1989 No. 79

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment) 1989

Made . . . . . *13th March 1989*

Coming into operation . . *10th April 1989*

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 procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers as follows:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment) 1989 and shall come into operation on 10th April 1989.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court (Northern Ireland) 1980(**b**).

Enduring powers of attorney

2. The Rules of the Supreme Court (Northern Ireland) 1980 shall be amended by inserting the Order and Appendix set out in Schedules 1 and 2 respectively in the places appropriate to their number and letter.

Business of the Supreme Court

3. In Order 1, for rule 12(*d*) there shall be substituted—

"(*d*) all jurisdiction in relation to patients under the Mental Health (Northern Ireland) Order 1986 and proceedings under the Enduring Powers of Attorney (Northern Ireland) Order 1987.".

(**a**) 1978 c. 23
(**b**) S.R. 1980 No. 346

Dated: 12th January 1989.

Brian Hutton
John MacDermott
Donald Murray
J. P. Higgins
R. D. Carswell
Brian Kerr
Owen Catchpole
Aidan A. Canavan

I concur, *MacKay of Clashfern,* C.

Dated: 13th March 1989.

SCHEDULE 1 Rule 2

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(**a**);

"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) 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.