

## 1995 No. 151

## COUNTY COURTS

County Court (Amendment No. 2) Rules  
(Northern Ireland) 1995

*Made* . . . . . 7th April 1995

*Coming into operation* . . . . . 1st September 1995

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, hereby make the following Rules:—

*Citation and interpretation*

1.—(1) These Rules may be cited as the County Court (Amendment No. 2) Rules (Northern Ireland) 1995.

(2) In these Rules “the principal Rules” means the County Court Rules (Northern Ireland) 1981(b).

(3) 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 principal Rules.

*New arrangements for entry and listing of civil bills*

2.—(1) In Order 8 for Rules 1 to 4 there shall be substituted the following new Rules:—

*“Entry of civil bills for hearing*

1. In each division for any court held in that division defended civil bills shall be entered for hearing in accordance with the following Rules.

*Notice of intention to defend*

2.—(1) Without prejudice to paragraph (2), in any proceedings commenced by civil bill which a defendant intends to defend he shall, within a period of 21 days from the date of service upon him of the civil bill, serve on the other party or parties to the proceedings a notice of intention to defend in Form 42.

(2) A defendant shall not serve a notice of intention to defend after the expiration of a period of 21 days after service upon him of the civil bill except with the consent in writing of the other party or parties or with the leave of the court.

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(a) S.I. 1980/397 (N.I. 3)  
(b) S.R. 1981 No. 225

(3) Service by a defendant of a notice of intention to defend shall not prevent a defendant from raising any issue or defence which he would otherwise be entitled to raise concerning the civil bill, or issue or service of the civil bill, or the jurisdiction of the court.

*Lodging of certificate of readiness*

3.—(1) In any proceedings commenced by civil bill in which a notice of intention to defend has been served the plaintiff shall after the conclusion of all interlocutory matters request the chief clerk to enter the proceedings for hearing by delivery to the chief clerk at his office of a certificate of readiness in Form 43 and shall, at the same time, cause to be served on the other party or parties to the proceedings a copy of the certificate of readiness.

(2) In any proceedings in which a notice of intention to defend has been served the chief clerk shall, if no certificate of readiness has been delivered to him within a period of 6 months immediately following the date of service of the notice of intention to defend, list the proceedings before the judge and notify the parties accordingly and the judge may issue such directions concerning the future conduct of any such proceedings as he considers appropriate.

*Documents to be delivered to the chief clerk*

4. In every proceedings commenced by civil bill in which the defendant serves a notice of intention to defend the defendant shall also at the same time as he serves the notice of intention to defend on the other party or parties to the proceedings deliver to the chief clerk a copy of the civil bill and of the notice of intention to defend.”.

(2) In Order 8 Rules 5, 8 and 9 are hereby revoked.

(3) In Order 8, Rule 6(3):

- (a) the words “or an application under paragraph (2) is granted” are hereby revoked; and
- (b) the words “or, as the case may be, entered the civil bill for hearing and had failed to proceed thereon at the sittings named therein” are hereby revoked.

*New default procedure*

3. For Order 12 of the principal Rules there shall be substituted the new Order 12 set out in Schedule 1.

*Third Party and Counterclaim Procedure*

4.—(1) In Order 11, after Rule 2 there shall be inserted the following new Rules:—

*“Notice of intention to defend*

2A.—(1) Without prejudice to paragraph (2), in any proceedings commenced by a third party notice which a defendant to that notice intends to defend he shall, within a period of 21 days from the date of

service upon him of the third party notice serve on the other parties to the proceedings and deliver to the chief clerk a notice of intention to defend in Form 42.

(2) A defendant to a third party notice shall not serve a notice of intention to defend after the expiration of a period of 21 days after service upon him of the third party notice except with the consent of the other parties or with the leave of the court.

#### *Application for Directions*

2B.—(1) In any proceedings in which a third party notice has been served under Rule 1 and a notice of intention to defend that third party notice has been served any party to the proceedings may at any time apply to the district judge for directions in respect of the conduct or disposal of the third party proceedings.

(2) On an application for directions under paragraph (1) the district judge may make such orders and give such directions as he considers appropriate.”.

#### *Expert evidence*

5. Order 24 shall be amended by inserting after Rule 2 the following new Rules:—

##### *“Evidence of plans, photographs etc.*

2A.—(1) Unless, at or before the hearing, the judge for special reasons otherwise orders, no map, plan or other drawing, photograph or model shall be receivable in evidence at the hearing of any proceedings unless at least 3 weeks before the commencement of the hearing the parties, other than the parties producing it, have been given an opportunity to inspect it and to agree to its admission without further proof.

(2) Any order under this Rule (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the judge made at or before the hearing.

##### *Medical reports, maps, plans etc may be given in evidence*

2B.—(1) Unless the judge otherwise orders and subject to paragraph (2), any medical report or other accompanying or supplemental document served or disclosed pursuant to the provisions of this Order or any map, plan, drawing, photograph or model produced pursuant to the provisions of Rule 2A by any party to proceedings to the other parties may be given in evidence without formal proof at the hearing or an assessment of damages by the party who has disclosed or produced it.

