

1988 No. 100

COUNTY COURTS

County Court (Amendment) Rules
(Northern Ireland) 1988*Made* 21st March 1988*Coming into operation—**rules 1, 2, 3, 6**1st May 1988**rules 4 & 5**1st August 1988*

We, the County Court Rules Committee, appointed by the Lord Chancellor under Article 46 of the County Courts (Northern Ireland) Order 1980(a), in exercise of the powers conferred on us by Article 47 of that Order and all other powers enabling us in that behalf, hereby make the following rules:—

Citation, interpretation and revocation

1.—(1) These rules may be cited as the County Court (Amendment) Rules (Northern Ireland) 1988.

(2) In these rules a reference to an Order, Rule, Appendix or Form is a reference to that Order, Rule, Appendix or Form as numbered in the County Court Rules (Northern Ireland) 1981(b).

(3) The County Court (Mental Health Act) Rules (Northern Ireland) 1978(c) and the County Court (Mental Health Act) (Amendment) Rules (Northern Ireland) 1979(d) are hereby revoked.

Mental Health (Northern Ireland) Order 1986(e)

2.—(1) Order 3 shall be amended as follows—

- (a) by substituting, in Rule 12, for the words “person of unsound mind if so found” the words “patient for whom a controller has been appointed”, by substituting for the words “if not so found” the words “a patient for whom a controller has not been appointed” and by substituting in the title of that Rule, for the words “Person of unsound mind”, the word “Patients”;
- (b) by substituting, at head (b) of Rule 13, for the words “person of unsound mind not so found” the words “patient for whom a controller has not been appointed”.

(2) Order 6 shall be amended at Rule 5(2) by substituting for the words “person of unsound mind (whether or not so found)” the word “patient”.

(a) S.R. 1980/397 (N.I. 3)

(b) S.R. 1981 No. 225; to which the only relevant amendments were made by S.R. 1982 No. 120 and S.R. 1986 No. 218

(c) S.R. 1978 No. 380

(d) S.R. 1979 No. 118

(e) S.I. 1986/595 (N.I. 4)

(3) Order 12 shall be amended at Rule 1 by substituting, in paragraph (1)(b), for the words “person of unsound mind” the word “patient”.

(4) Order 22 shall be amended at Rule 10 by substituting for the word “committee” the word “controller”.

(5) Order 44 shall be amended by substituting, in the title and in paragraphs (1) and (3) of Rule 1, for the words “person of unsound mind” the word “patient”.

(6) The new Rules set out in Schedule 1 shall be inserted in Order 52.

(7) Order 58 shall be amended at Rule 1 by inserting, in paragraph (1)—

(a) before the definition of “Court Funds Rules,” the following definition:—

“ “controller” means a person appointed as controller for a patient under Article 101 of the Mental Health (Northern Ireland) Order 1986;”;

(b) after the definition of “folio”, the following definition:—

“ “patient” has the meaning assigned to it in Article 2(2) of the Mental Health (Northern Ireland) Order 1986;”.

Entry day

3. Order 8 shall be amended by inserting, in Rule 1(1), after the word “court”, where it last appears, the words “or such other period before the opening day as the judge may in special circumstances direct”.

Increase in circuit registrars’ jurisdiction

4.—(1) Order 25 shall be amended at Rule 15 as follows—

(a) by inserting in paragraph (1), after the words “Order 26”, the words “, and without prejudice to paragraph (5),”;

(b) by deleting, in paragraphs (1) and (3), the figure “£500” and substituting the figure “£1,000”;

(c) by inserting the following new paragraph:—

“(5) The circuit registrar may refer to the judge any action which he thinks should properly be decided by the judge and the judge may either dispose of the action or refer it back to the circuit registrar with such directions as he thinks fit.”.

(2) Order 26 shall be amended by substituting, in Rule 2 and 4(2), for the figure “£300” the figure “£500”.

(3) Order 55 shall be amended at Rule 19 as follows—

(a) by deleting the figure “£500”, wherever it appears, and substituting the figure “£1,000”;

(b) by deleting the figure “£300”, wherever it appears, and substituting the figure “£500”.

