PRACTITIONER on whose advice this notification is made:

Name: Qualifications:

Address:

Prospects of early recovery of the patient assessed as being

Prospects that the patient could continue/return to live at home without care/support

NEAREST RELATIVE informed of this notification pursuant to Article 108(2)

Name: How related:

Address:

NB. The names and addresses of other relatives or persons with a significant interest in the patient's affairs are shown in the supporting documents.

This NOTIFICATION is to be sent to:

The Office of Care and Protection
Royal Courts of Justice
Belfast BT1 3JF

within fourteen days from first ascertainment of incapacity of the patient and of the informant being satisfied that notification of the case is appropriate pursuant to Article 107 of the Order.]

FORM 2:

[*Supplt. No. 13 (Aug. 1986)*]

FIRST APPLICATION FOR THE APPOINTMENT OF A CONTROLLER

(O. 109, r. 4(1))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

19 No.

IN THE MATTER OF_____

_____ A PATIENT

I

_____

of

_____

_____

apply to the Court for:

NOTES

Complete EITHER paragraph 1. OR paragraph 2. Delete the one which does not apply.

1. My own appointment as controller for the patient
   (*a*) I am not related to the patient*
   (*b*) I am the_____ of the patient (state relationship)*

2. the appointment of_____

*Delete whichever does not apply.

of_____

as controller for the patient_____

(*a*) He/She is the_____ of the patient (state relationship)*

DO NOT DELETE paragraph 3.

OR

Where any other order in addition to that at paragraphs 1, 2 and 3 is sought, a general form of application should be used.

3. the appointment of some other suitable person

Applicant's signature_____

Date_____

OR Solicitors for the applicant:

TO BE COMPLETED BY THE OFFICE,

THE COURT WILL CONSIDER THIS APPLICATION ON THE DAY
19 AT O'CLOCK

FORM 3:
GENERAL FORM OF APPLICATION
(O. 109, r. 4(1))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

19 No.

IN THE MATTER OF_____

_____ A PATIENT

I

_____

of_____

_____

_____

apply to the Court for an order that:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

and for any directions which are necessary as a result of my application.

Applicant's signature_____

Date_____

OR Solicitors for the applicant:

of:

TO BE COMPLETED BY THE OFFICE,
THE COURT WILL CONSIDER THIS APPLICATION ON THE DAY
19 AT O'CLOCK

NOTES

Where the application is one to which rule 13 or 14 applies, give details of your authority to make the application, e.g. Controller, Trustee, etc.

Give details of the order you are asking the court to make.

FORM 4:

CONSENT OF PROPOSED NEW TRUSTEE TO ACT
(O. 109, r. 31)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

19 No.

IN THE MATTER OF_____

_____ A PATIENT

I _____

of _____

_____

give my consent to:

(*a*) act as the trustee of the will of

or

(*b*) _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

NOTE:

If paragraph (a) does not apply delete and give details of what is being consented to in paragraph (b).

Signed _____

Date _____

I _____

of _____

_____

certify that the signature written above the signature of person mentioned in the above consent.

Signed _____

Date _____

FORM 5:
WITNESS SUMMONS
(O. 109, r. 43(1))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

19 No.

IN THE MATTER OF_____

_____A PATIENT

To_____

of_____

You are ordered to attend before

_____

at_____

_____

on the day of 19

at o'clock, to:

(*a*) give evidence in this matter

(*b*) bring with you and produce at the hearing the documents listed below;

_____

_____

_____

_____

_____

_____

_____

Date_____

THE SUMMONS WAS ISSUED AT THE REQUEST OF

_____

_____SOLICITORS FOR

THE_____of_____

_____

_____

FORM 6:
NOTICE OF APPEAL
(O. 109, r. 49(2))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

19 No.

IN THE MATTER OF_____

_____

I_____

of_____

_____

wish to appeal to a Judge against the order/decision* of the Master made in this matter on the day of 19 that:

NOTE

If you are appealing against only part of the order/decision write down which part.

_____

_____

_____

_____

_____

I intend to ask that the order/decision* may be:

(*a*) discharged*

(*b*) varied in the following way*

*Delete whichever does not apply

Give details of new order/decision you are asking to be made.

_____

_____

_____

_____

YOU WILL BE SENT NOTICE OF THE TIME, DATE AND PLACE OF THE HEARING OF THIS APPEAL

Signed_____ Appellant

Date_____

Solicitors for the Appellant_____

of_____

_____

[*Supplt. No. 13 (Aug. 1986)*]

FORM 7:

REQUEST FOR LEAVE TO GIVE SECURITY BY LODGMENT IN COURT

(O. 109, r. 52(2))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

19 No.

IN THE MATTER OF_____

_____ A PATIENT

I_____ Controller

for the above patient, of_____

_____

_____

NOTE

If the security is not money, give details of what is, and its value

ask the court to allow me to give my security to the court

(*a*) in the sum of £

(*b*) _____

_____

_____

_____

_____

_____

I agree that if the court decided that I have failed to pay or account to the patient's estate for any money or security which I have received on his/her behalf in carrying out my duties as controller, the money or security I have lodged with the court may immediately be transferred to the patient's account, or used as the court decides for the benefit of the patient; but if I prove that the loss, including any costs, is smaller than the amount of money or the value of the securities originally lodged, the balance will be returned to me.

Signed_____ Controller

Date_____]

ENDURING POWERS OF ATTORNEY FORMS

Form EP1
(Order 109 A. r. 2)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

ENDURING POWERS OF ATTORNEY (NORTHERN IRELAND) ORDER 1987

Notice of Intention to Apply for Registration

To _____
of _____
_____

TAKE NOTICE that I (we) _____
_____
of _____
_____
_____
_____
the attorney(s) of _____
(hereinafter called "the donor") of _____
_____
intend to apply to the court for registration of the enduring power of attorney appointing me (us) attorney(s) and made by the donor

on the _____ **19**____ .