(2) Any other party may, on giving sufficient notice to the party making the disclosure or production specified in paragraph (1), require the maker of any such medical report to give oral evidence or require any such map, plan, drawing, photograph or model to be proved, and in any such case paragraph (1) shall not apply.

(3) Where a medical witness or other expert witness is unable to attend court to give oral evidence at the hearing or an assessment of

damages the judge may direct that his written report or reports may be given in evidence or that any such map, plan, drawing, photograph or model may be admitted in evidence without further proof thereof, and in such case paragraph (2) shall not apply.

*Number of expert witnesses*

2C. Unless the judge otherwise orders, the number of expert witnesses who may be called by any party to give oral evidence in any proceedings shall be limited to two medical experts and one expert of any other kind.”

*Medical evidence*

6.—(1) Order 24 shall be amended by inserting after Part II the following new Part III:—

“PART III

MEDICAL EVIDENCE

*Application*

35.—(1) Subject to paragraph (2), this Part applies to all proceedings for damages in respect of personal injury or death.

(2) While liability remains an issue, this Part shall not apply to an action grounded on an allegation of medical or surgical negligence except insofar as the medical evidence relates to quantum only.

*Medical evidence to be served on the defendant*

36. The plaintiff shall serve on the defendant medical evidence substantiating the personal injuries alleged in the civil bill within 14 days after service upon him of the defendant’s notice of intention to defend.

*Medical examination of another party: disclosure of report*

37. Any party who has been afforded medical examination of another party shall disclose to that other party any medical evidence resulting from such examination within 21 days of receiving it and in any case before the first day of the hearing.

*Disclosure of medical evidence*

38. Subject to Rule 36, where a party proposes to adduce medical evidence at the hearing he shall disclose it to the other parties in accordance with Rule 36 or within 21 days of receiving it and in any case before the first day of the hearing.

*Evidence received during hearing*

39. Where a party obtains on or after the first day of the hearing any report or evidence of the kind mentioned in Rule 36 or Rule 37, he shall disclose that report or evidence to the relevant party or parties immediately.

*Restrictions on medical evidence*

40. No party shall, except with the leave of the judge or on consent, adduce medical evidence at the hearing the contents of which he has not disclosed to the other parties in accordance with Rule 38 or Rule 39.

*Party to furnish name and address of doctor etc.*

41. Any party to an action shall furnish to any other party on demand the name and address of any medical practitioner or the name of any hospital from whom or at which he received any medical or surgical treatment material to the action.

*Failure to comply with Rules*

42. Where any party fails to comply with any of the provisions of Rules 36 to 39 or 41, the judge may stay the proceedings or order that the party be debarred from defending the proceedings, as the case may be, or make such other order as to the judge may seem appropriate.

*Mode of disclosure*

43.—(1) A party serving or disclosing medical evidence under this Part shall do so by furnishing any relevant medical report or reports, together with any documents emanating from the maker thereof which are intended by him to accompany or supplement any such report. All such reports or other documents shall be signed and dated by the maker thereof and shall specify his professional qualifications. A photostat copy of any such report or document shall be sufficient for this purpose.

(2) On the ex parte application of any party bound to serve or disclose any medical report under this Order the judge may give him leave—

- (i) to adduce at the trial the evidence contained in any report without serving or disclosing the report; or
- (ii) to omit or amend any part of any report when serving or disclosing the report.

*Variation between evidence disclosed and evidence at trial*

44. Where a party's medical evidence at the hearing varies from the evidence which that party has disclosed to another party, the judge may on the application of any party adjourn the hearing or make any such order, on such terms as to costs and otherwise, as to the judge may seem appropriate.

*Definition of "medical evidence"*

45. For the purposes of this Part "medical evidence" means the evidence contained in any report or other accompanying or supplemental document as specified in Rule 43 and includes surgical and radiological evidence and any ancillary expert or technical evidence, and the expression "medical examination" shall be construed accordingly."

(2) Order 55 shall be amended by inserting after Rule 19 the following new Rule:—

*“Penalty in costs where oral evidence not reasonably necessary*

20.—(1) Where it appears to the judge in any proceedings that—

- (a) any witness has been called to give oral evidence where his evidence could have been put before the court in some other manner, and
- (b) his giving oral evidence was not reasonably necessary, the judge may order that the costs occasioned by calling the witness to give oral evidence shall fall upon the party who caused his so to be called, and for this purpose may make such provision as he thinks fit either by fixing the amount of such costs in default of agreement between the parties or by making an order for taxation of such costs.

(2) Any costs required to be taxed pursuant to an order under this Rule shall be taxed in the same manner as costs in equity suit or proceedings.”

