

SCHEDULE 1

The Rules of the Supreme Court (Northern Ireland) 1980

TRIAL

ORDER 44

PROCEEDINGS UNDER JUDGMENTS AND ORDERS: CHANCERY DIVISION

Application to proceedings under an order

1. This Order shall, with the necessary modifications, apply in relation to proceedings under an order as it applies in relation to proceedings under a judgment and, accordingly, references therein to a judgment shall be construed as including references to an order.

[E.r. 1]

Documents to be left at Chancery Office: summons to proceed

2.—(1) Where in order to carry out any directions contained in a judgment given in a cause or matter in the Chancery Division it is necessary to proceed in chambers under the judgment, the party entitled to prosecute the judgment must, within 10 days after entry of the Judgment, leave a copy of it at the Chancery Office with a certificate that it is a true copy of the judgment as entered.

(2) If the party entitled to prosecute the judgment fails to comply with paragraph (1), any other party to the cause or matter may leave a copy of the judgment, with the certificate referred to in that paragraph, at the Chancery Office, and, unless the Court otherwise directs, he shall thereupon become entitled to prosecute the judgment.

(3) Upon leaving a copy of the judgment at the Chancery Office the party entitled to prosecute the judgment must take out a summons to proceed under the judgment.

[E.r. 2]

Service of notice of judgment on person not a party

3.—(1) Where in an action for—

- (a) the administration of the estate of a deceased person, or
- (b) the execution of a trust, or
- (c) the sale of any property,

the Court gives a judgment which affects the rights or interests of persons not parties to the action or directs any account to be taken or inquiry made, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any person interested in the estate or under the trust or in the property, as the case may be; and any person duly served with notice of a judgment in accordance with this rule shall, subject to paragraph (5), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(2) The Court may direct a notice of judgment to be served personally or in such manner as it may specify on the person required to be served, or if it appears to the Court that it is impracticable for any person to serve such notice on any such person it may dispense with service of the notice on that person.

Before notice of a judgment is served the notice must be indorsed with a memorandum in Form No. 36 in Appendix A.

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(3) The party prosecuting the judgment must leave at the Chancery Office the stamped copy of the memorandum of appearance of any person served with notice of the judgment or, as the case may be, a certificate that no appearance has been entered by him.

(4) Where the Court dispenses with service of notice of a judgment on any person, it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly except where the judgment has been obtained by fraud or non-disclosure of material facts.

(5) A person served with notice of a judgment may, within one month after service of the notice on him, and without entering an appearance, apply to the Court to discharge, vary or add to the judgment.

(6) A person served with notice of a judgment may, after entering an appearance to the notice, attend the proceedings under the judgment.

(7) Order 12, rules 1 to 4, shall apply in relation to the entry of appearance to a notice of judgment as if the judgment were a writ, and the person by whom the notice is served were the plaintiff and the person on whom it is served a defendant.

[E.r. 3]

Directions by Court

4.—(1) The Court hearing the summons to proceed shall give directions with respect to the proceedings to be taken under the judgment and the conduct thereof, including, in particular, directions with respect to—

- (a) the manner in which any account or inquiry is to be prosecuted,
- (b) the evidence to be adduced in support thereof,
- (c) the parties required to attend all or any part of the proceedings, and
- (d) the time within which each proceeding is to be taken,

and may fix a day or days for the further attendance of the parties.

(2) The Court may revoke or vary any directions given under this rule.

[E.r. 4]

Court may require parties to be represented by same solicitors

5. Where on the hearing of the summons to proceed or at any stage of the proceedings under the judgment it appears to the Court that the interests of the parties can be classified, it may require the parties constituting each or any class to be represented by the same solicitor, and where the parties constituting any class cannot agree on the solicitor to represent them, the Court may nominate a solicitor to represent the class in the proceedings.

[E.r. 5]

Court may require parties to be represented by different solicitors

6. Where on the hearing of the summons to proceed or at any stage of the proceedings under the judgment it appears to the court that two or more of the parties who are represented by the same solicitor ought to be separately represented, it may require them to be so represented and may adjourn the proceedings until they are.

