1980 No. 433

SUPREME COURT PROCEDURE

Rules of the Supreme Court (Northern Ireland) (No. 3) 1980

Made	*26th November 1980*
Coming into operation . . .	*1st January 1981*
To be laid before Parliament	

We, the 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 those powers as follows:

1. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (No. 3) 1980 and shall come into operation on 1st January 1981.

2. The Orders set out in the Schedule hereto shall be inserted in the Rules of the Supreme Court (Northern Ireland) 1980(**b**) in the places appropriate to their numbers and the titles of these Orders shall be inserted in the Arrangement of Orders in the places appropriate to their numbers.

3. Appendix 3 to Order 62 of the Rules of the Supreme Court (Northern Ireland) 1980 shall be amended as follows:—

(1) In the Scale of Basic Costs in Part I for the figures "£17·25", "27·50" and "40·85" (which indicate the amounts currently allowed by way of basic costs where the amount of the debt recovered is not less than £1,200) there shall be substituted the figures "42·00", "60·00" and "90·00" respectively.

(2) Column (ii) of the Scale of Additional Costs (which indicates the additional costs to be allowed where the amount recovered is not less than £1,200) shall be amended as follows—

(*a*) against paragraph (1) (which allows for service on an additional defendant) for the figure "2·05" there shall be substituted the figure "5·50";

(*b*) against paragraph (2) (which allows for substituted service) for the figure "7·75" there shall be substituted the figure "22";

(*c*) against paragraph (4) (which allows for service out of the jurisdiction) for figures (*a*) "11·15" and (*b*) "17·20", there shall be substituted the figures (*a*) "29·50" and (*b*) "32·50";

(*d*) against paragraph (5) (which allows for proof of service where notice of appearance is not given on the day on which appearance is entered) for the figure "3·40" there shall be substituted the figure "8·00";

(*e*) against paragraph (6) (which allows for the proof of service of a summons under Order 14) for the figure "3·40" there shall be substituted the figure "8·00";

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

(*f*) against paragraph (7) (which allows for the cost of an adjournment of a summons under Order 14) for the figure "2·05" there shall be substituted the figure "10".

(3) Paragraphs (3) and (8) of the Scale of Additional Costs shall be omitted and the paragraphs currently numbered (4), (5), (6) and (7) shall be renumbered (3), (4), (5) and (6).

(4) Paragraph 2 of Part 2 (which provides for the costs to be allowed on judgment without trial for possession of land) shall be amended by omitting the figure and words "£350 but less than".

(5) Paragraph 1 of Part 3 (which provides for the costs to be allowed on signing judgment for costs under rule 10) shall be amended by substituting for the sum of "£2·15" the sum of "£5·00".

(6) Paragraph 2 of Part 3 (which provides for the costs to be allowed on the registration of a certificate of a judgment) shall be amended by substituting for the sum of "£9·45" the sum of "£19·50".

Dated 13th November 1980.

Lowry
E. W. Jones
John MacDermott
Donald Murray
J. B. E. Hutton
R. D. Carswell
J. J. Sheil
Owen Catchpole
James McFarland

I concur

Hailsham of St. Marylebone, C.

Dated 26th November 1980.

SCHEDULE

ORDER 74

ALTERATION OF MAINTENANCE AGREEMENTS: DECLARATION AS TO MATRIMONIAL STATUS

PART I

GENERAL

Definition

1.—(1) In this Order—

"the Office" means the Probate and Matrimonial Office

"the Order" means the Matrimonial Causes Order (Northern Ireland) 1978(**c**);

"a patient" means a person suffering or appearing to be suffering from mental disorder as defined in section 7 of the Mental Health Act (Northern Ireland) 1961(**d**).

(2) Proceedings under Part II of this Order shall be assigned to the Family Division and all business connected therewith shall be transacted in the Office.

PART II

ALTERATION OF MAINTENANCE AGREEMENT AFTER DEATH OF ONE PARTY

Application for alteration of maintenance agreement after death of one party

2.—(1) An application under Article 38 of the Order for the alteration of a maintenance agreement after the death of one of the parties to it shall be made by originating summons issued out of the Office. Order 7, rule 2(2), shall not apply to seek a summons.

(2) There shall be filed in support of the summons an affidavit by the applicant exhibiting a copy of the agreement and an office copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof.