1. You have 4 weeks from the day on which this notice is given to you to object in writing to the proposed registration of the power of attorney. Objections should be sent to the Court and should contain the following details:

(a) your name and address;
(b) if you are not the donor, the name and address of the donor;
(c) any relationship to the donor;
(d) the name and address of the attorney; and
(e) the grounds for objecting to the registration of the enduring power.

(a) Appendix E added by S.R. 1989 No. 79 with effect from 10.4.89

2. The grounds on which you may object are:

(a) that the power purported to have been created by the instrument is not valid as an enduring power of attorney;

(b) that the power created by the instrument no longer subsists;

(c) that the application is premature because the donor is not yet becoming mentally incapable;

(d) that fraud or undue pressure was used to induce the donor to make the power; or

(e) that the attorney is unsuitable to be the donor's attorney (having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor).

(Note: "the instrument" ***means the enduring power of attorney made by the donor which it is sought to register)***

3. You are informed that while the enduring power of attorney remains registered, you will not be able to revoke it until the Court confirms the revocation.

(Note: delete this part if the notice is addressed to a person other than the donor)

(Note: the notice should be signed by all the attorneys who are applying to register the enduring power of attorney)

Signed _____

Signed _____

Dated _____ 19 ____ .

Form EP2
(Order 109 A. r. 3)
IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

ENDURING POWERS OF ATTORNEY (NORTHERN IRELAND) ORDER 1987

Application for registration

THE ATTORNEY(S)

Full name _____

Address _____

_____

Date of birth _____ 19____ Occupation _____

Full name _____

Address _____

_____

Date of birth _____ 19____ Occupation _____

THE DONOR

Full name _____

Address as shown on the enduring power of attorney _____

_____

Present address - if different from that shown above _____

_____

I (We) the attorney(s) apply to register the enduring power of attorney made by the donor under the above Order on the _____ 19____ .

(Note: insert the date when the donor signed the enduring power of attorney)

I (We) have reason to believe that the donor is or is becoming mentally incapable.

I (We) have given notice in the prescribed form to the donor personally at

_____

_____

on the _____ 19 ____ .

(Note: the donor must be given the notice personally. It is not sufficient to post it to the donor)

[*Supplt. No. 17 (Dec. 1989)*]

I (We) have given notice in the prescribed form to the following relatives of the donor at the addresses and on the dates given below:
(Note: the date on which each notice was given must be stated)

Name	Address	Relationship	Date

This section only applies if one of two (or more) co-attorneys is making a sole application

I (We) have given notice in the prescribed form to my (our) co-attorney _____

_____

at _____

on the _____ 19_____ .

Relationship (if any) _____

The Enduring Power of Attorney accompanies this application.

A remittance for the registration fee accompanies this application.

I (We) certify that the above information is correct and that to the best of my (our) knowledge and belief I (we) have complied with the provisions of the Enduring Powers of Attorney (Northern Ireland) Order 1987 and of all the Rules and Regulations made under it.

(Note: the application should be signed by all the attorneys who are making the application)

(Note: this part must not pre-date the notices given)

Signed _____

Signed _____

Dated _____ 19_____

Address for service of documents _____

_____

Form EP3
(Order 109 A. r. 4)

[*Supplt. No. 17 (Dec. 1989)*]

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

ENDURING POWERS OF ATTORNEY (NORTHERN IRELAND) ORDER 1987

General Form of Application

In the matter of a power dated _____ 19____

given by _____ a donor

to _____ attorney(s)

I (We) _____

_____

of _____

_____

_____

apply for an order that _____

_____

_____

_____

_____

(Note: give details of the order that you are asking the Court to make)

and for any directions which are necessary as a result of my (our) application.

The grounds on which I (we) make this application are: _____

_____

_____

_____

_____

(Note: give details of the grounds on which you are asking the Court to make the order)

(Note: the application should be signed by all the applicants or their solicitors)

Signed _____

_____

Dated _____ 19____

Address for service of documents _____

_____

Form EP4

(Order 109 A. r.9(1))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

ENDURING POWERS OF ATTORNEY (NORTHERN IRELAND) ORDER 1987

Application for Search/Office Copy

I (We) _____

_____

of _____

_____

_____

apply to be informed by the Court whether an enduring power of attorney has been registered (or whether registration of an enduring power of attorney is pending) in the name of:

Note: give the full name (if known) of the person who is the subject of your enquiry

_____

_____

or in the alternative name of:

_____

_____

Address (if known) _____

Alternative address _____

I (We) enclose the prescribed fee of £ _____

Please supply me with an office copy of the power.

My (Our) reasons for requesting a copy from the Court are: _____

_____

_____

_____

It is not practical to obtain a copy from the attorney because: _____

_____

_____

_____

Signed _____

Dated _____ 19____

Form EP5
(Order 109 A. r. 9(1))
IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

ENDURING POWERS OF ATTORNEY (NORTHERN IRELAND) ORDER 1987

Certificate of Result of Search: 19___ No_____

To _____
of _____
Your reference _____

In reply to your enquiry dated _____ 19 ___

The following enduring power of attorney is registered against the donor's name given by you:
Donor's name _____
Attorney's name(s) _____
Power made by donor on _____ 19 ___
Registered on _____ 19 ___

OR

There is an application pending for registration of the following enduring power of attorney:
Donor's name _____
Attorney's name(s) _____
Power made by donor on _____ 19 ___

OR

There was an enduring power of attorney registered against the donor's name given by you but the registration has been cancelled (and revoked):
Donor's name _____
Attorney's name(s) _____
Power made by donor on _____ 19 ___
Registered on _____ 19 ___
Date cancelled (and revoked) _____ 19 ___

OR

There is no enduring power of attorney registered against the donor's name
_____ given by you.

