

## 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".

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(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 Lunacy 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,  
Dated 18th June 1986

*Hailsham of St. Marylebone, C.*

## 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) the controller for the patient, or
- (b) any person who has made an application for the appointment of a controller which has not yet been determined, or
- (c) a continuing trustee, or
- (d) any other person who, according to the practice of the Chancery Division, would have been entitled to make the application if it had been made to that Division.

[E.r. 16]

*Application for settlement or gift of patient's property or for execution of will of patient*

14. An application under Article 99(1)(d) of the Order for an order for the settlement or gift of any property of a patient, or an application under Article 99(1)(e) of the Order for an order for execution for a patient of a will, may be made only by—

- (a) the controller for the patient, or
- (b) any person who has made an application for the appointment of a controller which has not yet been determined, or
- (c) any person who, under any known will of the patient or under his intestacy, may become entitled to any property of the patient or any interest therein, or
- (d) any person for whom the patient might be expected to provide if he were not mentally disordered, or
- (e) any other person whom the Court may authorise to make it.

[E.r. 17]

#### PART IV

#### SERVICE

*Notice of hearing*

15.—(1) Except where this Order otherwise provides or the Court otherwise directs the applicant shall give notice of the hearing of an application in accordance with the following provisions of this rule.

(2) Where a controller has been appointed for a patient he shall, unless he is the applicant, be given notice of the hearing of any application relating to the patient.

(3) Where the application is one to which rule 13 above relates notice of the hearing of the application shall also be given to every person who, according to the practice of the Chancery Division, would have been required to be served with the summons if the application had been made to the Chancery Division.

(4) Notice of the hearing of the application shall also be given to such other persons who appear to the Court to be interested as the Court may specify.

(5) Notice of a hearing shall be given—

(a) in the case of a first application for the appointment of a controller, or an application under rule 12, not less than ten clear days, and

(b) in the case of any other application, not less than two clear days before the date fixed for the hearing.

(6) For the purposes of this rule notice of a hearing is given if a copy of the sealed application form is served on the person concerned.

[E.r. 18]

*Mode of service*

16. Except where this Order otherwise provides any document required by this Order to be served on any person shall be served by delivering it to him personally or, if in any particular case or class of case the Court so directs, by sending it to him at his last known address.

[E.r. 19]

*Service on solicitor*

17. Where a solicitor for the person to be served with any document endorses on the document or a copy of it a statement that he accepts service on behalf of that person, the document shall be deemed to have been duly served on that person and to have been served on the date on which the endorsement was made.

[E.r. 20]

*Substituted service*

18. Where it appears to the Court that it is impracticable for any reason to serve a document in accordance with rule 16, the Court may make an order for substituted service of the document by taking such steps as the Court may direct to bring it to the notice of the person to be served.

[E.r. 21]

*Service on person under disability*

19.—(1) Unless the Court otherwise directs, any document required by this Order to be served on a person who is a minor or patient (in this rule referred to as a person under disability) shall be served—

- (a) in the case of a minor who is not also a patient, on his parent or guardian or, if he has no parent or guardian, on the person with whom he resides or in whose care he is;
- (b) in the case of a patient, on his controller or, if he has no controller, on the person with whom he resides or in whose care he is;

and must be served in the manner required by this Order.

(2) Notwithstanding anything in the foregoing paragraph, the Court may order that any document which has been served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(3) Nothing in this rule shall apply to an order required by rule 38 to be served on a patient.

[E.r. 22]

*Notification of application for appointment of controller, etc.*

20.—(1) Subject to paragraph (2) below, where—

- (a) a first application is made for the appointment of a controller for a patient or for an order authorising a person to do any act or carry out any transaction on behalf of a patient without appointing him controller, or
  - (b) the Court proposes to make an order with respect to a patient's property under rule 5;
- the patient shall be notified in such manner as the court may direct.

(2) The Court may at any time direct that no such notification shall be given if it is satisfied that—

- (a) the patient is incapable of understanding it, or
- (b) such notification would be injurious to the patient's health, or
- (c) for any other reason notification ought to be dispensed with.

(3) Where notification has been dispensed with under paragraph (2) above and the patient is in Northern Ireland, a Visitor shall, if so requested by the Court, visit him and report to the Court as to his condition and welfare.

(4) Where the patient is a minor, notification under paragraph (1) of this rule shall be given, whether or not notification to the patient is dispensed with under paragraph (2) and unless the Court otherwise directs, to his parent or guardian or, if he has no parent or guardian, to the person with whom he resides or in whose care he is.

[E.r. 23]

*Certificate of service or notification*

21.—(1) Subject to paragraph (2) below and unless the Court otherwise directs, a certificate of service showing where, when, how and by whom service was effected shall be filed as soon as practicable after service of a document has been effected in accordance with this Order.

(2) The Court may if it thinks fit order that instead of, or in addition to, a certificate of service, an affidavit of service shall be filed.

(3) The provisions of paragraphs (1) and (2) of this rule shall apply to the giving of notification under rule 20 as they apply to the service of documents and references in paragraphs (1) and (2) to service and the effecting of service shall accordingly be construed as including references to notification and the giving of notification respectively.

