

1991 No. 231

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

The Rules of the Supreme Court (Northern Ireland)
(Amendment) 1991

Made 3rd June 1991

Coming into operation . . . in accordance with rule 1

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 and all other powers enabling us in that behalf as follows:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment) 1991 and shall come into operation on the same day as Article 14 of the Companies (Northern Ireland) Order 1990(b) comes into operation.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court (Northern Ireland) 1980(c).

Business of the Supreme Court

2.—(1) Order 1, rule 10, shall be amended as follows—

(a) by substituting in paragraph (b) for the words “Companies Acts (Northern Ireland) 1960 to 1982” the words “Companies (Northern Ireland) Order 1986”(d).

(b) by inserting after paragraph (b) the following paragraph—

“(bb) all applications for an injunction to restrain the presentation of a petition to wind up a company;”

(2) For Order 1, rule 15, there shall be substituted the following rule—

“*Bankruptcy and Companies Office*

15. There shall be transacted in the Bankruptcy and Companies Office all business in connection with—

(a) 1978 c. 23

(b) S.I. 1990/593 (N.I. 5)

(c) S.R. 1980 No. 346; the relevant amending instruments are S.R. 1981 No. 224 and S.R. 1983 No. 407

(d) S.I. 1986/1032 (N.I. 6) as amended by S.I. 1990/593 (N.I. 5)

- (a) proceedings under the Bankruptcy Acts (Northern Ireland) 1857 to 1980 and the Companies (Northern Ireland) Order 1986;
 - (b) applications for an injunction to restrain the presentation of a petition to wind up a company;
- except such business as by rule 13(b) is assigned to the Central Office.”.

Originating motions

3. Order 8, rule 3(4), shall be amended by adding after the words “Chancery Office” the words “or the Bankruptcy and Companies Office where the business has been assigned to that office”.

Injunctions

4. Order 29 shall be amended by inserting after rule 1 the following new rule—

“Application for injunction to restrain presentation of winding-up petition

1A.—(1) An application for the grant of an injunction to restrain the presentation of a petition to wind up a company shall, subject to paragraph (2), be made by originating motion.

(2) Where the case is one of urgency, the application may be made ex parte on affidavit, and in that case the injunction applied for may be granted on terms providing for the issue of the originating motion and such other terms, if any as the court thinks fit.”.

Companies (Northern Ireland) Order 1986

5. Order 102 shall be amended as follows—

- (a) for rules 1 to 6 there shall be substituted the rules set out in the Schedule;
- (b) in rule 13 for the words “section 67(2) of the Act” wherever they appear, there shall be substituted the words “Article 146(4) of the Order”.

Dated 23rd January 1991.

*Brian Hutton
Donald Murray
J. P. Higgins
Brian Kerr
Owen Catchpole*

I concur,

Mackay of Clashfern, C.

Dated 3rd June, 1991

The Companies (Northern Ireland) Order 1986*Definitions*

1. In this Order—

“the 1986 Order” means the Companies (Northern Ireland) Order 1986(a);

“the court”, without prejudice to Order 1 rule 3(2), includes the Master (Bankruptcy).

Applications to be made by originating summons

2.—(1) Except in the case of the applications mentioned in rules 3 and 4, every application under the 1986 Order must, in accordance with Order 5, rule 3, be made by originating summons, except that references in that Order, and in Forms 6, 7 and 8 in Appendix A, to “plaintiff” and “defendant” shall be construed as references to “applicant” and “respondent” respectively.

(2) Subject to paragraphs (3) and (4) an originating summons under this rule shall be in Form 7.

(3) An originating summons under this rule shall be in Form 6 where the application made by summons is—

- (a) an application under Article 224(1) of the 1986 Order for an order directing that any shares in a company shall be subject to the restrictions imposed by Part XVI of that Order;
- (b) an application under Article 250(3) of the 1986 Order for an order directing the directors of a company or any of them to make good any such default as is mentioned in paragraph (1) of that Article;
- (c) an application under Article 253B(1) of the 1986 Order for a declaration that the annual accounts of a company do not comply with the requirement of that Order and for any order requiring the preparation of revised accounts;
- (d) an application under Article 420 of the 1986 Order for an order to make provision for all or any of the matters mentioned in paragraph (3) of that Article where an order sanctioning the compromise or arrangement to which the application relates has previously been made;
- (e) an application under Article 465 of the 1986 Order for an order directing a receiver or manager of a company to make good any such default as is mentioned in paragraph (1) of that Article;
- (f) an application under Article 662(1) of the 1986 Order for an order directing a company and any officer thereof to make good any such default as is mentioned in paragraph (1) of that Article.