Signed _____
Dated _____ 19 ___

Form EP6
(Order 109 A. r. 15)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

ENDURING POWERS OF ATTORNEY (NORTHERN IRELAND) ORDER 1987

Witness Summons

To _____
of _____
_____

You are ordered to attend before _____
at _____
_____
on the _____ 19__ at _____ o'clock

to:

- give evidence in this matter
- bring with you and produce at the hearing the documents listed below:

_____
_____
_____

Dated _____ 19 __

This summons was issued at the request of _____
_____
Solicitors for the _____
of _____
_____

[(**a**) APPENDIX F

ADOPTION FORMS]

[(**b**) APPENDIX G

MATTERS TO BE COVERED IN REPORTS AND ADDITIONAL INFORMATION FOR A CONVENTION ADOPTION APPLICATION]

(**a**) Appendix F revoked, with savings by S.R. 2003 No. 263 with effect from 1.6.03
(**b**) Appendix G revoked, with savings by S.R. 2003 No. 263 with effect from 1.6.03

[(a) APPENDIX H

Parental Order Forms

[(b) (Order 84A Rule 3(1))

Form 1

Originating Summons for a Parental Order

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

IN THE MATTER OF the Human Fertilisation and Embryology Act 2008

IN THE MATTER OF [ ] a child,
(*Enter the first name(s) and surname by which the child is known*).

We, the undersigned and
wishing to have a Parental Order made in respect of ,
(*Enter the first name(s) and surname of the child as shown in his/her birth certificate*)
a child, hereby give the following particulars in support of our application.

Part 1 – Particulars of the child

(a) The birth name of the child
(b) The child is a boy.....a girl..... (*please tick*)
(c) The child was born on the..... day of.....20 .....
(d) The address where the child was born.....
(e) The address where the child lives now .....
(f) The parental rights and duties relating to the child are vested in .....
(g) The name(s) of the child if a Parental Order is made.....

Part 2 – Particulars of the petitioners

1st petitioner

(a) Your full name .....
(b) Your occupation.....
(c) Are you a genetic parent of the child? Yes..... No..... (*please tick*)

2nd petitioner

(a) Your full name .....
(b) Your occupation.....
(c) Are you a genetic parent of the child? Yes..... No..... (*please tick*)

Both applicants

Your address is .....

(a) Appendix H inserted by S.R. 1995 No. 2 with effect from 02.02.95
(b) Form substituted by S.R. 2010 No. 381 with effect from 20.12.10

Part 3 – Particulars of birth parents

The birth mother

(a) Full name .....

(b) Full address .....

The other parent (if applicable)

(a) Full name .....

(b) Full address .....

Part 4 – Parental Agreement

(a) Does the birth mother agree to a Parental Order being made?
Yes.....No.....(*please tick*)

(b) Does the other parent, if applicable, agree to a Parental Order being made?
Yes.....No.....(*please tick*)

***The agreement of the birth mother and the other parent (where appropriate) is required, or must be dispensed with on one of the grounds in paragraph (d) below, before an order can be made.**

***The child must be at least six weeks old when the agreement is given.**

(c) Will you be asking the court to dispense with the agreement of the birth mother and any other parent(s)?
Yes.....No.....(*please tick*)
If yes please give the name(s) of the parent(s) whose agreement you wish to dispense with .....

(d) The grounds for dispensing with agreement are:
(i) The person(s) cannot be found .....
(ii) The person(s) are incapable of giving agreement .....
(*please tick as appropriate*)

Part 5 – General Information

(a) Has the child ever been looked after by the Regional Board, HSC trust or voluntary organisation? Yes .....No.....(please tick)
If yes
(i) Give the period during which this organisation has looked after the child
.....
(ii) Give details of the organisation
Name.....
Address .....

(b) Have there been, or are there, any court proceedings pending or in progress which concern this child?
Yes.....No.....(*please tick*)
If yes, give details of the proceedings.....
Name of court .....
Case number of proceedings (if known).....

(c) Have there been, or are there, any court proceedings pending or in progress which concern any other children of the applicants' family?
Yes.....No.....(*please tick*)
If yes, give details of the proceedings.....
Name of court .....
Case number of proceedings (if known).....

(d) Did you attend a licensed treatment centre? Yes.....No .....(*please tick*)
If yes, give details .....

Part 6 – Particulars of Respondents

The respondent(s) will be:—

(a) the birth parents (except where the petitioners seek to dispense with their consent)

Part 7 – Declaration

We the petitioners declare that:

(a) we are married to each other and our marriage certificate is attached; or
we are civil partners and our civil partnership certificate is attached; or
we are living as partners in an enduring family relationship and are not within the prohibited degrees of relationship to each other,

(b) the child's home is with us,

(c) we are/one of us is/domiciled in a part of the United Kingdom or in the Channel Islands or the Isle of Man,

(d) no money or benefit (other than for expenses reasonably incurred) has been received or given by us for or in consideration of the matters set out in section 54(6) of the Human Fertilisation and Embryology Act 2008,

(e) a copy of the child's birth certificate is attached, and

(f) the information which we have given in this form is correct and complete to the best of our knowledge.

Signed

1st petitioner..... date .....

2nd petitioner ..... date .....

Notes

Part 7 Two people are within the prohibited degrees of relationship with each other if they share the following relationship: adoptive child; adoptive parent; child; former adoptive child; former adoptive parent; grandparent; grandchild; parent; parent's sibling; sibling (brother, sister, half-brother, half-sister), sibling's child.]