[E.r. 6]

Leave to attend proceedings, etc.

7. Any party to the proceedings under the judgment who has not been directed to attend may apply to the Court for leave to attend any part of the proceedings at the cost of the estate or other property to which the proceedings relate and to have the conduct of that part either in addition to or in substitution for any other party.

[E.r. 7]

Judgment requiring deed to be settled by Court: directions

8. Where the judgment directs any deed or other instrument to be settled by the judge in chambers, or to be settled by him if the parties to the deed fail to agree it, the Court hearing the summons to proceed under the judgment shall direct—

- (a) that within such period as it may specify the party entitled to prepare a draft of the deed must serve a copy of the draft on every other party who will be a party to the deed, and
- (b) that within 8 days, or such other period, if any, as it may specify, after service on any such other party of a copy of the draft that party must serve on the party by whom the draft was prepared a written statement of his objections (if any) to the draft.

[E.r. 8]

Application of rules 10 to 17

9. Rules 10 to 17 apply—

- (a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other unascertained claimants to be made, and
- (b) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made,

and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs any account of debts or other liabilities to be taken or any inquiry to be made.

[E.r. 9]

Advertisements for creditors and other claimants

10.—(1) On the hearing of the summons to proceed the Court may direct the issue of advertisements for creditors or other claimants, and in deciding whether to do so shall have regard to any advertisement previously issued by the personal representatives or trustees concerned.

(2) Every such advertisement shall be prepared by the party prosecuting the judgment, and—

- (a) in the case of an advertisement for creditors, shall be signed by that party's solicitor or, if he has no solicitor, by the master, and
- (b) in the case of an advertisement for other claimants, shall be submitted to the master and if approved by the master shall be signed by him.

(3) The Court shall fix the time within which, and the person to whom, any claimant is to send his name and address and particulars of his claim, and that time and the name and address of that person shall be stated in the advertisement.

[E.r. 10]

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Failure to claim within specified time

11. A claimant who fails to send full particulars of his claim to the person named in any advertisement directed by the Court within the time therein specified shall not be entitled to prove his claim except with the leave of the Court, and in granting leave the Court may impose such terms as to costs and otherwise as it thinks just.

[E.r. 11]

Examination, etc. of claims

12.—(1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must—

- (a) examine the claims of persons claiming to be creditors of the estate and determine, so far as he is able, to which of such claims the estate is liable, and
- (b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of—
 - (i) claims sent in pursuance of any advertisement,
 - (ii) claims which have been received by any of the personal representatives otherwise than in pursuance of an advertisement, and
 - (iii) debts of the deceased at the time of his death in respect of which no claim has been received but which are or may still be due and which have come to the knowledge of any of the personal representatives.

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must—

- (a) examine the claims and determine, so far as he is able, which of them are valid claims, and
- (b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of—
 - (i) claims sent in pursuance of any advertisement, and
 - (ii) claims received by any of the personal representatives or trustees concerned, otherwise than in pursuance of an advertisement, or which have come to his knowledge.

(3) The affidavit required by paragraph (1) or (2) must, as the circumstances of the case require, specify, in relation to the claims of creditors, the claims and debts which in the belief of the deponent are liabilities of the estate of the deceased and ought to be allowed, in whole or in part, and, in relation to the claims of persons other than creditors, the claims which in the belief of the deponent are valid claims, with, in either case, the reasons for such belief.

(4) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the affidavit required by this rule.

[E.r. 12]

Adjudication on claims

13.—(1) The Court adjudicating on the claims—

- (a) may allow any such claim after or without proof thereof;
- (b) may direct any such claim to be investigated in such manner as it thinks fit;
- (c) may require any claimant to attend and prove his claim or to furnish further particulars or evidence of it.

(2) Where the Court exercises the power conferred by paragraph 1(c) in relation to any claimant, such party as the Court may direct must serve on that claimant a notice requiring him—

- (a) to file an affidavit in support of his claim within such time, not being less than 7 days after service of the notice, as may be specified in the notice and to attend before the Court for adjudication on the claim at such time as may be so specified, or
- (b) to produce to the Court at such time as may be so specified such documents in support of his claim as may be so specified or described.