*Service of documents*

7.—(1) In Order 6, Rule 3 for sub-paragraph 2(b) substitute the following sub-paragraph:

- “(b) Where service is not required by paragraph (6) or Rule 6(1) of Order 40 to be made on the defendant in person, a civil bill may be served by a solicitor or member of his staff over the age of 16 years sending to the defendant at the address given for the defendant in the civil bill, a copy of the civil bill, by ordinary first class post, (in this Order, first class post means first class post which has been pre-paid or in respect of which pre-payment is not required).”

(2) In Order 6, after Rule 3, insert the following new Rule:—

*“Service of Notice of Intention to Defend*

3A. A notice of intention to defend may be served by sending to the plaintiff at the address given for the plaintiff in the civil bill a copy of the notice of intention to defend by ordinary first class post.”

(3) In Order 6, Rule 11(1)(b) for the words “registered post” substitute the words “ordinary first class post.”

(4) In Order 6 for Rule 12 there shall be substituted the following new Rule:—

*“Proof of service by post*

12. In any civil bill served by ordinary first class post under Rule 3(2) the plaintiff shall on the face of the civil bill certify that service has been effected by ordinary first class post, and the date when the civil bill was posted.”

(5) In Order 43

- (a) in Rule 3(b) for the words “registered post” substitute the words “ordinary first class post (that is first class post which has been pre-paid or in respect of which pre-payment is not required)”;

(b) for Rule 19 there shall be substituted the following new Rule:—

*“Service by post*

19. Every notice or other document, the service of which is permitted by ordinary first class post (that is first class post which has been pre-paid or in respect of which pre-payment is not required) under these Orders, or the service of which by post or by registered post is directed by the judge, shall be deemed sufficiently given and served if it is transmitted by ordinary first class post or by registered letter. Such service may be proved by affidavit.”.

*Costs*

8.—(1) In Order 21, for Rule 4(1)(a) there shall be substituted the following new sub-paragraph:

“(a) where the plaintiff is not under legal disability and subject to sub-paragraph (c), he shall be entitled to recover from the defendant 75% of his solicitor’s costs and outlays (other than his counsel’s fee), calculated in accordance with the scale fee on the amount decreed; and he shall be liable for 25% of the defendant’s solicitor’s costs and outlays (other than the defendant’s counsel’s fee) and for 100% of the defendant’s counsel’s fee, both as calculated in accordance with the scale fee on the amount claimed.”.

(2) In Order 21, after Rule 4(1)(b) there shall be inserted the following new sub-paragraph:

“(c) the division of responsibility for costs specified in sub-paragraph (a) may be varied in the discretion of the judge.”.

(3) In Order 55 for Rule 14 there shall be substituted the following new Rule:—

*“Costs in undefended cases*

14.—(1) Where a defendant pays the amount due or delivers up possession, as the case may be, within 21 days from service of the civil bill and also within that period pays 50% of the solicitor’s costs in column 2 of Table 3 of Part I or of Table 1 of Part III of Appendix 2 as appropriate, together with all of the plaintiff’s outlay including counsel’s fee (if any) properly incurred to the date of settlement he shall not be liable for any further costs.

(2) The costs awarded to a solicitor where he marks judgment on behalf of a plaintiff in accordance with Order 12, Rule 1 shall be the scale fee in accordance with Table 3 in Part I of Appendix 2.

(3) The costs awarded to a solicitor where he marks judgment on behalf of a plaintiff in accordance with Order 12, Rule 2 and damages are assessed under Order 12, Rule 13 or 16 shall be 50% of the scale fee calculated by reference to the relevant Table (as determined by the cause of action) in accordance with Appendix 2 Part I Tables 1, 4 or 6 or Part III Table 1 or Part VI Table 1 or the appropriate scale in the Schedule to Part VIII.”.

(4) In Order 55, Rule 19(1) after the words "Order 25, Rule 15(1)" insert the words "or an appeal under the 1977 Order, the 1988 Order, the 1978 Act or the 1991 Act".

(5) For Table 3 in Part I of Appendix 2 there shall be substituted the new Table 3 set out in Schedule 2.

(6) In Table 1 in Part III of Appendix 2 for note 1 there shall be substituted the following note:

"1. See Order 55, Rule 14(1). Only 50% payable where defendant delivers up possession within 21 days of service of civil bill."

*Time limits for making payments into court and accepting payments made into court*

9.—(1) In Order 21, Rule 2(1) for the words "upon notice to" substitute the words "after giving notice to".

(2) In Order 21, Rule 2(2):

(a) in sub-paragraph (a) the words "or at any time before entry day, whichever is the longer" shall be deleted; and

(b) in sub-paragraph (b) for the words "at any time before the entry day" substitute the words "within 28 days of service upon him of the plaintiff's medical evidence served in accordance with Rule 36 of Order 24 or, in any case to which that Rule does not apply, within 28 days of service of the notice of intention to defend."

(3) In Order 21 Rule 2, paragraph (3) is hereby revoked.