Entry of civil bills

5. Order 8 shall be amended as follows—

(a) by substituting, for Rule 2, the following new Rule:—

“Entry and subsequent re-entry of ordinary civil bills

2.—(1) All civil bills, other than equity or summary civil bills, intended for entry and such summary civil bills as under Rule 13 of Order 12 require to be entered shall, on or before entry day, be delivered to the chief clerk by the party entering them or his solicitor together with a list in Form 42.

(2) Subject to paragraph (3), a civil bill which is not dealt with at the sittings of the court for which it is entered (or for which it is deemed to have been entered by virtue of this paragraph) shall be carried forward to the next following sittings and shall be deemed to have been entered for those sittings.

(3) A civil bill which is not dealt with at the sittings of the court for which it is deemed to have been entered by virtue of paragraph (2), and which is not mentioned to the court either at those sittings or at the fixing of the list for the next following sittings, shall be struck out by the chief clerk without further order of the court but without prejudice to the plaintiff's proceeding by a new civil bill.

(4) Where a civil bill has been struck out pursuant to paragraph (3) either party may apply to the judge or, where the matter is within the circuit registrar's jurisdiction, to the circuit registrar, for an order that the civil bill be re-entered for hearing.

(5) Notice of application under paragraph (4) shall be given in writing setting out the special circumstances or other grounds on which the application is based and shall be served on the opposite party and filed in the Office not less than three clear days before the day on which the application is to be made.

(6) Where the court orders that a civil bill is to be re-entered for hearing pursuant to paragraph (4) the court shall record the special circumstances or other grounds on which that order is based.”;

(b) by deleting, in Rule 4(1), the word “like” and the words “as aforesaid”.

Forms

6. Appendix 1 shall be amended as follows—

(a) by substituting, in Form 5, for the word “committee” the word “controller”;

(b) by inserting the new Forms 299-304 set out in Schedule 2.

We, the undersigned members of the County Court Rules Committee, having by virtue of the powers vested in us in this behalf made the foregoing rules, do hereby certify the same under our hand and submit them to the Lord Chancellor accordingly.

John K. Pringle
T. F. Glass
S. D. Massey
C. Nelson M. Rountree
K. G. Nixon
Barry Valentine
John J. Curran
J. F. B. Russell

After consultation with the Lord Chief Justice, I allow these rules of which rules 1, 2, 3 and 6 shall come into operation on 1st May 1988 and rules 4 & 5 shall come into operation on 1st August 1988.

Dated 21st March 1988

Mackay of Clashfern, C.

Rules to be inserted in Order 52

PART II

MENTAL HEALTH (NORTHERN IRELAND) ORDER 1986

Interpretation

3. In this Part—

- (a) an Article referred to by number means the Article so numbered in the Mental Health (Northern Ireland) Order 1986 and expressions which are defined in that Order have the same meaning as they have in that Order;
- (b) “the Order” means the Mental Health (Northern Ireland) Order 1986;
- (c) “place of residence” means, in relation to a patient who is receiving treatment as an in-patient in a hospital or other institution, that hospital or institution.

Where proceedings may be commenced

4.—(1) Subject to paragraph (2), an application under Part II of the Order shall be made to the court for the division in which the patient’s place of residence is situated.

(2) An application under Article 37 for the discharge of an order made under Article 36 (Appointment by county court of acting nearest relative) may be made to the court which made the order.

Notice of application under Part II of the Order

5.—(1) Notice of application under Part II of the Order shall be given in Form 299, 301 or 303, as the case may be.

(2) The Notice shall be served on the chief clerk and the respondent not less than ten days before entry day for the sitting at which the application is sought to be heard or within such other period as the judge may direct.

(3) Upon receipt of the Notice the chief clerk shall enter the application for hearing at the appropriate sitting of the court without the need for production of an entry sheet.

(4) Where an application is made under Part II of the Order by a person other than an officer of the responsible Board, and the Board is not otherwise a respondent to that application, notice of the application shall be served on the Board in accordance with paragraph (2).

Respondents to applications under Part II of the Order

6.—(1) Where an application is made under Article 25(3) (to transfer guardianship to the responsible Board or to some other person) the person having guardianship of the patient shall be the respondent.

