1982 No. 307

SUPREME COURT

PROCEDURE

The Northern Ireland Assembly Election Petition Rules 1982

Made . . . . . *23rd September 1982*

Coming into operation . . . *20th October 1982*

To be laid before Parliament

We, the Supreme Court Rules Committee, being the authority having for the time being power to make rules for the purposes of Part IX of the Electoral Law Act (Northern Ireland) 1962(a) as applied and modified by the Northern Ireland Assembly Elections Order 1982(b) hereby with the concurrence of the Lord Chancellor exercise those powers as follows:—

Citation, commencement and application

1.—(1) These rules may be cited as the Northern Ireland Assembly Election Petition Rules 1982 and shall come into force on the 20th day of October 1982.

(2) These rules shall apply to proceedings questioning an election or return or complaining of no return to the Northern Ireland Assembly.

Interpretation

2.—(1) In these rules, unless the context otherwise requires:—

"the Act" means the Electoral Law Act (Northern Ireland) 1962 as applied and modified by the Northern Ireland Assembly Elections Order 1982;

"the court" means the election court;

"the Director of Public Prosecutions" means the Director of Public Prosecutions for Northern Ireland;

"election petitions office" means the Central Office in the Royal Courts of Justice Belfast;

"prescribed officer" means an officer of the Supreme Court, appointed by the Lord Chief Justice under section 93(3) of the Act.

(2) Subject to the provisions of the Act and these rules, the practice and procedure of the High Court, including the rules relating to discovery and inspection of documents and the delivery of interrogatories, shall apply to a petition under these rules as if it were an ordinary action within its jurisdiction, notwithstanding any different practice, principle or rule on which the committees of the House of Commons of the Parliament of the United Kingdom used to act in dealing with election petitions.

(3) Any document required to be filed in proceedings under these rules shall be filed in the election petitions office.

(a) 1962 c. 14 (N.I.)
(b) S.I. 1982/1135

Form of petition

3.—(1) An Assembly election petition shall be in the form set out in Schedule A.

(2) A petition shall state:—

(*a*) in which of the capacities mentioned in section 75(1) of the Act the petitioner or each of the petitioners presents the petition;

(*b*) the date and result of the election to which the petition relates, showing the date on which the return was made to the Clerk of the Assembly of the member declared to have been elected;

(*c*) in the case of a petition mentioned in subsection (2) or (3) of section 76 of the Act, the date from which the time for the presentation of the petition is to be calculated; and

(*d*) the grounds on which relief is sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved;

and shall conclude with a prayer setting out particulars of the relief claimed.

(3) The petition shall be presented by filing it and at the same time leaving three copies at the election petitions office.

Notice of presentation of petition

4.—(1) Within five days after the presentation of the petition, the petitioner shall serve on the respondent within the meaning of section 75(2) of the Act and on the Director of Public Prosecutions a notice of the presentation of the petition, and of the nature of the security for costs which the petitioner has given or proposes to give pursuant to paragraph 7(1) of the Eighth Schedule to the Act, together with a copy of the petition.

(2) Service shall be effected:—

(*a*) on the respondent, by delivering the notice and a copy of the petition to the respondent personally; and

(*b*) on the Director of Public Prosecutions in the same manner as a writ of summons is served;

and an affidavit of service shall be filed as soon as practicable after service.

Security for costs

5. Where security for costs pursuant to paragraph 7(1) of the Eighth Schedule to the Act is given in whole or in part:—

(*a*) by recognisance—

(i) the recognisance shall be acknowledged before a person authorised to take affidavits;

(ii) the recognisance shall be filed forthwith and shall be accompanied by an affidavit sworn by each surety stating that after payment of all his debts he is worth a sum not less than that for which he is bound by his recognisance and a copy of the affidavit shall forthwith be served by the petitioner on the respondent;

(*b*) by a deposit of money—

(i) the money shall be placed on deposit receipt in the Bank of Ireland in the name of the Accountant General of the Supreme Court to the credit of the matter and may be drawn upon by the court from time to time for the purposes for which security is required by the Act;

(ii) the deposit receipt shall forthwith be left with the Accountant General who shall certify the amount of such deposit and such certificate shall then be left with the prescribed officer.

Notice of objection to recognisance

6.—(1) Where the respondent intends to object to a recognisance on any ground mentioned in paragraph 7(4) of the Eighth Schedule to the Act, he shall, within five days after service on him of the notice referred to in rule 4, serve on the petitioner notice of his objection, stating the grounds thereof, and issue and serve on the petitioner a summons to determine the validity or otherwise of the objection.

