

SCHEDULE 1

The Rules of the Supreme Court (Northern Ireland) 1980 COMMENCEMENT AND PROGRESS OF PROCEEDINGS

ORDER 16

THIRD PARTY AND SIMILAR PROCEEDINGS

Third party notice

1.—(1) Where in any action a defendant who has entered an appearance—

- (a) claims against a person not already a party to the action any contribution or indemnity; or
- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action,

then, subject to paragraph (2), the defendant may issue a notice in Form No. 17 or 18 in Appendix A, whichever is appropriate (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

(2) A defendant to an action may not issue a third party notice without the leave of the Court unless the action was begun by writ and he issues the notice before serving his defence on the plaintiff.

(3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the action (in this Order referred to as a third party) with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice was issued.

[E.r. 1]

Application for leave to issue third party notice

2.—(1) An application for leave to issue a third party notice may be made ex parte but the Court may direct that a notice of motion for leave be issued.

(2) An application for leave to issue a third party notice must be supported by an affidavit stating—

- (a) the nature of the claim made by the plaintiff in the action;
- (b) the stage which proceedings in the action have reached;
- (c) the nature of the claim made by the applicant or particulars of, the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and
- (d) the name and address of the person against whom the third party notice is to be issued.

[E.r. 2]

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Issue and service of, and entry of appearance to, third party notice

3.—(1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.

(2) There must be served with every third party notice a copy of the writ or originating summons by which the action was begun and of the pleadings (if any) served in the action.

(3) An appearance to a third party notice may be entered in the appropriate office.

(4) Subject to the foregoing provisions of this rule, the following provisions of these Rules, namely, Order 6, rule 6(2), (3), (4) and (6), Order 10, Order 11 (except rule 3), Order 12, Order 21 and Order 75, rule 4, shall apply in relation to a third party notice and to the proceedings begun thereby as if—

- (a) the third party notice were a writ and the proceedings begun thereby an action, and
- (b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action.

[E.r. 3]

Third party directions

4.—(1) If the third party enters an appearance, the defendant who issued the third party notice may apply to the Court either by summons to be served on all the other parties to the action for directions or ex parte to receive and make a rule of Court a consent of all the parties providing for the conduct or disposal of the third party proceedings and such consent when made a rule of Court shall have the effect of an order.

(2) If no summons is served to the third party and no ex parte application is made under paragraph (1), the third party may, not earlier than 7 days after entering an appearance, by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.

(3) On an application for directions under this rule the Court may—

- (a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or
- (b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or
- (c) dismiss the application and terminate the proceedings on the third party notice,

and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

(4) On an application for directions under this rule the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.

(5) Any order made or direction given under this rule may be varied or rescinded by the Court at any time.

[E.r. 4]

Default of third party; etc.

5.—(1) If a third party does not enter an appearance or, having been ordered to serve a defence, fails to do so.

- (a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in that notice; and
- (b) the defendant by whom the third party notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court, before satisfaction thereof, enter judgment against the third party in respect of any contribution or indemnity claimed in the notice, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

(2) If a third party or the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other order as may appear to the Court necessary to do justice between the parties.

(3) The Court may at any time set aside or vary a judgment entered under paragraph (1)(b) or paragraph (2) on such terms (if any) as it thinks just.

[E.r. 5]

Setting aside third party proceedings

6. Proceedings on a third party notice may, at any stage of the proceedings, be set aside by the Court.

[E.r. 6]

Judgment between defendant and third party

7.—(1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action or, if the action is decided otherwise than by trial, on application order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.

(2) Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, the judgment shall not be enforced without the leave of the Court until that liability has been discharged.

(3) For the purpose of paragraph (2) “liability” includes liability under a judgment in the same or other proceedings and liability under an agreement to which section 1(4) of the Civil Liability (Contribution) Act 1978(1) applies.

[E.r. 7]

Claims and issues between a defendant and some other party

8.—(1) Where in any action a defendant who has entered an appearance—

- (a) claims against a person who is already a party to the action any contribution or indemnity;
- or

(1) 1978 c. 47

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the action,

then, subject to paragraph (2), the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim, or as the case may be, of the question or issue required to be determined, but need not serve with, the notice any document referred to in rule 3(2).

(2) Where a defendant makes such a claim as, is mentioned in paragraph (1) and that claim could be made by him by counterclaim in the action, paragraph (1) shall not apply in relation to the claim.

(3) No appearance to such a notice shall be necessary if the person on whom it is served has entered an appearance in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served on the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and (where he has entered an appearance in the action or is a plaintiff) had entered an appearance to the notice.

(4) Rule 4(2) shall have effect in relation to proceedings on a notice issued under this rule as if for the words “7 days after entering an appearance” there were substituted the words “21 days after service of the notice on him”.

(5) Notwithstanding paragraph (3) it shall not be necessary for any party whose only claim under paragraph (1) of this rule is for contribution or indemnity to apply to the Court for directions or serve a statement of his claim but any issue between that party and the person on whom such notice is served shall be determined at or after the trial of the action as the trial judge may direct.

(6) Where defendants are sued as tortfeasors liable in respect of the same damage, they shall be treated as opposite parties and no notice need be served under this rule, but any such defendant, if he intends, in support of a claim for contribution or indemnity, to rely on facts or particulars not pleaded by the plaintiff or on any contractual right, must furnish to the other parties particulars in Form 17.

[E.r. 8]

Claims by third and subsequent parties

9.—(1) Where a defendant has served a third party notice and the third party makes such a claim or requirement as is mentioned in rule 1 or rule 8, this order shall, with the modification mentioned in paragraph (2) and any other necessary modifications, apply as if the third party were a defendant; and similarly where any further person to whom by virtue of this rule this Order applies as if he were a third party makes such a claim or requirement.

(2) The modification referred to in paragraph (1) is that paragraph (3) shall have effect in relation to the issue of a notice under rule 1 by a third party in substitution for rule 1(2).

(3) A third party may not issue a notice under rule 1 without the leave of the Court unless the action in question was begun by writ and he issues the notice before the expiration of 14 days after the time limited for appearing to the notice issued against him.

[E.r. 9]

Offer of contribution

10. If, at any time after he has entered an appearance, a party to an action who, either as a third party or as one of two or more tortfeasors liable in respect of the same damage, stands to be held liable

in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his defence) a written offer to that other party to contribute a specified amount or to a specified extent to the debt or damages, then, notwithstanding that he reserves the right to bring the offer to the attention of the judge at the trial, the offer shall not be brought to the attention of the judge until after all questions of liability and amount of debt or damages have been decided.

[E.r. 10]

Disposal of claim for contribution or indemnity

11. Any claim to contribution or indemnity or other relief or remedy under this Order may be decided in the action notwithstanding that the plaintiff's claim has been satisfied by a payment into Court, compromise, judgment or otherwise.

Counterclaim by defendant

12. Where in any action a counterclaim is made by a defendant, the foregoing provisions of this Order shall apply in relation to the counterclaim as if the subject-matter of the counterclaim were the original subject-matter of the action, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

[E.r. 11]