1988 No. 221

EMERGENCY PROVISIONS

Emergency Provisions (Compensation) Rules (Northern Ireland) 1988

Made	*1st June 1988*
Coming into operation . .	*1st July 1988*

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

PART I

GENERAL

Citation, commencement, revocation and saving

1.—(1) These rules may be cited as the Emergency Provisions (Compensation) Rules (Northern Ireland) 1988 and shall come into operation on 1st July 1988.

(2) The Emergency Provisions (Compensation) (Northern Ireland) Rules 1982(**b**) are hereby revoked except in relation to any question as to compensation which before 1st July 1988 has been referred to the county court or an arbitrator appointed by the court in accordance with section 28(2) and (3) of the Act as originally enacted.

Interpretation

2.—(1) In these rules—

"the Act" means the Northern Ireland (Emergency Provisions) Act 1978;

"respondent" means the Secretary of State;

"the chief clerk" means the chief clerk of the county court for the division in which the application is being made;

(2) Any reference in these rules to a rule, paragraph or schedule by number is a reference to that rule, paragraph or schedule as numbered in these rules.

(3) Any reference to a form by number is a reference to the form as numbered in the Schedule to these rules and shall include a reference to a form to the like effect with such variations as the circumstances may require.

(**a**) 1978 c. 5 as substituted by section 12 of 1987 c. 30
(**b**) Printed at page 1622 in Part II of the 1982 Statutory Rules

(4) Without prejudice to section 7 of the Interpretation Act 1978(**a**), service of any document under these rules may be by registered post or by the recorded delivery service, using the advice of delivery form, or in any of the ways in which a civil bill may be served.

PART II

APPEALS UNDER SECTION 28 OF THE ACT

Lodging of appeals under section 28 of the Act

3.—(1) Subject to any directions under Article 4 of the County Courts (Northern Ireland) Order 1980, appeals under section 28(4) or section 28(5) of the Act shall be heard at such times as the Lord Chancellor may appoint under Article 6 of that Order and at the equity sittings of the county court having jurisdiction in the division in which the property taken, occupied, destroyed, damaged or otherwise interfered with is situated or, in the case of moveable property, was situated at the time when the act giving rise to the claim for compensation was committed.

(2) Such appeals shall be heard at the sitting for which the appointed entry day occurs next after a period of 28 days from the date on which the appeal is lodged under paragraph (4).

(3) An appeal under section 28(4) of the Act shall be by notice in Form 1 and an appeal under section 28(5) of the Act shall be by notice in Form 2 or 3 as may be appropriate, and shall state the sitting at which the appeal is to be heard in accordance with paragraph (2) and the appellant shall serve a copy thereof on the Secretary of State at the address of the department dealing with claims for compensation under the Act and on any person having an estate or interest in the property in respect of which an application for compensation has been made.

(4) The appellant shall at the time of service under paragraph (3) lodge the appeal by delivering the notice to the chief clerk at his office duly endorsed as to service and shall attach to it—

(*a*) any certificate of posting;

(*b*) where the appeal is under section 28(4) of the Act, a copy of the notice under section 28(4) or, where the appeal is under section 28(5) of the Act, a copy of the notice under section 28(5)(*a*) or (*b*), as the case may be, endorsed in every case with a certificate as to the date of service of the notice on him; and

(*c*) a copy of the application made to the Secretary of State under section 28(2) of the Act;

and the chief clerk shall forthwith upon receipt of the notice enter the appeal for hearing at the sitting specified in paragraph (2).

(5) The notice of appeal shall specify the grounds of appeal and, where the appeal is under section 28(5), shall in relation to any item compensation for which is disputed, state the ground of appeal in relation to that item.

(6) Nothing in this rule shall prevent the court from considering grounds of appeal not referred to in the notice or from considering items other than those referred to in it.

(**a**) 1978 c. 30

(7) A certificate for the purposes of section 25 of the Crown Proceedings Act 1947(**a**) of an order allowing an appeal under section 28(4) of the Act shall be in Form 4 and a certificate for those purposes of an order allowing an appeal against the decision of the Secretary of State to award the amount of compensation specified in a notice under section 28(5)(*a*) shall be in Form 5 or against his decision to refuse an application for compensation stated in a notice under section 28(5)(*b*) shall be in Form 6.

(8) An order dismissing an appeal under section 28(4) of the Act shall be in Form 7.

(9) An order dismissing an appeal against the decision of the Secretary of State to award the amount of compensation specified in a notice under section 28(5)(*a*) of the Act shall be in Form 8.

(10) An order dismissing an appeal against the decision of the Secretary of State to refuse an application for compensation stated in a notice under section 28(5)(*b*) of the Act shall be in Form 9.

Payment into court by respondent, acceptance etc.

4.—(1) The respondent may at any time before entry day make a payment into court by lodging in court—

(*a*) such sum of money as the respondent thinks sufficient to satisfy the appellant's claim to compensation under section 28 of the Act or so much of it as is the subject of the appeal; and

(*b*) a written undertaking to pay to the appellant any costs or expenses reasonably incurred by him between the date on which the respondent served on him notice of his decision under section 28(5)(*a*) or (*b*) of the Act and the date of the lodgment.

(2) Notice to the appellant in Form 10 of payment into court by the respondent shall be served on the appellant and a copy on the chief clerk at the time of the lodgment and a copy shall also be lodged at the County Court Bank headed "Criminal Injuries Account."