(3) Where a claimant fails to comply with a notice served on him under paragraph (2) his claim may be disallowed.

(4) A claimant who files an affidavit in compliance with a notice served on him under paragraph (2) must serve notice of the filing on the party by whom the first-mentioned notice was served and, unless the Court otherwise directs, that party must produce an office copy of the affidavit at the adjudication of the claim.

(5) No person claiming to be a creditor need make an affidavit or attend in support of his claim, except for the purpose of producing any documents which he is required to produce, unless served with a notice under paragraph (2)(a).

(6) If the Court so directs, a person claiming to be a secured creditor must produce his security at the Chancery Office.

(7) In this rule references to a claim include references to part of a claim.

[E.r. 13]

Adjournment of adjudication

14. Where on the day appointed for adjudication of claims any claim is not then disposed of, the adjudication shall be adjourned to a day appointed by the Court, and the Court may fix the time within which any evidence in support of or in opposition to the claim is to be filed.

[E.r. 14]

Service of notice of judgment on certain claimants

15.—(1) Where a claimant other than a creditor has established his claim, then, unless he is a party to the cause or matter or has previously been served with notice of the judgment or the Court otherwise directs, the party having the conduct of the cause or matter must serve notice of the judgment on him.

(2) A person duly served with notice of a judgment under this rule shall, subject to rule 3(5), as applied by paragraph (4), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(3) Where the Court directs under paragraph (1) that notice of a judgment shall not be served on a person, it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly except where the judgment has been obtained by fraud or non-disclosure of material facts.

(4) Rule 3(5), (6) and (7) shall apply in relation to a person served with notice of a judgment under this rule as they apply in relation to a person served with notice of a judgment under that rule.

[E.r. 15]

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Notice, etc. of claims allowed

16.—(1) Such party as the Court may direct must serve on every creditor whose claim or any part thereof has been allowed or disallowed and who did not attend when the claim was disposed of a notice informing him of that fact.

(2) Such party, if any, as the Court may direct must make out a list of the creditors' claims, and a list of any other claims, allowed and leave it at the Chancery Office.

[E.r. 16]

Service of notices

17. For the purpose of Order 65, rule 5, in its application to the service of any notice under this Order on a claimant, the proper address of a claimant shall be the address stated in his claim, or, if a solicitor is acting for him in connection with the claim, the business address of that solicitor.

[E.r. 17]

Interest on debts

18.—(1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed—

- (a) on any such debt as carries interest, at the rate it carries, and
- (b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with paragraph (1)(b) out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.

(3) For the purposes of this rule “debt” includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1)(b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

[E.r. 18]

Interest on legacies

19. Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the rate of £5 per cent. per annum beginning at the expiration of one year after the testator's death.

[E.r. 19]

Determination by judge of question arising before Master

20.—(1) Any party may, before the proceedings before the Master under any judgment are concluded, apply to the judge for the determination of any question arising in the course of the proceedings.

Unless the Court otherwise directs, a fresh summons shall not be issued for the purpose of an application under this paragraph.

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(2) It shall not be necessary to draw up the order or directions made or given by the judge on the determination of such question, except in the event of an appeal to the Court of Appeal, but the master shall refer to such order or directions in his certificate under rule 21.

[E.r. 20]

Master's certificate

21.—(1) The result of proceedings before the Master under a judgment shall be stated in the form of a certificate signed by the master.

(2) Such certificate shall refer to so much of the judgment, to such documents or parts thereof and to such of the evidence as will make it clear upon what the result stated in the certificate is founded but shall not, unless the circumstances of the case render it necessary, set out the judgment or any documents, evidence or reasons.

(3) Where the judgment requires the taking of any account, the certificate must refer to the account verified by filed affidavit and must specify by reference to the numbered items in the account which, if any, of such items have been disallowed or varied and the additions, if any, which have been made by way of surcharge or otherwise.