(4) In Order 21 Rule 2(4) for the words from "the reference to the entry day" to the end of that paragraph there shall be substituted the words "a lodgment may be made within 14 days of receipt of the further particulars furnished in compliance with the order of the judge."

(5) In Order 21 for paragraph (1) of Rule 3 there shall be substituted the following paragraph:—

"(1) Where money is paid into court under Rule 2 the plaintiff may (subject to any order made by the judge in granting an adjournment such as is referred to in Rule 2(4) and to Rule 3A within 28 days of receiving notification in accordance with Rule 2(1) that the defendant has made a payment into court, or subsequently with the consent of the defendant, sign and serve on the defendant and lodge with the chief clerk a notice in Form 98 accepting the amount in satisfaction of his claim."

(6) In Order 21, after Rule 3 there shall be inserted the following new Rule:—

*"Judge may permit payment in or out of court out of time*

3A. Without prejudice to Order 43 Rule 10, the judge may, on the application of any party, make an order permitting the defendant to make a payment into court or increase a payment made into court under Rule 2 or permitting a plaintiff to accept a payment or increased payment made into court notwithstanding the fact that the period for making a payment into court under Rule 2(2) or accepting a payment made into court under Rule 3(1) has expired."



*Power to dismiss proceedings or strike out notice of intention to defend in certain circumstances*

**10.**—(1) In Order 5, Rule 3(2) for the words “adjourn the case” to the end there shall be substituted the following:

“make such order as he thinks just including, in particular, an order that the proceedings be dismissed or, as the case may be, an order that the notice of intention to defend be struck out and judgment be entered accordingly.”.

(2) In Order 15, Rule 9 for paragraphs (a) and (b) there shall be substituted the following:

“then the Judge may make such order as he thinks just, including, in particular, an order that the proceedings be dismissed or, as the case may be, an order that the notice of intention to defend be struck out and judgment be entered accordingly.”.

(3) In Order 15, Rule 17 for the words from “the party” to the end there shall be substituted the words “the notice of intention to defend be struck out and judgment be entered accordingly.”.

*Substitution of references to entry day*

**11.**—(1) In proceedings commenced by civil bill all references to “entry day” in the principal Rules are hereby revoked and Part I of Schedule 3 shall have effect to make alternative provision.

(2) In respect of proceedings commenced otherwise than by civil bill all other references to “entry day” in the principal Rules are hereby revoked and Part II of Schedule 3 shall have effect to make alternative provision.

*Forms*

**12.**—(1) The new Forms referred to by number set out in Schedule 4 shall be substituted for the present Forms so numbered in the principal Rules.

(2) The amendments to the Forms set out in Schedule 5 shall have effect.

*Amendments consequential to removal of default and summary civil bill procedures*

**13.** The amendments to the principal Rules set out in Schedule 6 shall have effect.

*Transitional provisions*

**14.**—(1) Subject to paragraph (2) the amendments to the principal Rules made by these Rules shall not apply to any civil bill served before the date of commencement of these Rules (the commencement date).

(2) Every civil bill served before the commencement date (whether for a sitting taking place before or after the commencement date) but not disposed of before or at the sitting specified on the civil bill shall be deemed to have been submitted for hearing by way of a certificate of readiness in accordance with these Rules.

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.

*Robert W. Porter*  
*John Curran*  
*J. F. B. Russell*  
*Raymond T. Kerr*  
*James A. Agnew*  
*Brian J. Stewart*  
*P. Kelly*  
*Barry Valentine*  
*B. F. Walker*

Dated 3rd April 1995

After consultation with the Lord Chief Justice, I allow these Rules, which shall come into operation on 1st September 1995.

Dated 7th April 1995

*Mackay of Clashfern, C.*

**New Order 12 to be Substituted in Principal Rules****“ORDER 12****Default of Notice of Intention to Defend****PART I****JUDGMENT IN DEFAULT OF NOTICE OF INTENTION TO DEFEND***Claim for liquidated demand*

1.—(1) Where a civil bill is endorsed with a claim against a defendant for a liquidated demand only, then if that defendant fails to serve a notice of intention to defend in Form 42 within a period of 21 days after service upon him of the civil bill, the plaintiff may enter final judgment against that defendant for a sum not exceeding that claimed by the civil bill in respect of the demand and continue with the proceedings against the other defendants if any.

(2) A claim shall not be prevented from being treated for the purpose of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest under Article 45A of the Order at a rate which is not higher than that payable on judgment debts at the date of issue of the civil bill. A claim for interest at a higher rate shall be treated as a claim for interest to be assessed.

(3) Before final judgment is entered under this Rule an affidavit must be lodged with the chief clerk specifying the amount then actually due to the plaintiff.

*Claim for unliquidated damages*

2. Where a civil bill is endorsed with a claim against a defendant for unliquidated damages only, then if the defendant fails to serve a notice of intention to defend in Form 42 within a period of 21 days after service upon him of the civil bill, the plaintiff may enter interlocutory judgment against that defendant for damages to be assessed and continue with the proceedings against the other defendants if any.