(2) Where an application is made under Article 36 (Appointment by county court of acting nearest relative) the nearest relative of the patient shall be the respondent unless the application is made on the ground specified in paragraph (3)(a) of Article 36 or the court otherwise directs.

(3) Where an application is made under Article 37 (Discharge and variation of orders under Article 36) the respondent shall be—

- (a) in the circumstances specified in paragraph (1)(a), (2) or (3) of Article 37, the person who was the respondent to the original application under Article 36;

(b) in the circumstances specified in paragraph (1)(b) of Article 37, the person having the functions of the nearest relative of the patient by virtue of the order under Article 36.

(4) Without prejudice to paragraphs (1) to (3), the court may direct that any other person, not being the patient, shall be made a respondent to an application under Part II of the Order.

Evidence

7.—(1) On the hearing of an application under Part II of the Order the court may accept as prima facie evidence of the facts stated therein any report made by a medical practitioner and any report made in the course of his official duties by—

- (a) a probation officer; or
- (b) an approved social worker.

(2) The respondent shall be informed of the substance of any part of the report bearing on his fitness or conduct which the judge considers to be material to the manner in which the application should be dealt with.

Sitting in chambers

8. Unless the judge directs otherwise, an application under Part II of the Order shall be heard and determined in chambers.

Power to interview the patient

9.—(1) For the purpose of determining an application under Part II of the Order the judge may interview the patient either in the presence of or separately from the parties and either at the court or elsewhere.

(2) The judge may direct the circuit registrar to interview the patient as provided for by paragraph (1) and report to the judge in writing.

Forms to be inserted in Appendix 1

FORM 299

Notice of application for an order under Article 25(3) of the Mental Health (Northern Ireland) Order 1986 that guardianship of a patient be transferred to the responsible Health and Social Services Board or other person approved for the purpose by the Board

[Order 52, Rule 5(1)]

IN THE COUNTY COURT/RECORDER'S COURT

for the DIVISION OF

IN THE MATTER OF THE MENTAL HEALTH (NORTHERN IRELAND) ORDER 1986

BETWEEN

of

Applicant

an officer of the
and

Health and Social Services Board

of

Respondent

TAKE NOTICE THAT at the sittings of the court for the above-named Division to be held at _____ on the _____ day of _____ 19____ an application will be made to the court under Article 25(3) of the Mental Health (Northern Ireland) Order 1986 for an order that the guardianship of _____ (*name of patient*) at present residing at _____ (*private address and, where applicable, name of hospital in which patient is*), a patient, be transferred from _____ (*name*) of _____ (*address*) to the _____ Health and Social Services Board [*or to* _____ (*name*) of _____ (*address*) being a person approved for that purpose by the said Board].

The said patient was received into guardianship in pursuance of an application made on _____ (*date*) as follows:—

Dated this _____ day of _____ 19____ .

Applicant/Solicitor for
Applicant.

To: The above-named Respondent and the Chief Clerk at
(Courthouse).

FORM 300

Order transferring guardianship of a patient under Article 25(3) of the Mental Health (Northern Ireland) Order 1986

Order 52, Part II

[Title as in Form 299]

UPON AN APPLICATION made the [date] under
Article 25(3) of the Mental Health (Northern Ireland) Order 1986;

AND UPON READING the notice of application;

AND UPON HEARING ;

IT IS ORDERED THAT the guardianship of (name
and present place of residence of patient), be transferred from
(name and address of present
guardian) to—

¹(a) The Health and Social Services Board, being the responsible
Board;

¹(b) (name and
address of person appointed), being a person approved for the purpose by the
Health and Social Services Board.

Dated this day of 19

(Seal)

Signed

Chief Clerk

Note: ¹Delete as applicable.