(3) Money paid into court shall remain in court subject to further order unless the appellant elects to take it out as provided by this rule.

(4) The appellant may, at any time before the commencement of the sittings at which the appeal is to be heard or subsequently with the consent of the respondent, serve on the respondent and lodge with the chief clerk a notice in Form 11 accepting the amount in satisfaction of his claim.

(5) Subject to paragraph (8), where the money is accepted by the appellant under paragraph (4) all further proceedings in the appeal by the appellant shall be stayed and the money paid into court shall be paid out to the appellant without the necessity of any decree or order of the court and the respondent shall not be liable to any further costs other than those payable under the undertaking referred to in paragraph (1)(*b*).

(6) Where the costs and expenses referred to in paragraph (1)(*b*) are not agreed between the parties, they shall be settled by the circuit registrar subject to an appeal to the judge, notice of which appeal shall be served on the other party and the circuit registrar not more than two days after the costs are so settled.

(**a**) 1947 c. 44 as extended to Northern Ireland by S.I. 1981/233

(7) The respondent shall, within fourteen days from the day on which the parties agree on the sum due under the undertaking referred to in paragraph (1)(*b*) or on which the sum is settled by the circuit registrar, or as the case may be, determined by the judge, pay that sum to the appellant.

(8) Where notice of acceptance under paragraph (4) is served by, or on behalf of, an appellant under a legal disability—

(*a*) the money paid into court shall not be paid out without an order of the judge;

(*b*) a notice of intention to apply to the judge for approval of such acceptance shall also be served on the respondent and lodged in the office of the chief clerk;

(*c*) the application to the judge shall be made at the time when the appeal would, if no notice of acceptance had been served, have been heard by the judge; and

(*d*) the appellant shall be entitled to the costs of the application unless the judge otherwise directs.

(9) An order approving acceptance by a minor in satisfaction of a sum lodged by the respondent shall be in Form 12.

Costs where payment into court by respondent not accepted

5.—(1) Where money has been paid into court by the respondent under rule 4(1) and the appellant does not serve notice of acceptance in accordance with rule 4(4) and does not on appeal obtain an order for the recovery of an amount of compensation greater than the amount paid into court, then, where the appellant is not under a legal disability, he shall not be entitled to any costs against the respondent and shall be liable for the costs of the respondent in such amount as the court may determine.

(2) Where the appellant is under a legal disability the costs shall be in the discretion of the judge.

(3) Where the respondent becomes entitled to costs under this rule such costs shall be paid to him out of the money paid into court before any payment out of the said money is made to the appellant.

Payment into court not to be communicated to the judge

6. Where money has been paid into court under rule 4(1) that fact shall not be communicated to the judge before the determination of the appeal.

Form of order where notice of acceptance not served

7. Where money has been paid into court by the respondent and the appellant does not serve notice of acceptance, an order made on the appeal shall be in one of Forms 13 to 15 as may be appropriate.

Payment out

8. All moneys paid into the Criminal Injuries Account in accordance with rule 4 to be paid out in accordance with rule 4(5) or in accordance with an order made by the judge shall be paid out by cheque signed by the chief clerk and drawn on the said account.

Costs on appeal

9.—(1) Where the appeal is under section 28(4) of the Act the costs shall be in the discretion of the judge both as to incidence and as to amount.

(2) The scale of costs set out in Schedule 2 shall apply to appeals under section 28(5) of the Act.

Application of Order 28 of County Court Rules to payment into court by Secretary of State

10.—(1) Where compensation is payable under an award by the county court on appeal under section 28(5) of the Act by the respondent under section 28 of the Act and—

(i) the respondent receives notice that by virtue of any assignment or operation of law the rights of the appellant have passed to another person;

(ii) the appellant is under a disability or out of the United Kingdom; or

(iii) the address of the person entitled to compensation cannot be ascertained without undue expense or delay,

the respondent may pay the compensation into court.

(2) The provisions of Order 28 of the County Court Rules (Northern Ireland) 1981(**a**) shall apply to payment into court under paragraph (1) with the following modifications—

(*a*) in rule 1(1) the reference to section 63 of the Trustee Act (Northern Ireland) 1958(**b**) shall be construed as a reference to paragraph (1) and Form 132 (affidavit on payment into court under section 63 of the Trustee Act (Northern Ireland) 1958) in Appendix 1 to the said Rules may be modified as necessary;

(*b*) in rule 1(5) for the reference to Form 133 in the said Appendix 1 there shall be substituted a reference to Form 16 in Schedule 1 to these rules; and

(*c*) in rule 1(6) for the reference to Form 134 in the said Appendix 1 there shall be substituted a reference to Form 17 in Schedule 1 to these rules.

(3) Where a person desires to apply for payment out of court of any compensation paid into court under paragraph (1)—

(*a*) the application shall be made to the judge ex parte;

(*b*) the judge on the hearing of the ex parte application may require notice of the application to be served on such persons as he thinks fit, and fix a day for the further hearing;

(*c*) evidence in support of the application may be given by affidavit or in such other manner as the judge may direct.

Dated 1st June 1988.

Lowry
Lord Chief Justice
of Northern Ireland

(a) S.R. 1981 No. 225
(b) 1958 c. 23 (N.I.)