[E.r. 24]

## PART V

### EVIDENCE

#### *Affidavit evidence*

22. Except where this Order otherwise provides, evidence in proceedings under this Order shall be given by affidavit.

[E.r. 25]

#### *Unsworn evidence*

23.—(1) Notwithstanding rule 22, the Court may accept and act upon a statement of facts or such other evidence, whether oral or written, as the Court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule.

(2) The Court may give directions as to the manner in which a statement of facts or other written evidence under paragraph (1) above is to be given but subject to such directions any such statement or other evidence shall—

- (a) be drawn up in numbered paragraphs and dated; and
- (b) be signed by the person by whom it is made or given.

[E.r. 26]

#### *Written questions to Visitors*

24.—(1) Where a Visitor's report, or information contained in such a report, has been disclosed to any person in pursuance of Article 105(8) of the Order, the Court may, on the application of any person who appears to the Court to be interested, give leave for written questions relevant to the issues before the Court to be put to the Visitor by whom the report was made.

(2) The questions sought to be put to the Visitor shall be submitted to the Court, which may put them to the Visitor with such amendments, if any, as it thinks fit and the Visitor shall give his replies in writing to the questions so put.

(3) The Court may disclose the replies given by a Visitor under this rule to any person who appears to the Court to be interested, or to his legal or medical adviser, on such conditions, if any, as it thinks fit.

[E.r. 27]

#### *Cross-examination of deponent*

25. Any person who has made an affidavit or given a certificate or other written evidence for use in proceedings under this Order may be ordered by the Court to attend for cross-examination.

[E.r. 28]

#### *Administration of oaths*

26. The Court may direct that an oath be administered to any witness or interpreter in any proceedings before the Court.

[E.r. 29]

*Filing of written evidence*

27.—(1) Before an affidavit, certificate or other written evidence is used in any proceedings under this Order it shall be filed but the Court may make an Order on the basis of such evidence before it is filed if the person tendering it undertakes to file it before the order is drawn up.

(2) There shall be endorsed on every affidavit, certificate or other written evidence the name and address of the solicitor, if any, for the person on whose behalf it is filed.

[E.r. 30]

*Use of evidence in subsequent proceedings*

28.—(1) Except where the Court otherwise directs, evidence which has been used in any proceedings relating to a patient may be used at any subsequent stage of those proceedings or in any other proceedings relating to the same patient or to another member of the patient's family.

(2) Without prejudice to paragraph (1) above, the Master may, upon application being made for the purpose, authorise the use of any such evidence in any legal proceedings that the Master may specify.

[E.r. 31]

*Evidence to be filed on a first application for controller, etc.*

29.—(1) On the issue of a first application for the appointment of a controller for a patient or for an order authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him controller, the applicant shall, unless the Court otherwise directs, file a medical certificate and evidence of family and property.

(2) In this rule—

“a medical certificate” means a certificate by a medical practitioner that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs; and

“evidence of family and property” means a certificate or, if the Court so orders in a particular case, an affidavit, giving particulars of the patient's relatives, property and affairs and of the circumstances giving rise to the application.

(3) Rule 23(2) above applies to unsworn evidence of family and property as it applies to unsworn evidence generally.

[E.r. 32]

*Evidence of patient's death or recovery*

30. Where at any stage of proceedings relating to a patient the Court has reason to believe that the patient has died or recovered, the Court may require evidence of the death or recovery to be furnished by such person as the Court thinks appropriate.

[E.r. 33]

*Consent to act as trustee*

31. Where in any proceedings it is proposed to appoint a person to act as trustee, a written consent in Form 4 signed by him and verified by some other person shall be evidence of his consent so to act, but no such consent shall be required where the person to be appointed is an applicant in the proceedings or the proceedings are brought under section 35(9) of the Trustee Act (Northern Ireland) 1958.

[E.r. 34]

*Proof of amount due to public authority*

32. The amount due to any public authority for the past maintenance of a patient may, unless the Court otherwise directs, be proved by the filing of an account certified under the hand of the proper officer of the authority.

[E.r. 35]

## PART VI

## HEARING OF PROCEEDINGS

*Applications to be heard in Chambers*

33. Every application shall be heard in chambers unless, in the case of an application for hearing by the judge, the judge otherwise directs.

[E.r. 36]

*Persons attending hearing*

34. The Court may determine what persons are to be entitled to attend at any stage of the proceedings relating to a patient.

[E.r. 37]

*Representation at hearing*

35. Where two or more persons appearing at a hearing are represented by the same legal representative, the Court may, if it thinks fit, require any of them to be separately represented.

[E.r. 38]

*Reference of proceedings to judge*

36. The Master shall, after giving such directions as he thinks fit, refer to the judge any proceedings or any question arising in any proceedings which ought by virtue of any enactment or in the opinion of the Master, to be considered by the judge.