*Claim for detention of goods*

3.—(1) Where a civil bill is endorsed with a claim against a defendant relating to the detention of goods only, then if that defendant fails to serve a notice of intention to defend in Form 42 within a period of 21 days after service upon him of the civil bill the plaintiff may—

- (a) at his option enter either—
  - (i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed, or
  - (ii) interlocutory judgment for the value of the goods to be assessed; or
- (b) apply on notice to the district judge for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value, and in any case continue with the proceedings against the other defendants if any.

(2) An application under paragraph (1)(b) must be supported by affidavit and the application and a copy of the affidavit must be served on the defendant against whom judgment is sought.

*Claim for possession of land*

4.—(1) Where a civil bill is endorsed with a claim against a defendant for possession of land only, then subject to paragraphs (2), (3) and (4), if that defendant fails to serve a notice of intention to defend in Form 42 within a period of 21 days after service upon him of the civil bill, the plaintiff may enter judgment for possession of the land as against that defendant and continue with the proceedings against the other defendants if any.

(2) The plaintiff shall not be entitled, except with the leave of the district judge, to enter judgment under this Rule unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the claim does not relate to a dwelling-house.

(3) The plaintiff shall not be entitled, except with the leave of the district judge, to enter judgment under this Rule where the civil bill is endorsed with a claim against a defendant for possession of land for non-payment of rent unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the land does not comprise or include a holding agricultural or pastoral or partly agricultural and partly pastoral.

(4) The plaintiff shall not be entitled to enter judgment under this Rule where the civil bill is endorsed with a claim against a defendant for possession of land for non-payment of rent unless he lodges with the chief clerk an affidavit made by the landlord, his agent, receiver or clerk, stating that there was at the date of service of the civil bill at least one year's rent due over and above all just and fair allowances.

(5) An application for leave to enter judgment under paragraph (2) or (3) shall state the grounds of the application, and the application must, unless the district judge otherwise orders be served on the defendant against whom it is sought to enter judgment.

(6) Where there is more than one defendant, any judgment entered under this Rule shall contain a stay of enforcement against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

(7) Where the plaintiff is a superior landlord and he applies under paragraph (3) for leave to enter judgment against a defendant who is an immediate landlord the district judge may, having regard to the provisions of section 12 of the Land Law (Ireland) Act 1896(a):—

- (a) give such directions as to notice to tenants and otherwise and grant leave subject to such limitations as to enforcement of the judgment and such provisions as to costs as he thinks just;
- (b) on proof by affidavit that the non-payment of rent by the defendant is due to the non-payment of rent by the tenant of the holding, issue a certificate to that effect.

*Mixed claims*

5. Where a civil bill served on any defendant is endorsed with two or more of the claims mentioned in Rules 1 to 4, and no other claim, then if that defendant fails to serve a notice of intention to defend in Form 42 within a period of 21 days after service upon him of the civil bill, the plaintiff may enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim endorsed on the civil bill and proceed with the claim against the other defendants if any.

*Other claims*

6.—(1) Where a civil bill is endorsed with a claim of a description not mentioned in Rules 1 to 4, then if any defendant fails to serve a notice of intention to defend in Form 42 within a period of 21 days after service upon him of the civil bill, the plaintiff may upon lodging with the chief clerk an affidavit proving due service of the civil bill on that defendant proceed with the claim as if that defendant had served a notice of intention to defend.

(2) Where a defendant has satisfied the claim or complied with the demands thereof or for any other like reason it has become unnecessary for the plaintiff to continue with the proceedings then, if the defendant fails to serve a notice of intention to defend in Form 42 within a period of 21 days after service upon him of the civil bill, the plaintiff may enter judgment with the leave of the district judge against that defendant for costs.

(3) An application for leave to enter judgment under paragraph (2) shall, unless the district judge otherwise orders, be served on the defendant against whom it is sought to enter judgment.

*Proof of service of civil bill*

7.—(1) Judgment shall not be entered against a defendant under this Order unless—

- (a) an affidavit is lodged with the chief clerk by or on behalf of the plaintiff proving due service of the civil bill on the defendant; or
- (b) the plaintiff produces the civil bill endorsed by the defendant's solicitor with a statement that he accepts service of the civil bill on the defendant's behalf.

(2) Where application is made to the district judge or chief clerk for an order affecting a party who has failed to serve a notice of intention to defend, the district judge or chief clerk hearing the application may require to be satisfied in such manner as he thinks fit that the party has failed to serve a notice of intention to defend.

(3) Where, after judgment has been entered under this Order against a defendant purporting to have been served by post under Order 6, Rule 3(2) the copy of the civil bill sent to the defendant is returned to the plaintiff through the post undelivered to the addressee, the plaintiff shall, before taking any step or further step in the proceedings or the enforcement of the judgment, either—

- (a) make a request for the judgment to be set aside on the ground that the civil bill has not been duly served, or
- (b) apply to the district judge for directions.