(4) Where by reason of the alterations made in the account verified by filed affidavit the Court has directed a fresh account incorporating the alterations to be made, the reference in paragraph (3) to the account so verified shall be construed as a reference to the fresh account.

[E.r. 21]

Settling and filing of Master's certificate

22.—(1) A draft of the Master's certificate shall be drawn up in the Chancery Office unless the Master directs it to be drawn up by a party to the proceedings and the draft shall be settled by the parties before the Master on such day as he may appoint.

(2) The certificate signed by the Master and any account referred to therein shall be filed in the Chancery Office.

[E.r. 22]

Discharge or variation of Master's certificate

23.—(1) Any party to proceedings under a judgment may, not later than—

- (a) 8 clear days after the filing of the Master's certificate therein, or
- (b) if the certificate is to be acted upon by the Accountant General without further order or is a certificate passing a receiver's account, 2 clear days after the filing thereof,

apply by summons for an order of the judge in person discharging or varying the certificate.

A copy of any summons to discharge or vary a certificate which is to be acted upon by the Accountant General without further order must be served on the Accountant General as soon as practicable after the issue thereof.

(2) Subject to paragraph (3), any such certificate shall, on the expiration of the period specified in relation to it in paragraph (1), becoming binding on the parties to the proceedings unless discharged or varied by order under paragraph (1).

(3) The judge in person may, in special circumstances, by order discharge or vary the certificate of the Master notwithstanding that the certificate has become binding on the parties.

An application for an order under this paragraph may be by motion or summons.

[E.r. 23]

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Further consideration of cause or matter in chambers

24.—(1) Where the Master's certificate has been filed in any cause or matter in the Chancery Division, then, if—

- (a) the cause or matter in which it was filed is a debenture holders' action or the judgment to be made in the cause or matter in which it was filed is for the distribution of an insolvent estate or for the distribution of the estate of a person who died intestate, or
- (b) the order on which the certificate was made was made in chambers and no direction has been given that the cause or matter be adjourned for further consideration in court, or
- (c) an order has been made directing that the cause or matter be adjourned for further consideration in chambers,

a summons for the further consideration of the cause or matter may be issued—

- (i) after the expiration of 8 clear days, and before the expiration of 14 days, from the filing of the Master's certificate, by the plaintiff or party having the conduct of the proceedings, or
- (ii) after the expiration of the said 14 days, by any party.

(2) There shall be at least 6 days between the service of a summons under this rule and the day named therein for the further consideration of the cause or matter.

[E.r. 24]

Further consideration of cause or matter in court

25.—(1) Where the Master's certificate has been filed in any cause or matter in the Chancery Division, then, if—

- (a) the judgment on which the certificate was made was given in court and the cause or matter is not such as is mentioned in rule 25(1)(a) and no direction has been given that it be adjourned for further examination in chambers, or
- (b) an order has been made directing that the cause or matter be adjourned for further consideration in court,

the cause or matter may be set down in the cause book for further consideration—

- (i) after the expiration of 8 clear days, and before the expiration of 14 days, from the filing of the Master's certificate, on the written request of the plaintiff or party having the conduct of the proceedings, or
- (ii) after the expiration of the said 14 days, on the written request of any party,

upon the production, in either case, of the judgment adjourning the cause or matter for further consideration, or an office copy thereof, and an office copy of the Master's certificate or a memorandum of the date of filing of the certificate, indorsed on request by the proper officer on the judgment or office copy thereof.

When a cause or matter is so set down, a copy of the writ or other originating process by which the cause or matter was begun, a copy of the pleadings (if any) and two copies of minutes of the judgment sought must also be left with the proper officer.

(2) A cause or matter so set down shall not be put into the list for further consideration until after the expiration of 10 days from the day on which it was so set down, and shall be marked in the cause book accordingly, and notice of the setting down and of the day marked in the cause book as the day before which the cause or matter is not to be put in the list for further consideration must be given to the other parties to the cause or matter at least 6 days before that day.

[E.r. 25]