[E.r. 39]

*Reference of proceedings to Master*

37. The judge may refer any proceedings before him or any question arising therein to the Master for inquiry and report.

[E.r. 40]

## PART VII

## CONTROLLERS

*Interim provision*

38.—(1) Where in the opinion of the Court it is necessary to make immediate provision in relation to the property and affairs of a patient for any of the matters referred to in Article 98(1) of the Order, the court may—

- (a) by certificate direct or authorise any person named therein to do any act or carry out any transaction specified in the certificate; or
- (b) by order appoint a controller ad interim for the patient and, subject to any direction given by the Court, such appointment shall continue until further order.

(2) An order appointing a controller ad interim shall, unless the Court otherwise directs, be served upon the patient within such time as the order may specify and the patient may, within such further time as the order may specify, apply under rule 50 for the reconsideration of the order by the Court or, if the order was made by a judge, apply to have the order set aside.

[E.r. 41]

*Remuneration of controller*

39.—(1) Where a controller is appointed for a patient, the Court may, during the control, allow the controller remuneration for his services at such amount or at such rate as the Court considers reasonable and proper and any remuneration so allowed shall constitute a debt due to the controller from the patient and his estate.

(2) No request by a controller to have the sum payable for his remuneration fixed after the death or recovery of the patient shall be entertained unless the Court has during the control directed that remuneration be allowed and the request is made within six years from the date of the controller's discharge.

[E.r. 42]

*Appointment of controllers with survivorship*

40. Where in the opinion of the Court two or more persons ought to be appointed controllers for the same patient and one or more of them ought to continue to act after the death or discharge of any of the others, the Court may when appointing them controllers direct that the control shall continue in favour of the surviving or continuing controller or controllers.

[E.r. 43]

## PART VIII

## ENTRY OF ORDERS

*Sealing and filing of orders*

41. Every order, certificate, direction or authority of the Court which is drawn up shall, when entered, be sealed and filed.

[E.r. 44]

*Entry of orders after notification to patient*

42.—(1) Where—

(a) an order is made on a first application appointing a controller for a patient or directing or authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him controller, or

(b) an order with respect to a patient's property is made under rule 5, the order shall not be entered until the expiration of ten clear days after the patient has been notified in accordance with rule 20(1) unless such notification is dispensed with.

(2) Nothing in paragraph (1) above shall prevent the entry of an interim order for the protection of a patient's property or for the application of a patient's property for his benefit.

[E.r. 45]

## PART IX

SUMMONSES AND ORDERS FOR ATTENDANCE  
OF WITNESSES AND OTHER PERSONS*Summoning of witnesses*

43.—(1) In any proceedings under this Order the Court may allow or direct any party or the Official Solicitor to take out a witness summons in Form 5 requiring the person named therein to attend before the Court and give oral evidence or produce any document.

(2) An application by a person to be allowed to take out a witness summons shall be made by filing a statement giving—

- (a) the name and address of the person making the application and of his solicitor, if any;
- (b) the name, address and occupation of the proposed witness;
- (c) particulars of any document which the proposed witness is to be required to produce; and
- (d) the grounds on which the application is made.

(3) A witness summons shall be served on the witness personally a reasonable time before the day fixed for his attendance, and he shall be entitled to the like conduct money and payment for expenses and loss of time as if he had been summoned to attend the trial of an action in the High Court.

[E.r. 47]

*Powers of Court where undue delay, etc.*

44.—(1) If the Court is dissatisfied with the conduct of any proceedings or the carrying out of any order or direction of the Court whether by reason of undue delay or otherwise, the Court may require the person having the conduct of the proceedings, or any other person appearing to be responsible, to explain the delay or other cause of dissatisfaction, and may thereupon make such order for expediting the proceedings or otherwise as may be appropriate.

(2) For the purpose of the last foregoing paragraph the Court may direct any person to make any application and to conduct any proceedings and carry out any directions which the Court may specify; and the Court may, if it thinks fit, and if he consents, appoint the Official Solicitor to act as solicitor for the patient in the proceedings in the place of any solicitor previously acting for him.

[E.r. 48]

*Order for examination of patient*

45. In any proceedings relating to a patient a judge or the Master may make an order for the patient's attendance at such time and place as he may direct for examination by the Master, a Visitor or any medical practitioner.

[E.r. 49]

PART X

AMENDMENT

*Amendment of application*

46.—(1) The Court may allow or direct an applicant, at any stage of the proceedings, to amend his application in such manner and on such terms as to costs or otherwise as may be just.

(2) The amendment may be effected by making in writing the necessary alterations of the application, but if the amendments are so numerous or of such a nature or length that written alterations would make it difficult or inconvenient to read, a fresh application amended as authorised or directed may be issued.

[E.r. 50]

*Clerical mistakes and slips*

47. The Court may at any time correct any clerical mistakes in an order or any error arising in an order from any accidental slip or omission.

[E.r. 51]

*Endorsement of amendment*

48. Where an application or order has been amended under rule 46 or 47, a note shall be placed on it showing the date on which it was amended and the alteration shall be sealed.

[E.r. 52]

PART XI

APPEALS

*Appeal from Master*

49.—(1) Subject to rule 50, any person aggrieved by an order or decision of the Master may, within eight days from the date of entry of the order or, as the case may be, from the date of the decision, appeal therefrom to the judge.