(2) The summons shall be heard by the prescribed officer, subject to an appeal to the court within five days after the prescribed officer's decision.

(3) If the objection is allowed, the prescribed officer, or the court, as the case may be, shall at the same time determine what sum of money will make the security sufficient and the petitioner may, within five days thereafter, remove the objection by the deposit of that sum.

Lists of petitions at issue

7. The lists of petitions at issue kept by the prescribed officer pursuant to paragraph 9 of the Eighth Schedule to the Act shall be conspicuously displayed in the election petitions office, and shall be available for inspection by the public during office hours.

Time of trial

8.—(1) The day for trial of each election petition shall be fixed by a judge of the court.

(2) Not less than fourteen days, before the day so fixed, the prescribed officer shall cause notice of the time and place of trial to be displayed in a conspicuous place in the election petitions office and sent by post to—

(*a*) the petitioner;

(*b*) the respondent;

(*c*) the Director of Public Prosecutions; and

(*d*) the returning officer for the constituency for which the election to which the petition relates was held.

(3) The person to whom a notice is sent under paragraph (2)(*d*) shall, upon the receipt of such notice, publish it forthwith in the constituency.

(4) The Lord Chancellor shall appoint an officer of the Supreme Court to act as registrar for the purposes of the trial.

Evidence

9.—(1) Where the petition claims the seat for an unsuccessful candidate on the ground that the total number of lawful votes cast in his favour equalled or exceeded the quota or that, where only one vacancy remained unfilled, that total was equal to or greater than the total number of lawful votes (together with any surplus not transferred) credited to another or other continuing candidates, every party to the petition shall, not less than seven days before the day fixed for the trial, file a list of the votes which he contends were wrongly admitted or rejected, stating in respect of each such vote the grounds for his contention, and serve a copy of the list on every party and the Director of Public Prosecutions.

(2) Where the respondent to a petition complaining of an undue election and claiming a seat for some other person intends to give evidence pursuant to paragraph 11(5) of the Eighth Schedule to the Act, to prove that that person was not duly elected, the respondent shall, not less than seven days before the day fixed for the trial of the petition, file a list of his objections to the election of that person on which he intends to rely and serve a copy of the list on the petitioner and the Director of Public Prosecutions.

(3) Any party to the petition may inspect and obtain an office copy of any list filed pursuant to either of the two last foregoing paragraphs.

(4) Except by leave of the court—

(*a*) no evidence shall be given by a party against the admission or rejection of any vote or as to any ground of contention, which is not specified in a list filed by him pursuant to paragraph (1) of this rule; and

(*b*) no evidence shall be given by a respondent of any objection to a person's election which is not specified in a list filed by him pursuant to paragraph (2) of this rule.

(5) In this rule, the expressions "quota", "surplus" and "continuing candidates" have the same meaning as in rule 43 (Interpretation) of the Assembly Elections Rules in Schedule 2 to the Northern Ireland Assembly Elections Order 1982.

Order to compel attendance of witness

10. An order under paragraph 12(2) of the Eighth Schedule to the Act to compel the attendance of a witness at the hearing of an election petition may be in the form set out in Schedule B hereto or a form to the like effect.

Certificate of indemnity

11. The certificate of indemnity to be given by a member of the court pursuant to the provisions of paragraph 12(7) of the Eighth Schedule to the Act may be in the form set out in Schedule C hereto or a form to the like effect.

Witnesses' expenses

12.—(1) At the conclusion of the trial the registrar of the court or the prescribed officer shall ascertain the reasonable expenses of any person who appeared to give evidence at the trial and shall certify under his hand the amount so allowed.

(2) Where a witness has been called and examined by virtue of an order made under paragraph 12(2) of the Eighth Schedule to the Act, the registrar shall in addition certify that the attendance of such witness was required by the court.

Case stated

13.—(1) An application for a special case to be stated pursuant to section 83(1) of the Act shall be made by motion to a judge of the High Court.

(2) A special case under subsection (1) or subsection (2) of section 83 of the Act shall be stated to, heard and determined by the Court of Appeal.

Withdrawal of petition

14.—(1) An application for leave to withdraw a petition shall be made by motion to the court at such time and place as the court may appoint.