FORM 2

Agreement to a Parental Order

(Order 84A Rule 6(1))

(*Heading as in Form 1*)

If you are in any doubt about your legal rights you should obtain legal advice before signing this form

WHEREAS an application is to be/has been made by

and (insert the names of the applicants) for a parental order in respect of

(*Enter the first name(s) and surname of the child as known to the person giving agreement*) a child;

AND WHEREAS the child is the person to whom the birth certificate attached marked 'A' relates;

(AND WHEREAS the child is at least six weeks old;)

We, the undersigned of being the birth mother and the birth father (where appropriate) of the child hereby state as follows:—

(1) We understand that the effect of a parental order will be to deprive us permanently of the parental rights and duties relating to the child and to vest them in the applicants; and in particular we understand that, if an order is made, we shall have no right to see or get in touch with the child or to have him/her returned to us.

(2) We further understand that the court cannot make a parental order without the agreement of the birth mother and, where appropriate, the birth father of the child unless the court dispenses with an agreement on the ground that the person concerned cannot be found or is incapable of giving agreement.

(3) We further understand that when the application for a parental order is heard, this document may be used as evidence of our agreement to the making of the order unless we inform the court that we no longer agree.

(4) We hereby freely, and with full understanding of what is involved, agree to the making of a parental order in pursuance of the application.

(5) As far as we know, the only person(s) or body(ies) who has/have taken part in the arrangements in respect of the proposed parental order is/are

(*delete if inapplicable*).

(6) We have not received or given any money or other benefit (other than for expenses reasonably incurred) for, or in consideration of—

(*a*) the making of the parental order,

(*b*) any agreement required,

(*c*) the handling over of the child to the applicants, or

(*d*) the making of any arrangements with a view to the making of the parental order

(*delete if inapplicable*)

or

as authorised by the court, we have received or given money or other benefit as follows (*delete if inapplicable*)

Signatures:

This form, duly completed, was signed by the said and before me at ..... on the ..... day of 20 .

Signature:
Address:
Description:

Notes

Paragraph 3: Notice will be given of the hearing of the application and of the court by which it is to be heard. After the making of the application a parent or guardian cannot remove the child from the actual custody of the person with whom the child has his home except with the leave of the court.

Paragraph 5: Enter the name and address of any body or individual who took part in the arrangements in respect of the proposed parental order.

Witness of statement: In Northern Ireland the document should be witnessed by a Lay Magistrate. In Scotland, it should be witnessed by a Justice of the Peace or a Sheriff, and in England and Wales by a Justice of the Peace. Outside the United Kingdom it should be witnessed by a person authorised by law in the place where the document is signed to administer an oath for any judicial or legal purpose, a British consular officer, a notary public, or, if the person executing the document is serving in the regular armed forces of the Crown, an officer holding a commission in any of those forces.

FORM 3

Notice of Hearing of an Application for a Parental Order

(Order 84A Rule 7(3))

(*Heading as in Form 1*)

To of

WHEREAS an application for a parental order in respect of

, (*Enter the name(s) and surname of the child as shown in the originating summons*) a child of the sex born on the .....day of ..... 20 , has been made by

and

(*Enter the names of the applicants*).

AND WHEREAS was appointed guardian ad litem of the child;

TAKE NOTICE:—

1. That the said application will be heard before the judge at on the day of 20 , at o'clock and that you may then appear and be heard on the question whether a parental order should be made.

2. That you are not obliged to attend the hearing unless you wish to do so or the court notifies you that your attendance is necessary.

3. That while the application is pending, a parent or guardian of the child must not, except with the leave of the court, remove the child from the actual custody of the person with whom the child has his home.

4. That the court has been requested to dispense with (your) (the birth parents') agreement to the making of an order on the ground(s) that
and a statement of the facts on which the applicants intend to rely is attached).

If you wish to object to the making of the order you should within 14 days complete the attached Form and return to the Master (Care and Protection), High Court.

Dated the day of 20

Signed

.....Solicitor for the Applicant or
Master where no Solicitor acting

[A copy of this form must be sent to:—

(*a*) the birth parents;

(*b*) any persons or body in whom the parental rights and duties in relation to the child are vested at the time of application;

(*c*) any Board, HSS trust or voluntary organisation that has at any time provided accommodation for the child.]

FORM 4

Notice of Objection to the Making of a Parental Order

(Order 84A Rule 7(5))

To the Master (Care and Protection), High Court.

I received the Notice of the Hearing of an application for a parental order in respect of a child of the sex born on the day of 20 .

I intend to object to the making of such an order and wish to be heard on the hearing of the application. My objections may be summarised as follows:

(Date) Signature

Address

FORM 5

Parental Order

(Order 84A Rule 11)

(*Heading as in Form 1*)

WHEREAS an application has been made by
of whose occupation is
and whose occupation is
for a parental order in respect of , a child
of the sex, the child of (and
);

AND THE COURT BEING SATISFIED THAT the conditions set out in [(a) section 54 of the Human Fertilisation and Embryology Act 2008] are met;

[IT IS ORDERED that the consent of
(and , be and the same is hereby dispensed with;)]

IT IS ORDERED that a parental order be made in respect of the child [and that the parental rights and duties relating to the child (including the legal custody of the child) be vested in the applicants].

(AND AS REGARDS COSTS, it is ordered that ;)

(AND WHEREAS it has been proved to the satisfaction of the court that the child was born on the day of 20 , (and is identical with
to whom the entry numbered made on the day of
20 , in the Register of Births for the registration district of
in the county of relates;)

(AND WHEREAS the name or names and surname stated in the application as those by which the child is to be known are ;)

IT IS DIRECTED that the Registrar General shall make in the Parental Order Register an entry in accordance with Article 51 of, and Schedule 2 to, the Adoption (Northern Ireland) Order 1987, recording the particulars set out in this Order;

AND IT IS FURTHER DIRECTED that the aforesaid entry in the Register of Births be marked with the words 'Re-registered by the Registrar General pursuant to Article 51(4) of the Adoption (Northern Ireland) Order 1987 as applied with modifications by the [(a) Human Fertilisation and Embryology (Parental Orders) Regulations 2010].