(2) The appellant shall, within the said period of eight days—

(a) serve a notice of appeal in Form 6 on—

(i) every person who is directly affected by the appeal, being a person who appeared, or was represented before, the Court when the order or decision was made or given, and

(ii) any other person whom the Court may direct; and

(b) leave a copy of the notice at the Office.

(3) The time and place at which the appeal is to be heard shall be fixed by the Office in consultation with the judge, and the Office shall cause notice of the time and place so fixed to be sent to the appellant who shall forthwith send notice thereof to every person who has been served with notice of the appeal.

(4) No further evidence shall be filed in support of or in opposition to the appeal without leave of the Court.

[E.r. 53]

*Appeal from order not made on appointment for a hearing*

50.—(1) No appeal shall lie—

- (a) from any order or decision of the Court which is not made or given on an appointment for a hearing; or
- (b) at the instance of a patient from any order of the Court appointing a controller ad interim for the patient,

except in accordance with the following provisions of this rule.

(2) Any person who is aggrieved by such an order or decision as is mentioned in paragraph (1)(a), or a patient who is aggrieved by such an order as is mentioned in paragraph (1)(b), may apply to the Court to reconsider the order or decision, and the Office shall fix an appointment for a hearing.

(3) No further evidence shall be filed in support of or in opposition to the application without the leave of the Court.

(4) On the hearing of the application the Court may either confirm or revoke its previous order or decision or make or give any other order or decision which it thinks fit.

(5) Any person aggrieved by any order or decision made or given on the hearing of the application may appeal therefrom to the judge in accordance with rule 49.

[E.r. 54]

## PART XII

### SECURITY

*Controller to give security*

51.—(1) Where an order is made appointing a person other than the Official Solicitor as controller for a patient—

- (a) the person appointed shall, unless the Court otherwise directs, give such security for the due performance of his duties as the Court may approve and shall give it before acting as controller unless the Court allows it to be given subsequently; and
  - (b) the order shall not be entered until the person appointed has given to the satisfaction of the Court any security required to be given by him before acting.
- (2) The Court may from time to time vary any security required.

[E.r. 55]

*Manner of giving security*

52.—(1) Subject to any directions of the Court, security may be given in any of the following ways or partly in one of those ways and partly in another—

- (a) by a bond approved by the Court and given by the person giving security and also by—
  - (i) an insurance company, group of underwriters or bank approved by the Court; or
  - (ii) with the approval of the Court, two personal sureties; or
- (b) by lodging in court a sufficient sum of money or stock; or
- (c) in such other manner as the Court may approve.

(2) A person desiring to give security in whole or in part by lodging money or stock in court shall file a form of request in Form 7 and the Court may thereupon give leave to make the lodgment and direct how any such money is to be invested and how any dividends are to be applied.

[E.r. 56]

*Lodgment of Security*

53. Any security given by lodgment of money or stock shall be dealt with in accordance with the terms of the request filed when the lodgment was made.

[E.r. 57]

*Discharge of security where new security given*

54. Where a controller is authorised or directed to give new security, and—

- (a) the new security has been completed, and
- (b) he has paid or secured to the satisfaction of the Court any balance due from him,

the former security shall, unless the Court otherwise directs, be discharged.

[E.r. 58]

*Maintenance of security by bond*

55. Every person who has given security by a bond shall, whenever his accounts are passed or the Court so directs, satisfy the Court—

- (a) that any premiums payable in respect of the bond have been duly paid, or
- (b) if the bond was given by personal sureties that each surety is living and within the jurisdiction and has neither been adjudicated bankrupt nor compounded with his creditors,

and, if the Court is not so satisfied, it may require new security to be given or may give such other directions as it thinks fit.

[E.r. 59]

## PART XIII

## ACCOUNTS

*Passing of accounts*

56.—(1) Every controller shall annually, or at such other intervals as the Court may direct, deliver his accounts to the Office and attend at or within such time as the Office may appoint to have the accounts taken and passed.

(2) On the passing of any accounts the Court shall make all proper allowances out of the patient's estate, including an allowance in respect of the reasonable and proper costs of the controller of passing the accounts and of any other person allowed to attend.

(3) The Court may, if it thinks fit, direct that a controller need not account under this rule or may dispense with the passing of any accounts at any time at which they would otherwise require to be passed.

[E.r. 60]

*Application of balance due from controller*

57. The balance found due from a controller on the passing of his accounts or so much thereof as the Court may direct, shall—

- (a) be paid by the controller into court to the credit of the proceedings and invested in such manner as the Court may direct, or
- (b) be invested or otherwise dealt with by the controller in such manner as the Court may direct.

[E.r. 61]

*Default of controller*

58. Where a controller fails to comply with rule 56 or fails to pay into court or invest or otherwise deal with any money in accordance with any direction of the Court, the Court may disallow any remuneration which would otherwise be due to the controller and, if he has made default in paying into court or investing or otherwise dealing with any money, may charge him with interest thereon at such rate as the Court may fix, for the period of his default.

