1978 No. 135

COUNTY COURTS

County Court (Criminal Damage Compensation) Rules (Northern Ireland) 1978

Made . . . . . *26th May* 1978
Coming into operation . . . . . *1st July* 1978
To be laid before Parliament

The Secretary of State in pursuance of section 146 of the County Courts Act (Northern Ireland) 1959(**a**) and articles 12, 14 and 15 of the Criminal Damage (Compensation) (Northern Ireland) Order 1977(**b**) hereby, on the recommendation of the County Court Rules Committee and after consultation with the Lord Chief Justice, makes the following rules:

PART I

GENERAL

Citation and commencement

1. These rules may be cited as the County Court (Criminal Damage Compensation) Rules (Northern Ireland) 1978 and shall come into operation on 1st July 1978.

Interpretation

2.—(1) In these rules—

"the Order" means the Criminal Damage (Compensation) (Northern Ireland) Order 1977;

"the County Court Rules" means the County Court Rules (Northern Ireland) 1976(**c**);

and any reference to a Form by number is a reference to the Form as numbered in Schedule 1 to these rules.

(2) Without prejudice to section 24 of the Interpretation Act (Northern Ireland) 1954(**d**), service of any document under these rules may be by registered post or by the recorded delivery service, using the advice of delivery form.

PART II

APPEALS UNDER ARTICLE 15 OF THE ORDER

Lodging of appeals to the county court under article 15 of the Order

3.—(1) Subject to any order under section 2(2)(*c*) of the County Courts Act (Northern Ireland) 1959, appeals under article 15 of the Order shall be heard at the ordinary sittings of the court for the division specified in article 2(3) of the Order at such times as the judge for the county court division may appoint in accordance with section 4(2) of that Act or, in lieu of such appointment, at the sitting of the court for equity matters.

(**a**) 1959 c. 25 (N.I.) as modified by S.I. 1973/2163 (1973 III, p. 7541)
(**b**) S.I. 1977/1247 (N.I. 14)
(**c**) S.R. 1976 No. 374 (II, p. 1774)
(**d**) 1954 c. 33 (N.I.)

(2) Such appeals shall be heard at the sitting for which the appointed entry day occurs next after a period of 21 days from the date on which the appeal is lodged under paragraph (4).

(3) The appeal shall be by notice in Form 1, 2, 3 or 4, 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 Order and on each person upon whom notice has been served by the Secretary of State (in accordance with article 15(1) of the Order) of the decision, determination or order made by him.

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

(*a*) any certificate of posting;

(*b*) a copy of the notice of decision, determination or order served on the appellant under article 15(1) of the Order endorsed with a certificate as to the date of service of the notice on him; and

(*c*) where the appellant was the applicant for compensation, a copy of the application served on the Secretary of State under article 8 of the Order;

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

(5) Where the appeal is against a decision of the Secretary of State refusing a request submitted to him under article 7(3) of the Order, a copy of the preliminary notice to be served under article 7(1) thereof shall be attached to the notice of appeal in Form 3 delivered to the clerk of the Crown and peace under paragraph (4).

(6) Where the appeal is against a decision of the Secretary of State refusing to extend the period within which an application for compensation may be made in accordance with article 8(1) of the Order, a copy of the preliminary notice and of the application to be served under article 8 of the Order shall be attached to the notice of appeal in Form 4 delivered to the clerk of the Crown and peace under paragraph (4).

(7) The notice of appeal shall either state that the appeal is against the entire decision, determination or order of the Secretary of State or shall specify the part or parts thereof by which the appellant is aggrieved.

(8) Nothing in this rule shall prevent the court from considering other items specified in the decision, determination or order or from considering grounds of appeal not referred to in the notice.

(9) A certificate for the purposes of section 25 of the Crown Proceedings Act 1947(e) of an order allowing an appeal under article 15 of the Order shall be in Form 5, 6, 7 or 8 and an order dismissing such appeal shall be in Form 9, 10 or 11.

Payment into court under article 15(3) *of the Order, acceptance, etc.*

4.—(1) Payment into court by the Secretary of State under article 15(3) of the Order may be made at any time within 10 days from service of the copy of the notice of appeal upon him by lodging in court—

(e) 1947 c. 44

(*a*) such sum of money as the Secretary of State thinks sufficient to satisfy so much of the appellant's claim to compensation or of the sum payable under article 12(2) of the Order or both as is in dispute and hence 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 Secretary of State served on him notice of his decision, determination or order under article 15(1) of the Order and the date of the lodgment.

(2) Notice to the appellant in Form 12 of payment into court by the Secretary of State under article 15(3) shall be given at the time of such lodgment.

(3) Money shall be paid into court by lodging it in the County Court Bank to the credit of the Criminal Injuries Account in accordance with Order 42, Part I, of the County Court Rules and where any money is so lodged a copy of the notice sent to the appellant under paragraph (2) shall be lodged with the clerk of the Crown and peace and a copy shall also be lodged with the bank, such last-mentioned copy being headed with the additional words "Criminal Injuries Account".