Dated this day of 20 .

(a) Words substituted by S.R. 2010 No. 381 with effect from 20.12.10

FORM 6

Application, in Respect of Removal of, or for Return of, Child

(Order 84A Rule 12(1))

(Heading as in Form 1)

WHEREAS an application for a parental order in respect of , a child of the sex born on the day of 19 , has been made by and of

AND WHEREAS has been appointed guardian ad litem of the child;

TAKE NOTICE that I/We , (description) of , hereby make application for

(1. leave of the court under Article 28(1) of the Adoption (Northern Ireland) Order 1987, to remove the child from the actual custody of);

(2. an order of the court directing , of , who removed the child from my/our actual custody in breach of Article 28 to return the child to me/us);

(3. an order of the court directing , of , not to remove the child from my/our custody in breach of Article 28);

THE GROUNDS on which I/We rely in support of this application are

Signed

Dated

Notes

Paragraph 3: The order may only be made if the applicant for the order has reasonable grounds for believing that the person named intends to remove the child.]

SCHEDULE 2

PART I

Rules and Orders Revoked	*References*
Rules of the Supreme Court (Northern Ireland) 1936	S.R. & O. 1936 No. 70 (II p. 2559)
Rules of the Supreme Court (Northern Ireland) dated March 30, 1938	S.R. & O. 1938 No. 280 (II p. 3197)
Rules of the Supreme Court (Northern Ireland) dated January 12, 1939.	S.R. & O. 1939 No. 34 (II p. 3139)
Rules of the Supreme Court (Northern Ireland) dated August 31, 1939.	S.R. & O. 1939 No. 848 (II p. 3140)
Rules of the Supreme Court (Northern Ireland) dated August 31, 1939.	S.R. & O. 1939 No. 1043 (II p. 3165)
Orders of the Lord Chief Justice of Northern Ireland under section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act, 1939 dated June 12, 1940, July 31, 1940 and October 31, 1940.	S.R. & O. 1940 No. 1985/2 (I p. 1014)
Orders of the Lord Chief Justice of Northern Ireland dated February 4, 1942, April 16, 1942 and October 20, 1942.	S.R. & O. 1942 No. 2255/2 (I p. 817)
Order of the Lord Chief Justice of Northern Ireland under section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act, 1939 dated June 25, 1943.	S.R. & O. 1943 No. 944 (I p. 946)
Order of the Lord Chief Justice of Northern Ireland under section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act, 1939 dated October 14, 1943.	S.R. & O. 1943 No. 1504 (I p. 957)
Order of the Lord Chief Justice of Northern Ireland under section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act, 1939 dated January 28, 1944	S.R. & O. 1944 No. 117 (I p. 988)
Order of the Lord Chief Justice of Northern Ireland under section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act, 1939 dated February 29, 1944	S.R. & O. 1944 No. 268 (I p. 990)

Rules and Orders Revoked	*References*
Order of the Lord Chief Justice of Northern Ireland under section 2(5) of the Northern Ireland Land Purchase (Winding Up) Act, 1935 and section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act, 1939 dated May 4, 1944.	S.R. & O. 1944 No. 572 (I p. 991)
Order of the Lord Chief Justice of Northern Ireland under section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act, 1939 dated September 9, 1944.	S.R. & O. 1944 No. 1106 (I p. 1002)
Order of the Lord Chief Justice of Northern Ireland under section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act 1939 dated October 27, 1944.	S.R. & O. 1944 No. 1264 (I p. 1008)
Order of the Lord Chief Justice of Northern Ireland under section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act, 1939 dated January 18, 1945.	S.R. & O. 1945 No. 110 (I p. 1131)
Order of the Lord Chief Justice of Northern Ireland under section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act, 1939 dated July 30, 1945	S.R. & O. 1945 No. 958 (I p. 1132)
Order of the Lord Chief Justice of Northern Ireland under section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act, 1939 dated February 1, 1946.	S.R. & O. 1946 No. 187 (I p. 1586)
Order of the Lord Chief Justice of Northern Ireland under section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act, 1939 dated March 21, 1946.	S.R. & O. 1946 No. 416 (I p. 1587)
Order of the Lord Chief Justice of Northern Ireland under section 1(4) of the Administration of Justice (Emergency Provisions) (Northern Ireland) Act, 1939 dated May 31, 1946.	S.R. & O. 1946 No. 818 (I p. 1588)