[E.r. 62]

*Payment of maintenance and costs*

59. Unless otherwise directed, any money ordered to be paid by a controller for maintenance shall be paid out of income and any costs ordered to be paid by a controller may,

when taxed or measured, be paid out of any moneys coming into his hands, after providing for any maintenance payable under this Order and fees payable under an Order made under section 116(1) of the Act.

[E.r. 63]

#### *Final accounts*

60.—(1) On the discharge or death of a controller or on the death or recovery of a patient for whom a controller has been appointed, the Court shall take and pass the accounts of the controller from the foot of his last account or, if no account of his has previously been passed, from the date of his appointment, unless in the opinion of the Court the taking and passing of such accounts may properly be dispensed with.

(2) If a balance is found due from the controller or his estate, he or his personal representatives, as the case may be, shall pay it into court or otherwise deal with it as the Court may direct.

(3) If a balance is found due to the controller or his estate, it shall be paid to him or his personal representatives, as the case may be, by the patient or out of the patient's estate.

(4) On payment of any balance found due from the controller, or if no balance is found due from him or the passing of his accounts has been dispensed with under paragraph (1) above, the security of the controller shall, unless the Court otherwise directs, be discharged.

[E.r. 64]

#### *Accounting by other persons*

61. Rules 56 to 60 shall also apply, to the extent directed by the Court, to any person who is—

- (a) directed to deal with the patient's property or affairs under rule 5;
- (b) directed or authorised to act under rule 38(1)(a); or
- (c) appointed a controller ad interim under rule 38(1)(b),

as they apply to a controller.

[E.r. 65]

### PART XIV

#### INQUIRIES

#### *Inquiries as to desirability of appointment of controller, etc.*

62.—(1) Where the Court has reason to believe that a controller should be appointed for a patient or that any other power conferred on the Court should be exercised with respect to the property and affairs of a patient, the court may direct—

- (a) an officer of the Court or a Visitor or, if he consents, the Official Solicitor to make inquiries and report to the Court whether it is desirable in the interests of the patient that an application should be made for that purpose; or
- (b) a Medical Visitor to visit the patient and report to the Court on the capacity of the patient to manage and administer his property and affairs.

(2) On receiving any report pursuant to paragraph (1) above, the Court may, if it thinks fit—

- (a) direct an application to be made pursuant to rule 8; or
- (b) if the report is by a Medical Visitor and the Court is satisfied that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs, make an order appointing a controller or exercising any other power conferred on the Court with respect to the patient's property and affairs.

[E.r. 66]

#### *Inspection of patient's property*

63. For the purpose of any proceedings relating to the property of a patient, the Court may if it thinks fit, inspect the property or direct an officer of the Court or, if he consents, the Official Solicitor to inspect the property, make any necessary inquiries and report to the Court.

[E.r. 67]

*Inquiries as to prior dealing with the patient's property*

64. In any proceedings relating to a patient the Court may make or cause to be made such inquiries as it thinks fit as to any dealing with the patient's property before the commencement of the proceedings and as to the mental capacity of the patient at the time of such dealing.

[E.r. 68]

*Inquiries as to testamentary documents executed by patient*

65. The Court may make or cause to be made inquiries whether any person has in his possession or under his control or has any knowledge of any testamentary document executed by a patient, and may direct that person to answer the inquiries on oath and to produce any such document which is in his possession or under his control and deal with it in such manner as the Court may direct.

[E.r. 69]

*Power to direct other inquiries*

66. The Court may make or cause to be made any other inquiries which it may consider necessary or expedient for the proper discharge of its functions under the Order or this Order.

[E.r. 70]

## PART XV

## CUSTODY AND DISPOSAL OF FUNDS AND OTHER PROPERTY

*Statement of property retained or deposited*

67. Where under a direction of the Court any furniture or effects of a patient are allowed to remain in the possession of, or deposited with, any person, that person shall, unless the Court otherwise directs, sign and file a statement of the furniture or effects and an undertaking not to part with them except on a direction under seal.

[E.r. 71]

*Stock in name of patient or controller*

68.—(1) Where any stock—

- (a) is standing in the name of a patient beneficially entitled thereto; or
- (b) is standing in the name of a controller in trust for a patient, or as part of his property, and the controller dies intestate or himself becomes incapable by reason of mental disorder of acting as controller, or is out of the jurisdiction of the Court, or it is uncertain whether he is still alive, or he neglects or refuses to transfer the stock or to receive and pay over the dividends thereof as the Court directs,

the Court may order some proper person to transfer the stock into the name of the controller or, as the case may be, a new controller for the patient or into court or otherwise deal with it as the Court may direct and also to receive and pay over the dividends thereof as the Court may direct.

(2) Where an order is made under paragraph (1) above or under Article 102 of the Order directing stock to be transferred into court, the person required to effect the transfer shall be—

- (a) in the case of stock standing in the stock register kept by the Bank of Ireland or any other bank or by the Crown Agents for Overseas Governments and Administrations, some proper officer of the bank or the Crown Agents;
- (b) in any other case, some proper officer of the company or other body, whose stock is to be transferred;

and the said person shall, if so ordered, receive any sum accrued due before the transfer by way of dividend, bonus or periodical payment in respect of the stock and pay it into court to the general account of the patient or to a separate account or otherwise deal with it as the Court may direct.