(4) An application under Article 670 of the 1986 Order may be made by ex parte originating summons in Form 8 in Appendix A.

Applications to be made by originating motion

3. The following applications under the 1986 Order must be made by originating motion, namely, applications—

- (a) under Article 98(6) for an order extending the time for delivery to the registrar of companies of any documents required by that Article to be delivered;

(a) S.I. 1986/1032 (N.I. 6) as amended by S.I. 1990/593 (N.I. 5)

- (b) under Article 225(5) for amendment of the register of interests in shares of a company;
- (c) under Article 367(1) for rectification of the register of members of a company;
- (d) under Article 425(1) for an order declaring that the affairs of a company ought to be investigated by an inspector appointed by the Department of Economic Development;
- (e) under Article 429 for an inquiry into any such case as is therein mentioned;
- (f) under Article 449(1) for an order directing that any shares in or debentures of a company shall cease to be subject to the restrictions imposed by Part XVI of the 1986 Order;
- (g) under Article 449(4) for an order directing that any shares in or debentures of a company shall, on a sale, cease to be subject to the restrictions imposed by Part XVI of the 1986 Order;
- (h) under Article 602(1) for an order declaring a dissolution of a company which has not been wound up to have been void.

Applications to be made by petition

4.—(1) The following applications under the 1986 Order must be made by petition, namely applications—

- (a) under Article 16(1) to cancel the alteration of a company's objects;
- (b) under Article 28(1) to cancel the alteration of a condition contained in a company's memorandum;
- (c) under Article 64(1) to cancel a special resolution to which that section applies;
- (d) under Article 137(2) to cancel any variation or abrogation of the rights attached to any class of shares in a company;
- (e) under Article 140(3) to confirm a reduction of the share premium account of a company;
- (f) under Article 146(1) to confirm a reduction of the share capital of a company;
- (g) under Article 167(2) or Article 186(1) to cancel a special resolution to which either of those Articles applies;
- (h) under Article 180(4) in relation to the reduction of capital redemption reserve;
- (i) under Article 418(1) to sanction a compromise or arrangement between a company and its creditors or any class of them or between a company and its members or any class of them;
- (j) under Article 604(2) for an order restoring the name of a company to the register where the application is made in conjunction with an application for the winding up of the company;
- (k) under Article 639(2) to cancel the alteration of the form of a company's constitution;
- (l) under Article 675(2) for relief from liability of an officer of a company or a person employed by a company as auditor.

(2) A petition by which any such application is made shall be presented in the Bankruptcy and Companies Office.

Entitlement of proceedings

5. Every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings must be entitled in the matter of the company in question and in the matter of the Companies (Northern Ireland) Order 1986.

Summons for directions

6.—(1) After presentation of a petition by which any such application as is mentioned in rule 4 is made,, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a summons for directions under this rule.

(2) The applications referred to in paragraph (1) are—

- (a) an application under Article 64(1) of the 1986 Order for an order cancelling a special resolution to which that Article applies;
- (b) an application under Article 167(2) or Article 186(1) of the 1986 Order for an order cancelling a special resolution to which those Articles apply;
- (c) an application under Article 418(1) of the 1986 Order to sanction a compromise or arrangement unless there is included in the petition for such sanction an application for an order under Article 420 of that Order;
- (d) an application under Article 604(2) of the 1986 Order for an order restoring the name of a company to the register.

(3) On the hearing of the summons the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.

(4) Where the application made by the petition is to confirm a reduction of the share capital, the share premium account, or the capital redemption reserve of a company, then, without prejudice to the generality of paragraph (3), the Court may give directions—

- (a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;
- (b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made;

and the power of the court under Article 146(6) of the 1986 Order to direct that Article 146(3) to (5) thereof shall not apply as regards any class of creditors may be exercised on any hearing of the summons.

(5) Rules 7 to 12 shall have effect subject to any directions given by the Court under this rule.

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 in consequence of the Companies (Northern Ireland) Order 1986 and the Companies (Northern Ireland) Order 1990.