(2) Not less than seven days before the day so appointed the petitioner shall—

(*a*) serve notice of motion on the respondent, the returning officer and the Director of Public Prosecutions and shall file a copy in the election petitions office; and

(*b*) publish notice of the intended motion in at least one newspaper circulating in the constituency to which the petition relates.

(3) The notice of motion shall state the grounds on which the application for withdrawal is made and shall contain a statement to the effect that on the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner.

(4) The returning officer shall, upon receipt of the notice, forthwith publish it in his constituency.

(5) Where on the hearing of the application a person is substituted as a petitioner any security required to be given by him shall be given within three days after the order of substitution.

Application to stay or dismiss petition

15.—(1) An application by a respondent to stay or dismiss a petition before the day fixed for the trial shall be made by motion to the court at such time and place as the court may appoint.

(2) Not less than seven days before the date so appointed the respondent shall serve notice of motion, stating the grounds thereof, on the petitioner, any other respondent, the returning officer and the Director of Public Prosecutions and shall file a copy in the election petitions office.

Death of petitioner

16.—(1) Where a petition is abated by the death of a sole petitioner or the survivor of several petitioners the solicitor acting for him in the proceedings at the date of his death or, if he had no such solicitor, any respondent learning of his death shall—

(*a*) file notice thereof in the election petitions office;

(*b*) serve notice thereof on the returning officer, who shall forthwith publish it in his constituency;

(*c*) publish notice thereof in at least one newspaper circulating in the constituency to which the petition relates.

Each such notice shall contain a statement to the effect of the next following paragraph.

(2) Within 28 days after the publication of the notice referred to in paragraph (1)(*c*) any person who might have been a petitioner in respect of the election may apply by motion to the court at such time and place as the court may appoint, to be substituted as a petitioner.

Notice of intention not to oppose petition.

17. A respondent who does not intend to oppose the petition shall, not less than seven days before the day fixed for the trial, serve notice to that effect on the petitioner and the Director of Public Prosecutions.

Substitution of respondents

18.—(1) On the happening of any event mentioned in section 90 of the Act, the respondent concerned shall—

(*a*) file notice thereof in the election petitions office;

(*b*) serve notice thereof on the returning officer who shall forthwith publish it in his constituency;

(*c*) publish notice thereof in at least one newspaper circulating in the constituency to which the petition relates.

Each such notice shall contain a statement to the effect of paragraph (3) of this rule.

(2) The duties imposed by the last foregoing paragraph on the respondent concerned shall, in the case of the death of a respondent, be performed by the solicitor acting for him in the proceedings at the date of his death, or if he has no solicitor, by any petitioner learning of his death.

(3) Within fourteen days after the publication of any notice referred to in paragraph (1)(*c*) any person who might have been a petitioner in respect of the election may apply by motion to the court to be admitted as the respondent to oppose the petition.

Duty to file copies

19. A party giving particulars in pursuance of an order or otherwise shall file a copy within two days after delivering the particulars to the party requiring them.

Cost of publication

20. Where by any provision of the Act or of these rules a petition or notice is required to be published by the returning officer, the cost of publication shall be paid in the first instance by the petitioner or, as the case may be, by the person by whom the notice was given, without prejudice to the manner in which such cost shall ultimately be borne by one or more of the parties to the petition.

Notice of appointment of respondent's solicitor

21. A solicitor appointed to act for a respondent in proceedings on a petition shall forthwith give notice of his appointment to the petitioner and lodge a copy of the notice in the election petitions office.

Service of notices

22.—(1) Any notice required to be served on a respondent to a petition may be served—

(*a*) by delivering it or sending it by post to any solicitor who has given notice under the last foregoing rule that he is acting for the respondent; or

(*b*) if no such notice has been given, in the manner provided by section 101 of the Act.

(2) Any notice required to be served on the returning officer or the Director of Public Prosecutions in proceedings under these rules may be served by delivering it or sending it to him by post.

Forfeiture of recognisance

23. An application to the High Court under the provisions of section 91(2) of the Act shall be by notice of motion to the petitioner and the sureties.

Payment from deposit on default

24. Where security has been given by the deposit of money and where the petitioner has neglected or refused to pay any costs due by him for the period prescribed by section 91(2) of the Act, the High Court may upon notice of motion to the petitioner, made within the time limited by the said subsection, by or on behalf of any respondent or any witness summoned on behalf of the petitioner, order that the sum certified to be due to him for his costs shall be paid by the Accountant General out of the sum deposited.