[E.r. 72]

*Disposal of property on patient's death or recovery*

69.—(1) On the death or recovery of a patient the Court may order any money, securities or other property belonging to the patient, or forming part of his estate, or remaining under the

control of, or held under the directions of the Court, to be paid, transferred, delivered or released to the person who appears to be entitled thereto.

(2) If no grant of representation has been taken out to the estate of a deceased patient and it appears to the Court that the assets of the estate, after deduction of debts and funeral expenses, do not exceed £5,000 in value, the court may, if it thinks fit, provide for payment of the funeral expenses out of any funds in court standing to the credit of the deceased and order that any such funds, or the balance thereof, or any other property of the patient remaining under the control, or held under the directions, of the Court, be paid, transferred, delivered or released either to the personal representative of the deceased when constituted or to the person who appears to be entitled to apply for a grant of representation to his estate.

(3) The Court may at any time, pending notification to the Office of the grant of representation to the estate of a patient, direct that any money or securities which belonged to the patient when he died and were not already in court shall be transferred into court.

[E.r. 73]

## PART XVI

### SETTLEMENT AND APPROVAL OF DEEDS

#### *Documents to be settled by court*

70. All mortgages, leases and other dispositions of a patient's land and such other deeds and documents relating to his estate as may be directed shall be settled and approved by the Court.

[E.r. 74]

#### *Authentication by seal*

71.—(1) The seal of the Office on any deed or other document shall be evidence that it has been settled and approved by the Court.

(2) Unless otherwise directed, no deed or other document shall be sealed for the purpose aforesaid unless—

- (a) it bears a certificate by the person tendering it that it is an exact copy of a draft settled and approved by the Court, and
- (b) in the case of a deed or document containing a recital that any money has been lodged in court, a certificate of the Accountant General is produced stating that the lodgment has been made.

[E.r. 75]

## PART XVII

### COPIES OF DOCUMENTS

#### *Copies of documents in court*

72.—(1) Any person who has filed an affidavit or other document shall, unless the Court otherwise directs, be entitled, on request, to be supplied by the Office with a copy of it.

(2) The person having the conduct of any proceedings shall, unless the Court otherwise directs, be entitled, on request, to be supplied by the Office with a copy of any order, certificate, authority, direction or other document made, given or prepared by the Court in the proceedings.

(3) Any other person may, on request, be supplied by the Office with a copy of any such document as is mentioned in paragraph (1) or (2), if the Court is satisfied that he has good reason for requiring it and that it is not reasonably practicable for him to obtain it from the person entitled to bespeak a copy from the Office.

(4) Any copy of a document supplied under paragraph (1), (2) or (3) above shall, if so required, be marked as an office copy.

[E.r. 76]

## PART XVIII

## FEES

*Payment of fees*

73.—(1) Subject to paragraph (2), the person by whom any fee is payable shall, unless the Court otherwise directs, make the payment out of the income of the patient or, if he is dead, out of his estate.

(2) Where the Court directs that a fee is to be paid by the Accountant General wholly or partly out of funds in court, then, unless the Court directs payment to be made out of capital, the Accountant General shall meet the fee out of the income arising from the fund.

[E.r. 77]

*Administration fee*

74.—(1) The Office shall annually, or at such other intervals as may be convenient, issue a certificate in respect of each patient in which there shall be stated—

- (a) the amount of the administration fee payable in respect of the patient at the date of the certificate;
- (b) the period in respect of which the administration fee is payable; and
- (c) the name of the person by whom the payment is to be made.

(2) The Office may, if it thinks fit, issue a certificate for the payment of an estimated administration fee.

(3) Upon the issue of a certificate under this rule the amount of the fee shall be charged upon the patient's estate, and the payment shall be made within such time (not exceeding one month from the date of the certificate) as the Court may allow.

[E.r. 79]

## PART XIX

## COSTS

*Costs generally*

75.—(1) All costs incurred in relation to proceedings under this Order, and not provided for by way of remuneration under rule 39, shall be in the discretion of the Court and the Court may order them to be paid by the patient or charged on or paid out of his estate or paid by any other person attending or taking part in the proceedings.

(2) An order that costs incurred during the lifetime of a patient be paid out of or charged on his estate may be made within six years after his death.

[E.r. 84]

*Supreme Court costs rules to apply*

76. Subject to the provisions of this Order, Order 62 shall apply, with such modifications as may be necessary to costs incurred in relation to proceedings under this Order as they apply to costs incurred in relation to proceedings in the Chancery Division and may be taxed where required accordingly.

[E.r. 86]

*Costs of unnecessary employment of solicitor etc., not to be allowed*

77.—(1) No controller for a patient other than the Official Solicitor, shall, unless authorised by the Court, be entitled at the expense of the patient's estate to employ a solicitor or other professional person to do any work not usually requiring professional assistance.