Rules and Orders Revoked	*References*
The Supreme Court Rules (Northern Ireland) Order in Council, 1947.	S.R. & O. 1947 No. 2661 (1 p. 2098)
Supreme Court Rules (Exchanges Control) (Northern Ireland) Order in Council, 1948.	S.R. & O. 1948 No. 540 (I p. 4060)
The Supreme Court Rules (Northern Ireland) Order in Council, 1948.	Belfast Gazette dated 30 July, 1948.
The Supreme Court Rules (Northern Ireland) Order in Council, 1949.	Belfast Gazette dated 15 April, 1949.
The Supreme Court Rules (Northern Ireland) (No. 2) Order, 1949.	Belfast Gazette dated 9 December, 1949.
The Supreme Court Rules (Northern Ireland) (No. 2) Order, 1952.	Belfast Gazette dated 1 February, 1952.
The Supreme Court Rules (Northern Ireland) (No. 1) Order, 1952.	Belfast Gazette dated 1 February, 1952.
The Supreme Court Rules (Northern Ireland) Order in Council, 1953.	Belfast Gazette dated 16 October, 1953.
The Supreme Court Rules (Northern Ireland) Order in Council, 1954.	Belfast Gazette dated 23 April, 1954.
The Supreme Court Rules (Northern Ireland) (No. 2) Order in Council, 1954	Belfast Gazette dated 25 June, 1954.
The Supreme Court Rules (Northern Ireland) (No. 3) Order in council, 1954.	Belfast Gazette dated 25 June, 1954.
The Supreme Court Rules (Northern Ireland) Order in Council, 1955.	S.R. & O. (N.I.) 1955 No. 73 (p. 525)
The Supreme Court Rules (Northern Ireland) Order in Council, 1956.	S.R. & O. (N.I.) 1956 No. 52 (p. 593)
The Supreme Court Rules (Northern Ireland) (No. 2), Order in Council, 1956.	S.R. & O. (N.I.) 1956 No. 189 (p. 595)
The Supreme Court Rules (Northern Ireland) Order in Council, 1957.	S.R. & O. (N.I.) 1957 No. 104 (p. 844)
The Supreme Court Rules (Northern Ireland) (No. 2) Order in Council, 1957.	S.R. & O. (N.I.) 1957 No. 105 (p. 847)
The Supreme Court Rules (Northern Ireland) (No. 3) Order in Council, 1957	S.R. & O. (N.I.) 1957 No. 112 (p. 850)

Rules and Orders Revoked	*References*
The Supreme Court Rules (Northern Ireland) Order in Council, 1958.	S.R. & O. (N.I.) 1958 No. 55 (p. 562)
The Supreme Court Rules (Northern Ireland) Order in Council, 1959.	S.R. & O. (N.I.) 1959 No. 5 (p. 9)
The Supreme Court Vacations (Northern Ireland) Order in Council, 1959.	S.R. & O. (N.I.) 1959 No. 6 (p. 11)
The Supreme Court Rules (Northern Ireland) (No. 2) Order in Council, 1959.	S.R. & O. (N.I.) 1959 No. 7 (p. 12)
The Supreme Court Rules (Northern Ireland) (No. 3) Order in Council, 1959.	S.R. & O. (N.I.) 1959 No. 115 (p. 338)
The Supreme Court Rules (Northern Ireland) Order in Council, 1960.	S.R. & O. (N.I.) 1960 No. 82 (p. 261)
The Supreme Court Rules (Northern Ireland) (No. 2) Order in Council, 1960.	S.R. & O. (N.I.) 1960 No. 108 (p. 370)
The Supreme Court Rules (Northern Ireland) (No. 2) Order in Council, 1961.	S.R. & O. (N.I.) 1961 No. 152 (p. 609)
The Supreme Court Rules (Northern Ireland) Order in Council, 1962.	S.R. & O. (N.I.) 1962 No. 88 (p. 381)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1963.	S.R. & O. (N.I.) 1963 No. 61 (p. 196)
The Rules of the Supreme Court (Northern Ireland) (No. 2) 1963.	S.R. & O. (N.I.) 1963 No. 120 (p. 415)
The Rules of the Supreme Court (Northern Ireland) (No. 3) 1963.	S.R. & O. (N.I.) 1963 No. 191 (p. 644)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1964.	S.R. & O. (N.I.) 1964 No. 17 (p. 62)
The Rules of the Supreme Court (Northern Ireland) (No. 2) 1964.	S.R. & O. (N.I.) 1964 No. 18 (p. 75)
The Rules of the Supreme Court (Northern Ireland) (No. 3) 1964.	S.R. & O. (N.I.) 1964 No. 19 (p. 77)
The Rules of the Supreme Court (Northern Ireland) (No. 4) 1964.	S.R. & O. (N.I.) 1964 No. 149 (p. 669)
The Rules of the Supreme Court (Northern Ireland) (No. 5) 1964.	S.R. & O. (N.I.) 1964 No. 164 (p. 802)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1965.	S.R. & O. (N.I.) 1965 No. 18 (p. 58)

Rules and Orders Revoked	*References*
The Rules of the Supreme Court (Northern Ireland) (No. 2) 1965.	S.R. & O. (N.I.) 1965 No. 115 (p. 416)
The Rules of the Supreme Court (Northern Ireland) (No. 3) 1965.	S.R. & O. (N.I.) 1965 No. 134 (p. 485)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1966.	S.R. & O. (N.I.) 1966 No. 1 (p. 1)
The Rules of the Supreme Court (Northern Ireland) (No. 2) 1966.	S.R. & O. (N.I.) 1966 No. 35 (p. 124)
The Rules of the Supreme Court (Northern Ireland) (No. 3) 1966.	S.R. & O. (N.I.) 1966 No. 112 (p. 345)
The Rules of the Supreme Court (Northern Ireland) (No. 4) 1966.	S.R. & O. (N.I.) 1966 No. 149 (p. 466)
The Rules of the Supreme Court (Northern Ireland) (No. 5) 1966.	S.R. & O. (N.I.) 1966 No. 287 (p. 927)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1967.	S.R. & O. (N.I.) 1967 No. 76 (p. 249)
The Rules of the Supreme Court (Northern Ireland) (No. 2) 1967.	S.R. & O. (N.I.) 1967 No. 170 (p. 619)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1968.	S.R. & O. (N.I.) 1968 No. 150 (p. 581)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1969.	S.R. & O. (N.I.) 1969 No. 1 (p. 1)
The Rules of the Supreme Court (Northern Ireland) (No. 2) 1969.	S.R. & O. (N.I.) 1969 No. 177 (p. 698)
The Rules of the Supreme Court (Northern Ireland) (No. 3) 1969.	S.R. & O. (N.I.) 1969 No. 187 (p. 763)
The Rules of the Supreme Court (Northern Ireland) (No. 4) 1969.	S.R. & O. (N.I.) 1969 No. 288 (p. 1277)
The Rules of the Supreme Court (Northern Ireland) (No. 5) 1969.	S.R. & O. (N.I.) 1969 No. 325 (p. 1491)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1970.	S.R. & O. (N.I.) 1970 No. 163 (p. 797)
The Rules of the Supreme Court (Northern Ireland) No. 1) 1971.	S.R. & O (N.I.) 1971 No. 39 (p. 361)
The Rules of the Supreme Court (Northern Ireland) (No. 2) 1971.	S.R. & O. (N.I.) 1971 No. 153 (p. 734)
The Rules of the Supreme Court (Northern Ireland) (No. 3) 1971.	S.R. & O. (N.I.) 1971 No. 219 (p. 1037)