(4) A request under paragraph (3)(a) shall be made by lodging with the chief clerk an affidavit stating the relevant facts, and thereupon the judgment shall be set aside and the record of the entry of the judgment and of any proceedings for its enforcement shall be marked by the chief clerk accordingly.

(5) An application under paragraph (3)(b) shall be made *ex parte* by affidavit stating the facts on which the application is founded and any order or direction sought, and on the application the district judge may—

- (a) set aside the judgment; or
- (b) direct that, notwithstanding the return of the copy of the civil bill, it shall be treated as having been duly served, or
- (c) make such other order and give such other direction as the circumstances may require.

*Judgment against a State*

8.—(1) Where the defendant is a State, as defined in section 14 of the State Immunity Act 1978(a) (“the Act”), the plaintiff shall not be entitled to enter judgment under this Order except with the leave of the district judge.

(2) An application for leave to enter judgment shall be supported by an affidavit—

- (a) stating the grounds of the application,
- (b) verifying the facts relied on as excepting the State from the immunity conferred by section 1 of the Act, and
- (c) verifying that the civil bill has been served by being transmitted through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of the State, or in such other manner as may have been agreed to by the State, and that the time for serving a notice of intention to defend, as extended by section 12(2) of the Act (by two months) where applicable, has expired.

(3) The application may be made *ex parte* but the district judge hearing the application may direct an application to be issued and served on that State, for which purpose such a direction shall include leave to serve the application and a copy of the affidavit out of the jurisdiction.

(4) Unless the district judge otherwise directs, an affidavit for the purpose of this Rule may contain statements of information or belief with the sources and grounds thereof, and the grant of leave to enter judgment under this Order shall include leave to serve out of the jurisdiction—

- (a) a copy of the judgment, and
- (b) a copy of the affidavit, where not already served.

(5) The procedure for effecting service out of the jurisdiction pursuant to leave granted in accordance with this Rule shall be the same as for the service of the civil bill under Order 6A, rule 6(6), except where section 12(6) of the Act applies and an alternative method of service has been agreed.

*Judgments under the Civil Jurisdiction and Judgments Act 1982*

9.—(1) Where a civil bill has been served out of the jurisdiction under Order 6A, rule 2(2) or has been served within the jurisdiction on a defendant domiciled in England and Wales or Scotland or in any other Convention territory the plaintiff shall not be entitled to enter judgment under this Order except with the leave of the district judge.

(2) An application for leave to enter judgment may be made *ex parte* and shall be supported by an affidavit stating that in the deponent’s belief—

- (a) each claim made by the civil bill is one which by virtue of the Civil Jurisdiction and Judgments Act 1982 the judge or the district judge has power to hear and determine,
- (b) no other court has exclusive jurisdiction within the meaning of Schedule 1 or under Schedule 4 to that Act to hear and determine such claim, and
- (c) where the civil bill is served out of the jurisdiction under Order 6A, rule 2(2), such service satisfied the requirements of Schedule 1 or, as the case may require, of Article 20 of Schedule 4 to that Act.

and giving in each case the sources and grounds of such belief.

(3) For the purposes of this rule, domicile is to be determined in accordance with the provisions of section 41 to 46 of the Civil Jurisdiction and Judgments Act 1982 and “Convention territory” means the territory or territories of any Contracting State, as defined by section 1(3) of that Act, to which the Conventions as defined in section 1(1) of that Act apply.

*Judgment in default of notice of intention to defend*

**10.**—(1) A party entitled to judgment in default of service of a notice of intention to defend may enter judgment by lodging with the chief clerk the following documents—

- (a) the original civil bill by which the proceedings were commenced;
- (b) an affidavit of service or production of a copy of the civil bill endorsed by the defendant’s solicitor with a statement that he accepts service of the civil bill on the defendant’s behalf;
- (c) a certificate that a notice of intention to defend those proceedings in Form 42 was not received by him within 21 days after service of the civil bill;
- (d) any affidavit or certificate filed under Rule 1(3) or 4(1) to (4); and
- (e) a decree drawn up by the party.

(2) Where this Order enables a party to any proceedings to enter judgment on the production of any documents, the chief clerk shall not enter judgment by signing the decree until the documents which the party is required to produce are produced and the chief clerk is satisfied that they are in order.

*Default procedure not to apply to certain proceedings*

**11.**—(1) Judgment under this Order may not be entered against a minor or a patient.

(2) Except with the leave of the district judge, no judgment in default of service of a notice of intention to defend in Form 42 shall be entered:

- (a) against the Crown; or
- (b) where in any such proceedings as are mentioned in section 139(1)(b) of the Consumer Credit Act 1974(a) the debtor or surety desires to have a credit agreement reopened.