(3) The affidavit referred to in paragraph (2) shall state—

(*a*) whether the deceased died domiciled in Northern Ireland;

(*b*) the place and date of the marriage between the parties to the agreement and the name and status of the wife before the marriage;

(*c*) the name of every child of the family and of any other child for whom the agreement makes financial arrangements, and—

(i) the date of birth of each such child who is still living (or, if it be the case, that he has attained 18 years), and the place where the person with whom any such minor child is residing;

(ii) the date of death of any such child who has died since the agreement was made;

(*d*) whether there have been in any court any, and if so what, previous proceedings with reference to the agreement or to the marriage or to the children of the family or to any other children for whom the agreement makes financial arrangements, and the date and effect of any order or decree made in such proceedings;

(*e*) whether there have been in any court any proceedings by the applicant against the deceased's estate under the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979(**e**) or any statutory provision

(**c**) S.I. 1978/1045 (N.I. 15)
(**d**) 1961 c. 15 (N.I.)
(**e**) S.I. 1979/924 (N.I. 8)

repealed by that Order and the date and effect of any order made in such proceedings;

(*f*) in the case of an application by the surviving party, the applicant's means;

(*g*) in the case of an application by the personal representatives of the deceased, the surviving party's means, so far as they are known to the applicants, and the information mentioned in sub-paragraphs (*a*), (*b*) and (*c*) of rule 4(3);

(*h*) the facts alleged by the applicant as justifying an alteration in the agreement and the nature of the alteration sought;

(*i*) if the application is made after the end of the period of six months from the date on which representation in regard to the deceased's estate was first taken out, the grounds on which the court's permission to entertain the application is sought.

(4) A copy of the affidavit referred to in paragraph (2) shall be served with the summons.

Service of summons, etc., out of jurisdiction

3. The summons mentioned in rule 2 and any other document in the matter may be served out of the jurisdiction without leave either in the manner prescribed for service within the jurisdiction or in accordance with Order 11, rules 5 and 6 (which relate to the service of process out of the jurisdiction).

Further proceedings on application under rule 2

4.—(1) The Court may at any stage of the proceedings direct that any person be added as a respondent to an application under rule 2.

(2) Order 15, rule 13 (which enables the court to make representation orders in certain cases) shall apply to the proceedings as if they were mentioned in paragraph (1) of that rule.

(3) A respondent who is a personal representative of the deceased shall, within 14 days after the time limited for entering an appearance, file an affidavit in answer to the application stating—

(*a*) full particulars of the value of the deceased's estate for probate, after providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout, including the amount of the capital transfer tax and interest thereon;

(*b*) the person or classes of person beneficially interested in the estate (giving the names and addresses of all living beneficiaries) and the value of their interests so far as ascertained; and

(*c*) if such be the case, that any living beneficiary (naming him) is a minor or a patient.

(4) If a respondent who is a personal representative of the deceased does not file an affidavit stating the matters mentioned in paragraph (3), the Court may order him to do so.

(5) A responent who is not a personal representative of the deceased may, within 14 days after the time limited for entering an appearance, file an affidavit in answer to the application.

(6) Every respondent who files an affidavit in answer to the application shall serve a copy of the affidavit on the applicant.

(7) Subject to the provisions of this rule, the provisions of the matrimonial causes rules relating to the investigation by the Master of an application for ancillary relief and the making of an order thereon shall apply, with the necessary modifications, to an application under Article 38 of the Order or if it were an application for ancillary relief.

PART III

DECLARATIONS AS TO MATRIMONIAL STATUS

Application for declaration as to matrimonial status

5.—(1) Where the proceedings are proceedings for a declaration involving a determination as to the validity or subsistence of a marriage of the petitioner, the proceedings shall be begun by petition filed in the Office.

(2) The petition shall state—

(*a*) the names of the parties and the residential address of each of them at the date of presentation of the petition;

(*b*) the place and date of any ceremony of marriage to which the application relates;

(*c*) whether there have been any previous proceedings in any court in Northern Ireland or elsewhere between the parties with reference to the marriage or the ceremony of marriage to which the application relates or with respect to the matrimonial status of either of them, and, if so, the nature of those proceedings;

(*d*) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which he alleges that the court has jurisdiction to make it;

and shall conclude with a prayer setting out the declaration sought and any claim for costs.

(3) Nothing in the foregoing provisions shall be construed—

(*a*) as conferring any jurisdiction to make a declaration in circumstances in which the court could not otherwise make it, or

(*b*) as affecting the power of the court to refuse to make a declaration notwithstanding that it has jurisdiction to make it.

(4) The petition shall also state whether there are any proceedings continuing in any country outside Northern Ireland which relate to the marriage or are capable of affecting its validity or subsistence and, if so, shall give—

(i) particulars of the proceedings, including the court in or tribunal or authority before which they were begun,

(ii) the date when they were begun,

(iii) the names of the parties,

(iv) the date or expected date of any trial in the proceedings, and

(v) such other facts as may be relevant to the question whether the proceedings on the petition should be stayed under Schedule 1 to the Order

and such proceedings shall include any which are not instituted in a court of law in that country, if they are instituted before a tribunal or other authority having power under the law having effect there to determine questions of status, and shall be treated as continuing if they have been begun and have not been finally disposed of.

(5) Subject to the provisions of this rule, the provisions of the matrimonial causes rules relating to proceedings commenced by petition shall apply with the necessary modifications to the proceedings.