(2) Where two or more persons having the same interest in relation to the matter to be determined attend any hearing by separate legal representatives, they shall not be allowed more than one set of costs of that hearing unless the Court certifies that the circumstances justify separate representation.

[E.r. 87]

*Costs of Official Solicitor*

78. Any costs incurred by the Official Solicitor in relation to proceedings under this Order or in carrying out any directions given by the Court, and not provided for by way of remuneration under rule 39, shall be paid by such person or out of such funds as the Court may direct.

[E.r. 88]

*Certificate of service or notification*

79. Where in proceedings relating to a patient a claim is made against his estate in respect of any costs alleged to have been incurred by him or on his behalf otherwise than in relation to the proceedings, the Court may refer the claim to the Master (Taxing Office) so that the amount due to the claimant may be ascertained by him or under his direction.

[E.r. 89]

APPENDIX D

PATIENTS' AFFAIRS FORMS

FORM 1:

NOTICE UNDER ARTICLE 107

OF THE MENTAL HEALTH (NORTHERN IRELAND) ORDER 1986

(O. 109, r. 3)

(N.B. This Notice is to be sent to the Master, Office of Care and Protection, Royal Courts of Justice, Belfast BT1 3JF, within fourteen days from first ascertainment of incapacity of the person concerned.)

I hereby give notice that the under mentioned person is considered to be incapable of managing his/her affairs by reason of mental disorder.

Name: \_\_\_\_\_

Present address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If in a Residential or Private Nursing Home or Hospital, date of admission: \_\_\_\_\_

Former Address: \_\_\_\_\_

\_\_\_\_\_

Married, Single or Widowed: \_\_\_\_\_

Date of Birth or approximate age: \_\_\_\_\_

Religion: \_\_\_\_\_

Former Occupation: \_\_\_\_\_

National Insurance Number: \_\_\_\_\_

If in hospital

(a) Registered Number: \_\_\_\_\_

(b) Statutory Authority for detention (if any): \_\_\_\_\_

(c) Dates of previous hospital treatment, if any, and how then classified: \_\_\_\_\_

Name and Address and date of appointment of Guardian (if any): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Particulars of Income (including pensions): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



FORM 2:

FIRST APPLICATION FOR THE APPOINTMENT OF A CONTROLLER

(O. 109, r. 4(1))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

19 No.

IN THE MATTER OF \_\_\_\_\_  
\_\_\_\_\_ A PATIENT

I \_\_\_\_\_  
of \_\_\_\_\_  
\_\_\_\_\_

apply to the Court for:

NOTES

Complete EITHER paragraph 1. OR paragraph 2. Delete the one which does not apply.

1. My own appointment as controller for the patient  
(a) I am not related to the patient\*  
(b) I am the \_\_\_\_\_  
of the patient (state relationship)\*

\*Delete whichever does not apply.

2. the appointment of \_\_\_\_\_  
of \_\_\_\_\_  
as controller for the patient \_\_\_\_\_  
(a) He/She is the \_\_\_\_\_  
of the patient (state relationship)\*

DO NOT DELETE paragraph 3.

Where any other order in addition to that at paragraphs 1, 2 and 3 is sought, a general form of application should be used.

OR  
3. the appointment of some other suitable person

Applicant's signature \_\_\_\_\_  
Date: \_\_\_\_\_

OR Solicitors for the applicant:

TO BE COMPLETED BY THE OFFICE,  
THE COURT WILL CONSIDER THIS APPLICATION ON THE \_\_\_\_\_ DAY OF  
19 \_\_\_\_\_ AT \_\_\_\_\_ O'CLOCK

FORM 3:

GENERAL FORM OF APPLICATION

(O.109, r. 4(1))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

19 No.

IN THE MATTER OF \_\_\_\_\_

\_\_\_\_\_ A PATIENT

I \_\_\_\_\_  
of \_\_\_\_\_

NOTES

Where the application is one to which rule 13 or 14 applies, give details of your authority to make the application, e.g. Controller, Trustee, etc.

Give details of the order you are asking the court to make

\_\_\_\_\_ apply to the Court for an order that:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and for any directions which are necessary as a result of my application.

Applicant's signature \_\_\_\_\_

Date \_\_\_\_\_

OR Solicitors for the applicant:

of:

TO BE COMPLETED BY THE OFFICE,  
THE COURT WILL CONSIDER THIS APPLICATION ON THE \_\_\_\_\_ DAY OF  
19 \_\_\_\_\_ AT \_\_\_\_\_ O'CLOCK

FORM 4:

CONSENT OF PROPOSED NEW TRUSTEE TO ACT

(O.109, r. 31)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

19 No.

IN THE MATTER OF \_\_\_\_\_

\_\_\_\_\_ A PATIENT

I \_\_\_\_\_

of \_\_\_\_\_

give my consent to:

(a) act as the trustee of the will of

or

(b) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signed \_\_\_\_\_

Date \_\_\_\_\_

I \_\_\_\_\_

of \_\_\_\_\_

certify that the signature written above is the signature of the person mentioned in the above consent.