(3) An application for leave under paragraph (2) shall be made on notice to the other parties and must be served not less than seven days before the date fixed by the chief clerk for the hearing of the application for leave.

*Setting aside judgment*

**12.** Without prejudice to Rule 7(3) and (4) and to Part III of Order 25, the judge or the district judge may, on such terms as he thinks just, set aside or vary any judgment entered in pursuance of this Order.

PART II

DAMAGES: ASSESSMENT AFTER JUDGMENT

*Assessment of damages by the district judge*

**13.**—(1) Where judgment is given for damages to be assessed the damages shall, subject to the provisions of this Order, be assessed by the district judge.

- (2) The party entitled to the benefit of the judgment shall:
- (i) lodge with the chief clerk a certificate of readiness in Form 43 together with the medical or other reports upon which he will seek to rely at the hearing; and
  - (ii) issue a summons in Form 70 for hearing and serve it together with the medical or other reports upon which he will seek to rely at the hearing on the other parties to the proceedings at least 7 days before the date fixed for the hearing.

(3) Without prejudice to the powers of a district judge under Order 25, Part II, the attendance of witnesses and the production of documents before the district judge in proceedings under this Order may be compelled by witness summons in Form 110 in accordance with Order 24, Rule 9, and the provisions of Order 25 shall, with the necessary adaptations, apply in relation to those proceedings as they apply in relation to proceedings at a hearing.

*Judgment for amount of damages*

14. Where damages are assessed by a district judge or judge, he shall give a decree for the amount of the damage so assessed.

*Default judgment against some but not all defendants*

15. Where any judgment is entered in default of service of a notice of intention to defend in Form 42 under this Order and the proceedings continue against other defendants, the damages under the judgment entered shall be assessed at the hearing unless the judge or district judge, as the case may be, otherwise orders.

*Assessment of value*

16. The foregoing Rules in this Order shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, as they apply to a judgment for damages to be assessed, and references in those Rules to the assessment of damages shall be construed accordingly.

*Assessment of damages to time of assessment*

17. Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.”



## New Table 3 of Part I of Appendix 2 to the Principal Rules

**“Costs where no notice of intention to defend is served and judgment is marked under Order 12**

TABLE 3: PLAINTIFF'S COSTS

<i>In actions where amount decreed—</i>	<i>Where sum claimed and costs specified in civil bill not paid within 21 days of service</i>
(1)	(2)
(i) does not exceed £500	£51
(ii) exceeds £500 but does not exceed £1,000	£81
(iii) exceeds £1,000 but does not exceed £2,000	£102
(iv) exceeds £2,000 but does not exceed £3,000	£116
(v) exceeds £3,000 but does not exceed £4,000	£128
(vi) exceeds £4,000 but does not exceed £5,000	£141
(vii) exceeds £5,000 but does not exceed £6,000	£157
(viii) exceeds £6,000 but does not exceed £7,000	£172
(ix) exceeds £7,000 but does not exceed £8,000	£185
(x) exceeds £8,000 but does not exceed £9,000	£197
(xi) exceeds £9,000 but does not exceed £10,000	£208
(xii) exceeds £10,000 but does not exceed £12,500	£226
(xiii) exceeds £12,500 but does not exceed £15,000	£249

1. Where the sum claimed is paid within 21 days of service of civil bill the sum for costs specified in column 2 to be reduced by 50%. See Rule 14(1) of Order 55.

2. For each copy civil bill required for service after first add 80p to costs. See Order 55, Rule 13.

3. Where service of civil bill effected by post under Rule 3(2)(b) of Order 6 the solicitor is entitled to £1·86 inclusive of outlay in lieu of process server's fee. See Order 55, Rule 17.

4. See Part IX ("Miscellaneous Costs") of this Appendix for application of this Table to proceedings under Part VIII of the Judgments Enforcement (Northern Ireland) Order 1981 and under the Hire Purchase Acts.

5. Where in any undefended action under the Consumer Credit Act 1974 the amount decreed exceeds £15,000, the costs may be increased by such amounts as the district judge thinks proper having regard to the amount involved or the importance or difficulty of the case, provided that the total amount allowed for costs shall not exceed £275.

6. Solicitor travelling to attend a court—

- (a) 20 to 50 miles from the solicitor's office or, where the solicitor's firm practises from more than one office, from the office which dealt with the proceedings is entitled to an additional sum of £14·92;
- (b) more than 50 miles from the solicitor's office or, where the solicitor's firm practises from more than one office, from the office which dealt with the proceedings is entitled to an additional sum of £29·88.

Where a solicitor has conducted more than one case on the same day at the same venue, this fee may be claimed once only and the fee shall be divided proportionately over the number of cases conducted by the solicitor."