FORM 301

**Notice of Application for appointment of acting nearest relative under
Article 36 of the Mental Health (Northern Ireland) Order 1986**

Order 52, Rule 5(1)

[Title as in Form 299]

BETWEEN

of

Applicant

and

of

Respondent

TAKE NOTICE that at the sittings of the court for the above-named Division to be held at _____ on the _____ day of _____ 19 ____ an application will be made to the court under Article 36 of the Mental Health (Northern Ireland) Order 1986 for an order directing that the functions of the nearest relative of _____ (*name of patient*) at present residing at _____ (*private address*) and, where applicable, name of hospital in which patient is in residence) under the Mental Health (Northern Ireland) Order be exercisable by the applicant [*or by (name and address of person proposed)*].

The ground upon which this application will be made is—

- ¹(a) that the patient has no nearest relative within the meaning of the Mental Health Order, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is;
- ¹(b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness;
- ¹(c) that the nearest relative of the patient unreasonably objects to the making of an application for assessment or a guardianship application in respect of the patient; or
- ¹(d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient from hospital or guardianship under Part II of the Mental Health Order, or is likely to do so.

²The nearest relative of the said patient at the date of this application is

(*name and address of nearest relative*).

The applicant is—

- ¹(a) a relative of the patient [give particulars];
- ¹(b) a person (other than a relative) with whom the patient is residing (or, if the patient is an in-patient in a hospital, was last residing before he was admitted) [give particulars];
- ¹(c) an approved social worker.

FORM 303

Notice of Application under Article 37 of the Mental Health (Northern Ireland) Order 1986 for discharge or variation of an order appointing a person to act as nearest relative under Article 36 of the Mental Health Order 1986

Order 52, Rule 5(1)

[Title as in Form 301]

TAKE NOTICE that at the sittings of the court for the above-named Division to be held at _____ on the _____ day of _____ 19 ____ an application will be made to the court under Article 37 of the Mental Health (Northern Ireland) Order 1986 for—

- ¹ (a) discharge of the order dated _____ made by _____
 Court appointing _____ (*name and address of person appointed*)
 to exercise the functions of the nearest relative of
 (*name and present place of residence of patient*);
- ¹ (b) variation of the order dated _____ made by _____
 Court appointing _____ (*name and address of person appointed*)
 to exercise the functions of the nearest relative of _____ (*name and present place of residence of patient*)
 by substituting for the person so appointed
 (*name and address of person proposed*).

The application is made on the following grounds—

The applicant is [here give particulars, including the name and address of the applicant and the capacity, as prescribed by Article 37(1), (2) or (3) of the Mental Health Order, in which the application is made].

Dated this _____ day of _____ 19 ____ .

Signed

Applicant/Solicitor for
 Applicant.

To: The above-named Respondent and the Chief Clerk at
 (Courthouse)

Note: ¹Delete as applicable.

Order of discharge/variation of appointment of a person to act as nearest relative under Article 36 of the Mental Health (Northern Ireland) Order 1986

Order 52, Part II

[Title as in Form 301]

UPON AN APPLICATION made the [date] under
Article 37 of the Mental Health (Northern Ireland) Order 1986;

AND UPON READING the notice of application;

AND UPON HEARING ;

IT IS ORDERED THAT the order dated _____ made by
_____ Court appointing _____ (name
and address of person appointed) to exercise the functions under the Mental Health
(Northern Ireland) Order 1986 of the nearest relative of
_____ (name and present place of residence of the patient)
be—

¹(a) discharged;

¹(b) varied by substituting for the person so appointed

_____ (name and address of person
substituted), being a person who, in the opinion of the court, is a proper person to
exercise those functions and is willing to do so.

Dated this _____ day of _____ 19 .

(Seal)

Signed

Chief Clerk

Note: ¹Delete as applicable.

EXPLANATORY NOTE

(This note is not part of the rules.)

These Rules amend the County Court Rules (Northern Ireland) 1981 so as to—

- (a) make provision for applications under Part II of the Mental Health (Northern Ireland) Order 1986 and to take account of changes in terminology introduced by that Order (rules 2 and 6);
- (b) enable the judge to alter the formula for calculating entry day in special circumstances (rule 3);
- (c) take account of the increase in the circuit registrars' trial jurisdiction from £500 to £1,000 and the increase in the small claims limit from £300 to £500 (rule 4);
- (d) alter the rules relating to the entry of ordinary civil bills (rule 5).