Recognisance and deposit

25. The provisions of rules 23 and 24 shall apply mutatis mutandis to cases where security is given partly by recognisance and partly by deposit of money.

Discharge of recognisance and deposit

26. The court, or a judge thereof, on being satisfied that the purposes for which security was given have been fulfilled, or that the period of one year fixed by section 91(2) of the Act has elapsed, may order that—

(*a*) any recognisance entered into be vacated; and

(*b*) any money deposited or remaining on deposit be repaid.

Time

27. The provisions of Order 3 of the Rules of the Supreme Court (Northern Ireland) 1980 (a) shall apply to any period of time prescribed by these rules as if it were prescribed by the Rules of the Supreme Court except where the Act otherwise provides.

Costs

28. The Rules of the Supreme Court with respect to the costs and fees to be allowed in actions, causes and matters in the High Court shall apply, subject to any necessary modifications, in relation to petitions and other proceedings under Part IX of the Act.

Dated 17th September 1982.

Lowry
E. Jones
J. B. E. Hutton
R. D. Carswell
Owen Catchpole

I concur, *Hailsham of St. Marylebone, C.*

Dated 23rd September 1982.

(a) S.R. 1980 No. 346

SCHEDULE A

Rule 3(1)

In the Matter of the Electoral Law Act (Northern Ireland) 1962, and by the Northern Ireland Assembly Elections Order 1982.

And in the Matter of an Assembly Election for [*state place*] held on the day of 19 .

The Petition of **AB** of [*and* **CD** *of*]shows:—

1. That the Petitioner **AB** is a person who voted [*or* had a right to vote] as an elector at the above election [*or* was a candidate at the above election] [*or* claims to have had a right to be elected or returned at the above election] and the Petitioner **CD** (*state similarly the capacity in which he presents the petition*).

2. That the election was held on the day of 19 , when **EF**, **GH**, and **JK** were candidates, and on the day of 19 , the Returning Officer returned **EF** to the Clerk of the Assembly as being duly elected.

3. That [*state the facts on which the petitioner(s) rely*].

4. That [*in the case of a petition mentioned in section 76(2) or (3) of the above Act state the event on which the time for the presentation of the petition depends and its date*].

The Petitioner(s) therefore pray(s):—

(1) That it may be determined that the said **EF** was not duly elected [*or* returned] and that the election was void [*or* that the said **JK** was duly elected and ought to have been returned] [*or as the case may be*].

(2) That the Petitioner(s) may have such further or other relief as may be just.

Dated this day of 19 .

(Signed)
Petitioner(s)

This petition was presented by whose address for service is [and who is agent for of] [solicitor for the said Petitioner(s)].

It is proposed to serve a copy of this petition on of [and of] and on the Director of Public Prosecutions

SCHEDULE B

Rule 10

COURT FOR THE TRIAL OF AN ELECTION PETITION
FOR THE

CONSTITUENCY OF

BETWEEN:

A **B**

Petitioner(s);

and

C **D**

Respondent(s).

To of
in the County of

YOU ARE HEREBY REQUIRED to attend before the above Court at the Courthouse, in the County of on the day of 19 at the hour of to be examined as a witness in the matter of the said Petition and to attend the said Court until your examination shall have been completed.

As Witness my hand
day of 19
Member of the said Court.

SCHEDULE C

Rule 11

Certificate of Indemnity

ELECTORAL LAW ACT (NORTHERN IRELAND) 1962

NORTHERN IRELAND ASSEMBLY ELECTIONS ORDER 1982

COURT FOR THE TRIAL OF AN ELECTION PETITION
FOR THE
CONSTITUENCY OF

BETWEEN:

A **B**

Petitioner(s);

and

C **D**

Respondent(s).

Whereas of
was called and examined as a witness before us on the trial of the said Petition, now I do hereby certify that the said
as such witness aforesaid, was upon his examination required by us to answer questions relating to an offence at or connected with the election to which the said Petition referred, the answers to which questions criminated or tended to criminate him, and that the said
answered truly all such questions.

As witness my hand this day of 19 .
Member of the said Court.

EXPLANATORY NOTE

(This note is not part of the Rules.)

These rules are made under the Electoral Law Act (Northern Ireland) 1962, as applied and modified by the Northern Ireland Assembly Elections Order 1982, to provide for the procedure to be followed on an election petition questioning an election to the Northern Ireland Assembly.