Signed \_\_\_\_\_

Date \_\_\_\_\_

NOTE

If paragraph (a) does not apply delete and give details of what is being consented to in paragraph (b)

FORM 5:

WITNESS SUMMONS

(O. 109, r. 43(1))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

19 No.

IN THE MATTER OF \_\_\_\_\_

\_\_\_\_\_ A PATIENT

To \_\_\_\_\_

of \_\_\_\_\_

You are ordered to attend before

\_\_\_\_\_

at \_\_\_\_\_

\_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_ 19

at \_\_\_\_\_ o'clock, to:

(a) give evidence in this matter

(b) bring with you and produce at the hearing the documents listed below;

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_

THIS SUMMONS WAS ISSUED AT THE REQUEST OF

\_\_\_\_\_ SOLICITORS FOR

THE \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

FORM 6:

NOTICE OF APPEAL

(O.109, r. 49(2))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

19 No.

IN THE MATTER OF \_\_\_\_\_

I \_\_\_\_\_

of \_\_\_\_\_

wish to appeal to a Judge against the order/decision\* of the Master made in this matter on the \_\_\_\_\_ day of 19 \_\_\_\_\_ that:

NOTE

If you are appealing against only part of the order/decision write down which part.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I intend to ask that the order/decision\* may be:

- (a) discharged\*
(b) varied in the following way\*

\*Delete whichever does not apply

Give details of new order/decision you are asking to be made

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

YOU WILL BE SENT NOTICE OF THE TIME, DATE AND PLACE OF THE HEARING OF THIS APPEAL

Signed \_\_\_\_\_ Appellant

Date \_\_\_\_\_

Solicitors for the Appellant \_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_

FORM 7:

REQUEST FOR LEAVE TO GIVE SECURITY BY LODGMENT IN COURT

(O.109, r. 52(2))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

19 No.

IN THE MATTER OF \_\_\_\_\_

\_\_\_\_\_ A PATIENT

I \_\_\_\_\_ Controller

for the above named patient, of \_\_\_\_\_

NOTE

If the security is not money, give details of what is, and its value

ask the court to allow me to give my security to the court

(a) in the sum of £

(b) \_\_\_\_\_

I agree that if the court decides that I have failed to pay or account to the patient's estate for any money or security which I have received on his/her behalf in carrying out my duties as controller, the money or security I have lodged with the court may immediately be transferred to the patient's account, or used as the court decides for the benefit of the patient; but if I prove that the loss, including any costs, is smaller than the amount of money or the value of the securities originally lodged, the balance will be returned to me.

Signed \_\_\_\_\_ Controller

Date \_\_\_\_\_

<i>Orders revoked</i>	<i>References</i>
The Mental Patients' Affairs Order (Northern Ireland) 1949	—
The Mental Patients' Affairs (Amendment) Order (Northern Ireland) 1963	S.R. & O. (N.I.) 1963 No. 173
The Mental Patients' Affairs (Amendment) Order (Northern Ireland) 1971	S.R. & O. (N.I.) 1971 No. 30
The Patients' Affairs (Amendment) Order (Northern Ireland) 1976	S.R. 1976 No. 206
The Patients' Affairs (Amendment) Order (Northern Ireland) 1977	S.R. 1977 No. 5

## EXPLANATORY NOTE

*(This note is not part of the Rules.)*

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 so as to introduce, as Order 109 and Appendix D, new provisions relating to the management of the property and affairs of patients in consequence of the Mental Health (Northern Ireland) Order 1986. The main changes are:—

- (1) Provision is made for the manner in which the Court's powers under the said Order of 1986 may be exercised (rule 2) and the provisions for the making of applications are shortened (Part III of the Rules).
- (2) New forms of application for the appointment of a controller (formerly a committee) for a patient or for some other relief are introduced in the place of applications by way of summons (rule 4).
- (3) Rule 5 enlarges the classes of case which may be dealt with by the simplified procedure, in future to be known as short procedure: rule 5 also includes provision concerning the Court's power to make an order without appointing a controller for a patient.
- (4) The minimum notice required for the hearing of a first application for the appointment of a controller is extended from 7 to 10 days (rule 15).
- (5) Where certain kinds of application to the Court are made (rule 20) the patient will in future be given informal notification by letter instead of formal notice.
- (6) The certificate of kindred and fortune is now renamed the certificate of family and property (rule 29).
- (7) Provision is made for the settlement or gift of any property of a patient and for the execution for the patient of a will (rule 14).
- (8) Rule 45 enables the Master (Care and Protection) as well as a judge to order the attendance of a patient for examination.
- (9) The rule (rule 69) enabling the Court to take certain steps in relation to the estate of a deceased person even if no grant of representation is taken out is updated by increasing from £1,500 to £5,000 the maximum value of estates to which it applies. This is in line with changes made in January 1985 by the Administration of Estates (Small Payments) (Increase of Limit) Order (Northern Ireland) 1985 (S.R. 1985 No. 9).

The Rules also make minor consequential amendments and revoke The Mental Patients' Affairs Order (Northern Ireland) 1949 and amending Orders.