Rules and Orders Revoked	*References*
The Rules of the Supreme Court (Northern Ireland) (No. 4) 1971.	S.R. & O. (N.I.) 1971 No. 318 (p. 1478)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1972	S.R. & O. (N.I.) 1972 No. 1 (p. 1)
The Rules of the Supreme Court (Northern Ireland) (No. 2) 1972.	S.R. & O. (N.I.) 1972 No. 64 (p. 206)
The Rules of the Supreme Court (Northern Ireland) (No. 3) 1972.	S.R. & O. (N.I.) 1972 No. 151 (p. 891)
The Rules of the Supreme Court (Northern Ireland) (No. 4) 1972.	S.R. & O. (N.I.) 1972 No. 316 (p. 1499)
The Rules of the Supreme Court (Northern Ireland) (No. 5) 1972.	S.R. & O. (N.I.) 1972 No. 317 (p. 1509)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1973.	S.R. & O. (N.I.) 1973 No. 39 (I p. 225)
The Rules of the Supreme Court (Northern Ireland) (No. 2) 1973.	S.R. & O. (N.I.) 1973 No. 515 (II p. 3034)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1974.	S.R. 1974 No. 59 (I p. 151)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1975.	S.R. 1975 No. 31 (I p. 164)
The Rules of the Supreme Court (Northern Ireland) (No. 2) 1975.	S.R. 1975 No. 50 (I p. 234)
The Rules of the Supreme Court (Northern Ireland) (No. 3) 1975.	S.R. 1975 No. 178 (II p. 945)
The Rules of the Supreme Court (Northern Ireland) (No. 4) 1975.	S.R. 1975 No. 222 (II p. 1102)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1976.	S.R. 1976 No. 123 (I p. 508)
The Rules of the Supreme Court (Northern Ireland) (No. 2) 1976.	S.R. 1976 No. 219 (I p. 1011)
The Rules of the Supreme Court (Northern Ireland) (No. 3) 1976.	S.R. 1976 No. 363 (II. p. 1752)
The Rules of the Supreme Court (Northern Ireland) (No. 4) 1976.	S.R. 1976 No. 407 (II p. 2252)
The Rules of the Supreme Court (Northern Ireland) (No. 1) 1977.	S.R. 1977 No. 71 (I p. 212)

Rules and Orders Revoked	*References*
The Commissioners for Oaths (Fees) Rules, 1977.	S.R. 1977 No. 348 (II p. 1818)
The Rules of the Supreme Court (Northern Ireland) (Convention Adoptions etc.) 1978.	S.R. 1978 No. 128 (I p. 378)
The Rules of the Supreme Court (Northern Ireland) (Capital Transfer Tax Appeals) 1978.	S.R. 1978 No. 180 (I p. 586)
The Rules of the Supreme Court (Northern Ireland) (Miscellaneous) 1978.	S.R. 1978 No. 181 (I p. 590)
The Rules of the Supreme Court (Northern Ireland) (Sittings and Vacations) 1978.	S.R. 1978 No. 287 (II p. 982)
The Rules of the Supreme Court (Northern Ireland) (Transitional Rules) 1979.	S.R. 1979 No. 86 (I p. 296)
The Rules of the Supreme Court (Northern Ireland) (Amendment No. 1) 1979.	S.R. 1979 No. 205
The Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 1979	S.R. 1979 No. 206
The Rules of the Supreme Court (Northern Ireland) (Amendment No. 3) 1979	S.R. 1979 No. 431
The Rules of the Supreme Court (Northern Ireland) (Amendment No. 4) 1979.	S.R. 1979 No. 432
The Rules of the Supreme Court (Northern Ireland) (Amendment No. 5) 1979.	S.R. 1979 No. 433
The Rules of the Supreme Court (Northern Ireland) (Amendment No. 6) 1979.	S.R. 1979 No. 444
The Rules of the Supreme Court (Northern Ireland) (Amendment No. 7) 1979.	S.R. 1979 No. 445
The Rules of the Supreme Court (Northern Ireland) (Miscellaneous) 1980.	S.R. 1980 No. 255

Directions of Probate Judge under section 20(2) of the Administration of Estates Act (N.I.) 1955	*References*
Directions dated 15th February 1956	S.R. & O. (N.I.) 1956 No. 29 (p. 217)
Directions dated 16th January 1969	S.R. & O. (N.I.) 1969 No. 28 (p. 159)

ORDER 65

The revocations in this Schedule shall not affect rules 19 and 21 of Order 65 of the Rules of the Supreme Court (Northern Ireland) 1936 or Appendix 8 thereto in their application to costs incurred in relation to business done before 1st January 1981.

