STATUTORY RULES AND ORDERS OF A GENERAL CHARACTER ISSUED IN 1972

1972. No. 1 **[NC]**

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

Rules of the Supreme Court (Northern Ireland) (No. 1) 1972

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 7 of the Northern Ireland Act 1962(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby exercise those powers and all other powers enabling us in that behalf as follows:—

1. Order 39 of the Rules of the Supreme Court (Northern Ireland) 1936(b) shall be revoked.

2. For Order 58 there shall be substituted the Order set out in Schedule 1 hereto.

3. Order 59A shall be amended as follows—

(1) in rule 1 for the words "Supreme Court" there shall be substituted the words "High Court", and

(2) in rule 7 for the reference to Order 58, rules 1, 2, 4 and 8 there shall be substituted a reference to Order 58, rules 3, 5, 7, 9 and 10.

4. Order 79 shall be amended as follows—

(1) rule 34 shall be revoked.

(2) for rules 40, 41, 42 and 43 there shall be substituted the following rules—

"*Guarantee*

40.—(1) In this rule—

"the Act of 1971" means the Administration of Estates Act (Northern Ireland) 1971;

"directions" means the directions dated 15th February 1956 given by the Probate Judge under section 20 of the Administration of Estates Act (Northern Ireland) 1955.

(2) The Registrar shall not require a guarantee under section 1 of the Act of 1971 as a condition of granting administration except where it is proposed to grant it—

(a) 10 & 11 Eliz. 2. c. 30. (b) S.R. & O. 1936, No. 70 (II, p. 2559).

(*a*) by virtue of direction 3(6) or direction 4(4) to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;

(*b*) under direction 9 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate be entitled to his estate;

(*c*) under direction 10 to the attorney of a person entitled to a grant;

(*d*) under direction 11 for the use and benefit of an infant;

(*e*) under direction 12 for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his affairs;

(*f*) to an applicant who appears to the Registrar to be resident elsewhere than in the United Kingdom;

or except where the Registrar considers that there are special circumstances making it desirable to require a guarantee.

(3) Notwithstanding that it is proposed to grant administration as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is—

(*a*) a trust corporation;

(*b*) a solicitor holding a current practising certificate under the Solicitors Act (Northern Ireland) 1938;

(*c*) a servant of the Crown acting in his official capacity.

(4) Where the Registrar considers that there are special circumstances under paragraphs (2) or (3), he shall give the applicant or his solicitor (where the application for a grant is made through a solicitor) an opportunity of being heard with respect to the requirement.

(5) Every guarantee entered into by a surety for the purposes of section 1 of the Act of 1971 shall be in Form 14 of Appendix R.

(6) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorised officer, a commissioner to administer oaths or other person authorised by law to administer an oath.

(7) Unless the Registrar otherwise directs—

(*a*) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed £500 or a corporation is a proposed surety, and in those cases one will suffice;

(*b*) no person shall be accepted as a surety unless he is resident in the United Kingdom;

(*c*) no officer of the principal registry or district registry shall become a surety, nor in any case in which a person is solicitor for the applicant for a grant shall he or his clerk or apprentice become a surety without the leave of the Chief Registrar of the principal probate registry;

(*d*) the limit of liability of the surety or sureties given for the purposes of the Act of 1971 shall be the gross amount of the estate as sworn on the application for the grant;

(*e*) every surety, other than a corporation, shall justify.

(8) Where the proposed surety is a corporation there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the guarantee in the manner prescribed by its constitution, and containing sufficient information as to the financial position of the corporation to satisfy the registrar that its assets are sufficient to satisfy all claims which may be made against it under any guarantee which it has given or is likely to give for the purposes of the Act of 1971:

Provided that the Chief Registrar of the principal probate registry may, instead of requiring an affidavit in every case, accept an affidavit made not less often than once in every year together with an undertaking by the corporation to notify the said registrar forthwith in the event of any alteration in its constitution affecting its power to become surety under the Act of 1971.

41. An application for leave of the High Court under section 1(3) or section 4(5) of the Administration of Estates Act (Northern Ireland) 1971 to sue a surety on a guarantee shall be made by summons to the Chief Registrar or Assistant Registrar who may direct the matter to be brought before a Judge and notice of the application shall in any event be served on the administrator, the surety and any co-surety."

(3) in rule 44 the following paragraph shall be deleted—

"No surety shall be required from a trust corporation unless the Judge or Principal Registrar shall so direct."

(4) rule 45 shall be revoked.

(5) immediately after rule 51 the following rule shall be inserted—

"**51A.** Unless otherwise directed by a Registrar every oath of executor or administrator shall state where the deceased died domiciled."

(6) rules 80, 81, 82, 97 and 98 shall be revoked.

(7) for rule 104 there shall be substituted the following rule:—

"**104.** The certificate of delivery of any inland revenue affidavit required by section 30 of the Customs and Inland Revenue Act 1881 to be borne by every grant shall, subject to any necessary variations and modifications, which the officer of the court giving the certificate is hereby authorised at his discretion to make, be in the following form:

'And it is hereby certified that an inland revenue affidavit has been delivered wherein it is shown that the gross value of the estate of the said deceased in the United Kingdom (exclusive of what the deceased may have been possessed of or

entitled to as a trustee and not beneficially) amounts to £ and that the net value of the estate amounts to £ ;

And it is further certified by a receipt signed by an inland revenue officer on the said affidavit that £ on account of estate duty and interest on such duty has been paid.' "

(8) for rule 109 there shall be substituted the following rule—

"**109.** On an application for the sealing of a grant under the Colonial Probates Acts 1892 and 1927—

(*a*) the Registrar shall not require sureties under section 4 of the Administration of Estates Act (Northern Ireland) 1971 as a condition of resealing the grant, except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraphs (*a*) to (*f*) of rule 40(2) or except where he considers that there are special circumstances making it desirable to require sureties;

(*b*) rule 40(3), (4), (6), (7) and (8) shall apply with any necessary modifications;

(*c*) a guarantee entered into by a surety for the purposes of the said section 4 shall be in Form 15 of Appendix R; and

(*d*) an application to sue on a guarantee shall be made in accordance with rule 41."

(9) in rule 134 for the word "bonds" there shall be substituted the word "guarantees".

5. For the paragraph appearing after the notification of entering an appearance in Form 1 in Part I of Appendix A there shall be substituted the following paragraph—

"If judgment is given against you and there are special circumstances which make it inexpedient to enforce the judgment or you are unable to pay the amount due you may apply to the Enforcement of Judgments Office, Bedford House, Belfast, for a stay of enforcement."

6. Appendix R shall be amended as follows—

(1) for Forms 14 and 15 there shall be substituted the forms set out in Schedule 2 hereto.

(2) Forms 16, 37 and 38 shall be revoked.

7.—(1) These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (No. 1) 1972.

(2) This rule, rule 4 (with the exception of paragraph (7), rule 5 and rule 6 shall come into force on 1st January, 1972.

(3) Rules 1, 2 and 3 shall come into force on 1st February 1972.

(4) Paragraph (7) of rule 4 shall come into force on 1st June 1972.

Dated 1st January 1972.

(Signed) *Robert Lowry*
L. E. Curran
Maurice W. Gibson
Turlough O'Donnell
Donald Murray