(4) 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.

(5) The appellant may, at any time before the opening day of the sitting at which the appeal is to be heard or subsequently with the consent of the Secretary of State, sign and serve on the Secretary of State and lodge with the clerk of the Crown and peace a notice in Form 13 accepting the amount in satisfaction of his claim.

(6) Subject to paragraph (9), where the money is accepted by the appellant under paragraph (5) 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 Secretary of State shall not be liable to any further costs other than those payable under the undertaking referred to in paragraph (1)(*b*).

(7) Where the costs and expenses referred to in paragraph (1)(*b*) are not agreed between the Secretary of State and the appellant, they shall be settled by the clerk of the Crown and peace subject to an appeal to the judge, notice of which appeal shall be served on the Secretary of State and the clerk of the Crown and peace not more than two days after the costs are so settled.

(8) The Secretary of State 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 clerk of the Crown and peace or, as the case may be, determined by the judge, pay that sum to the appellant.

(9) Where notice of acceptance under paragraph (5) 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 Secretary of State and lodged in the office of the clerk of the Crown and peace;

(*c*) the application to the judge shall be made at the time 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 his costs of the application unless the judge otherwise directs.

(10) An order approving acceptance by a minor in satisfaction of a sum lodged by the Secretary of State shall be in Form 14.

Costs where payment into court by Secretary of State not accepted

5.—(1) Where money has been paid into court by the Secretary of State under article 15(3) of the Order and the appellant does not serve notice of acceptance in accordance with rule 4(5) and does not on appeal obtain an order for the recovery, in relation to such items in the decision, determination or order of the Secretary of State as are the subject of the appeal, of an amount of compensation or, where appropriate, any sum payable under article 12(2) of the Order 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 Secretary of State and shall be liable for the costs of the Secretary of State 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 Secretary of State 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 article 15(3) of the Order that fact shall not be communicated to the judge before determination of the appeal.

Form of order where notice of acceptance not served

7. Where money has been paid into court by the Secretary of State and the appellant does not serve notice of acceptance, an order made on the appeal shall be in one of the Forms 5 or 15 to 17, as may be appropriate.

Amendment of Order 42 of County Court Rules and manner of payment out in accordance with rule 4(6)

8.—(1) In rule 3(2) and rule 13(3) of Order 42 of the County Court Rules after the words "the Criminal Injuries to Property (Compensation) Act (Northern Ireland) 1971" there shall be inserted the words ", article 15(3) of the Criminal Damage (Compensation) (Northern Ireland) Order 1977".

(2) Any interest accruing to the Criminal Injuries Account shall be paid to the Secretary of State for the credit of the Exchequer at such intervals as the Secretary of State may from time to time direct.

(3) All moneys paid into the Criminal Injuries Account in the County Court Bank to be paid out in accordance with rule 4(6) or in accordance with an order made by the judge shall be paid out by cheque signed by the clerk of the Crown and peace and drawn on the said account.

Costs on appeal

9.—(1) Subject to paragraph (2), the scale of costs set out in Schedule 2 shall apply to appeals under article 15 of the Order.

(2) Where the appeal is against a decision of the Secretary of State to refuse either—

(*a*) a request submitted to him under article 7(3) of the Order; or

(*b*) to extend the period within which an application for compensation may be made in accordance with article 8(1) of the Order;

the costs shall be in the discretion of the judge both as to incidence and as to amount.

PART III

APPLICATIONS FOR RECOVERY FROM OFFENDER UNDER ARTICLE 16 OF THE ORDER

Applications to the court under article 16 *of the Order for an order directing offender to reimburse to the Secretary of State whole or part of compensation*

10.—(1) An application by the Secretary of State for an order of reimbursement under article 16 of the Order may be made by notice in Form 18 at any time after the conviction of the offender and may be heard at any ordinary sitting of the court for the division specified in article 2(3) of the Order.

(2) Such notice shall be served on the offender and a copy thereof on the clerk of the Crown and peace not less than fifteen days before the day appointed for the commencement of the sitting at which the application is to be heard.

(3) Upon receipt of such copy the clerk of the Crown and peace shall enter the application for hearing.

(4) An order for reimbursement under article 16(1) of the Order shall be in Form 19.

Applications to vary orders made under article 16(4) *of the Order*

11.—(1) An application under article 16(4) of the Order by the Secretary of State or by an offender for the variation of an order for reimbursement made under article 16(1) shall be in Form 20 and such application shall be served on the respondent and a copy thereof served on the clerk of the Crown and peace within the same period as is specified in rule 10(2) and shall be entered for hearing in the same manner as is provided by rule 10(3).

(2) An order under article 16(4) of the Order shall be in Form 21.

Costs on applications under article 16

12. The costs awarded on an application under article 16(1) or article 16(4) of the Order shall be in the discretion of the judge both as to incidence and as to amount.