1986 No. 184

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 1986

Made	*18th June 1986*
Coming into operation . . .	*31st July 1986*
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 practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers as follows:

Citation, interpretation and commencement

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 1986 and shall come into operation on 31st July 1986.

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

Patients' affairs

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

Amendment of references

3.—(1) Order 32, rule 11(1)(*m*) shall be amended by substituting for the words "section 111(2) of the Mental Health Act (Northern Ireland) 1961" the words "Article 133(2) of the Mental Health (Northern Ireland) Order 1986".

(2) Order 52, rule 8(1)(*b*) shall be amended by substituting for the words "Mental Health Act (Northern Ireland) 1961" the words "Mental Health (Northern Ireland) Order 1986".

(3) Order 62, rules 31(4)(*a*) and 32(1)(*a*), (3)(*b*) and (8)(*a*) shall be amended by substituting for the words "Mental Health Act (Northern Ireland) 1961" the words "Mental Health (Northern Ireland) Order 1986".

(4) Order 80, rule 1 shall be amended by substituting for the words "section 7 of the Mental Health Act (Northern Ireland) 1961" the words "Article 3 of the Mental Health (Northern Ireland) Order 1986" and by substituting for the words "Mental Health Act (Northern Ireland) 1961" when they secondly occur, the words "Mental Health (Northern Ireland) Order 1986".

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

(5) Order 80, rule 3(2) and (6)(*b*) shall be amended by substituting for the words "the Lunancy Regulation (Ireland) Act 1871" the words "Part VIII of the Mental Health (Northern Ireland) Order 1986".

(6) Order 112, rule 3(*b*) shall be amended by substituting for the words "Mental Health Act (Northern Ireland) 1961" the words "Mental Health (Northern Ireland) Order 1986".

Revocations

4. The Orders set out in Schedule 2 are hereby revoked.

Dated 22nd May 1986

Lowry
John MacDermott
Donald Murray
W. A. Campbell

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

Dated 18th June 1986

SCHEDULE 1 Rule 2

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(**a**);

"controller" means controller appointed under Article 101(1) of the Order;

"entered" means entered in the books 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(**b**);

"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 exercisable 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.

[*E.r.* 2]

PART II

EXERCISE OF JURISDICTION

Exercise of jurisdiction

2. Except where this Order otherwise provides the jurisdiction of the Court may be exercised—

(**a**) 1978 c. 23

(**b**) S.I. 1986/595 (N.I. 4)

(*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 £5,000 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]

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 a 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 person 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 disability 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**) 1958 c. 23 (N.I.)