SCHEDULE 2

PART II

Column 1 *Excepted provisions*	Column 2 *Modifications*
Rules of the Supreme Court (Northern Ireland) 1936	
Order 73	None
Order 74	(*a*) In rule 1, for the words "the Bank as defined in Order 91, rule 1" there shall be substituted the words "the Governor and Company of the Bank of Ireland". (*b*) After rule 10 there shall be inserted the following rule— "*Jurisdiction of Master (Bankruptcy) in chambers* 10A.—(1) The Master (Bankruptcy) shall have power to transact all such business and exercise all such jurisdiction as may be transacted and exercised by a master under Order 32, rule 11, of the Rules of the Supreme Court (Northern Ireland) 1980. (2) An order or decision of the Master (Bankruptcy) under this rule shall be subject to appeal in accordance with Order 58, rule 1, of the Rules of the Supreme Court (Northern Ireland) 1980". (*c*) In rule 10(5), for the words "Order 96, rule 1" there shall be substituted the words "Order 58, rule 1, of the Rules of the Supreme Court (Northern Ireland) 1980". (*d*) In rule 89(2) the words "shall be paid according to the scale of remuneration provided by rule 57 of Order 65 and such sums" shall be deleted.
Order 87	None
Order 88	(*a*) In rule 1(1)— (i) for the definition of "the Court" there shall be substituted the words " 'the Court' means the High Court and includes the Master (Bankruptcy) when exercising the powers of the Court";

Column 1 *Excepted provisions*	Column 2 *Modifications*
Rules of the Supreme Court (Northern Ireland) 1936. Order 88 (*contd.*)	(ii) for the definition of "office of the Court" there shall be substituted the words, " 'office of the Court' means the Bankruptcy and Companies Office"; (iii) for the definition of "Official Assignee", there shall be substituted the words " 'Official Assignee' means the Official Assignee for bankruptcy for Northern Ireland or an Assistant Official Assignee for bankruptcy for Northern Ireland". (*b*) In rule 3, for the words "Order 64, rules 2, 3 and 13", there shall be substituted the words "Order 3, rules 2 and 4 of the Rules of the Supreme Court (Northern Ireland) 1980". (*c*) In rule 9, paragraph (3) shall be revoked. (*d*) After rule 17(5) there shall be inserted the following paragraph:— "(5A) Any document service of which is effected personally or by delivery after twelve noon on a Saturday or after four o'clock in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Saturday or on the day following that other weekday, as the case may be". (*e*) In rule 27, for paragraphs (1) and (2) there shall be substituted the following paragraphs:— "(1) Order 41 of the Rules of the Supreme Court (Northern Ireland) 1980 shall apply. (2) Every affidavit must be filed in the office of the Court.

Column 1 *Excepted provisions*	Column 2 *Modifications*
Rules of the Supreme Court (Northern Ireland) 1936.	
Order 88 (*contd.*)	(2A) The Official Assignee shall have authority to administer oaths and take affidavits for the purpose of proceedings under the Acts or this Order". (*f*) In rule 197, for paragraph (1) there shall be substituted the following paragraph:— "(1) Subject to rule 198, Order 62 of the Rules of the Supreme Court (Northern Ireland) 1980 shall apply to the taxation of all costs incurred in proceedings under the Acts or this Order". (*g*) After rule 198(1) there shall be inserted the following paragraph:— "(1A) The costs of a case to counsel (except case to advise proofs) or of a consultation or conference with counsel shall not be allowed against the estate without the previous order of the Court."
Appendix Q, Part I	None
Appendix Y, Part I	None

SCHEDULE 3

Column 1 *Provision*	Column 2 *Extent of repeal or revocation*
County Courts (Northern Ireland) Order 1980 (S.I. 1980 No. 397 (N.I. 3)	Paragraph (2) of Article 60
Criminal Appeal (Northern Ireland) Rules 1968	Rules 8, 9, 10 and 11
(S.R. & O. (N.I.) 1968 No. 218)	Forms 8, 9, 10, 11, 12 and 13 in the Schedule

EXPLANATORY NOTE

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

These Rules represent the final stage of the complete revision of the Rules of the Supreme Court (Northern Ireland) 1936, which began with the Rules of the Supreme Court (Transitional Rules) 1979.

The aim of the Rules Committee has been to assimilate the revised Rules to the Rules of the Supreme Court 1965, which regulate the procedure in the High Court and Court of Appeal in England and Wales, while taking account of the differences in the law and practice in Northern Ireland. The numeration and subject matter generally correspond and the note in square brackets at the end of a rule in the several Orders refers to a rule in the equivalent Order of the 1965 Rules (except in Order 97 (non-contentious probate) where the reference is to a rule in the Non-Contentious Probate Rules 1954).

The more important differences are:

Order 1. (interpretation etc.) Part II of this Order provides for the distribution of business amongst Chancery, Queen's Bench and Family Divisions of the High Court and the assignment of business to the various Departments of the Supreme Court.

Order 18. (pleadings). The times for service of pleadings remain longer in Northern Ireland than in England and Wales. The rule that pleadings may be served in the Long Vacation is preserved.

Order 24. (discovery). In the absence of agreement, discovery in Northern Ireland is subject to an order of the Court.

Order 25. No order corresponding to Order 25 of RSC 1965 (summons for directions) has been made, as this procedure has never been adopted in Northern Ireland.

Orders 45-50. (Enforcement of judgments and orders) in RSC 1965 have been considerably modified to take account of the existence in Northern Ireland of the Enforcement of Judgments Office. No Order 49 (which in England and Wales deals with garnishee proceedings) has been made.

Order 91. (non-contentious probate). In England the corresponding rules are not made by the Supreme Court Rules Committee.

The existing Orders of the 1936 Rules relating to Adoption (Order 73), Company Winding-Up (Order 74), Land Purchase (Order 87) and Bankruptcy (Order 88) are preserved.

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