## PART I

SUBSTITUTION OF REFERENCES IN THE PRINCIPAL RULES TO "ENTRY DAY" IN CASES  
COMMENCED BY CIVIL BILL*Order 3*

1. (a) In Rule 10(a) for the words "before the entry day" substitute the words "at any time before the hearing";
- (b) In Rule 15(1)(a) for the words "at any time after service of the civil bill and before the entry day" substitute the words "not later than 21 days after service of the civil bill except with the consent of the other parties or the leave of the court".

*Order 5*

2. In Rule 3(1) for the words "before the beginning of a period of fourteen days ending on the entry day, to furnish further particulars before the beginning of a period of seven days ending on the entry day" substitute the words "within 14 days after service of the notice of intention to defend, to furnish further particulars within 14 days of service upon him of the notice for particulars".

*Order 6*

3. In Rules 3(3) and 9(2) for the words "not later than entry day" substitute the words "together with the certificate of readiness";

*Order 7*

4. (a) In Rules 1 and 3 for the words "before the beginning of a period of four days ending on the entry day" wherever they occur substitute the words "within 28 days after service of his notice of intention to defend";
- (b) In Rule 4(2) for the words "before the beginning of a period of four days ending on the entry day" substitute the words "within 28 days after service of his notice of intention to defend";
- (c) In Rule 5(1) for the words "on or before entry day" substitute the words "within 28 days of service of his notice of intention to defend";
- (d) In Rule 5(2) for the words "before the beginning of a period of four days ending on the entry day" in both places where they occur substitute the words "within 28 days after service of his notice of intention to defend".

*Order 8*

5. Rule 6(2) is hereby revoked.

*Order 11*

6. In Rule 1 for the words "before the beginning of a period of seven days ending on the entry day" substitute the words "within 14 days after service of his notice of intention to defend".

*Order 22*

7. In Rule 8:

- (a) for paragraph (2) substitute the following paragraph:—

“(2) The original writ of summons or other originating process and all other pleadings shall be lodged with the chief clerk in accordance with paragraph (1) within 14 days from the date of the order for remittal.”.

(b) paragraphs (3), (4) and (5) are hereby revoked;

*Order 46*

8. (a) Rule 5(3) is hereby revoked.

(b) In Rule 7(1) for the words from “Rule 3 of Order 8” to “and a copy thereof” substitute the words “Together with the Certificate of Readiness, the testamentary civil bill and a copy of the testamentary civil bill”.

PART II

SUBSTITUTION OF REFERENCES IN THE PRINCIPAL RULES TO “ENTRY DAY” IN PROCEEDINGS COMMENCED OTHERWISE THAN BY CIVIL BILL

*Order 29*

9. In Rule 1(1) and in Rule 3(2) for the words “before the beginning of a period of 28 days ending on the entry day” substitute the words “not less than 28 days before the date fixed for the hearing.”.

*Order 30*

10. (a) In Rule 9(5) for the words “the entry day for the sitting at which the application is to be heard” substitute the words “the date fixed for the hearing.”.

(b) Rule 9(6) is hereby revoked.

(c) In Rule 11(3) for the words “before entry day” substitute the words “not less than 28 days before the date fixed for the hearing”.

*Order 31*

11. In Rule 1 for the words “before the beginning of a period of 28 days ending on the entry day” substitute the words “not less than 28 days before the date fixed for the hearing.”.

*Order 32*

12. In Rule 1(5) for the words “entry day.” substitute the words “28 days before the date fixed for the hearing.”.

*Order 35*

13. In Rule 4(1) for the words “before the beginning of a period of sixteen days ending on the entry day for the sittings at” substitute the words “not less than 28 days before the date on”.

*Order 37*

14. (a) In Rule 1 for the words from “at least three days before the entry day” to the end substitute the words “not less than 28 days before the date fixed for the hearing.”.

(b) In Rule 2 for the words “before the beginning of a period of sixteen days ending on the entry day for the sittings at which such claim is to be

made." substitute the words "not less than 28 days before the date fixed for the hearing."

*Order 49*

15. (a) In Rule 9(1) for the words "entry day for the sitting at which the application or appeal is to be heard." substitute the words "date fixed for the hearing.";
- (b) Rule 9(3) is hereby revoked.

PART I

*Order 52*

16. (a) In Rule 2(3) for the words "14 days before the entry day for the sitting at which the application is to be heard." substitute the words "28 days before the date fixed for the hearing.";
- (b) In Rule 2(4) for the words "10 days before the entry day for the sitting at which the application is to be heard." substitute the words "28 days before the date fixed for the hearing.";
- (c) Rule 2(5) is hereby revoked.

PART II

- (d) In Rule 5(2) for the words "ten days before the entry day for the sitting at which the application is sought to be heard" substitute the words "28 days before the date fixed for the hearing";
- (e) Rule 5(3) is hereby revoked.

PART III

- (f) In Rule 11(3) for the words "10 days before entry day for the sitting at which the application is sought to be heard" substitute the words "28 days before the date fixed for the hearing.";
- (g) Rule 11(4) is hereby revoked;
- (h) In Rule 12(3) for the words "10 days before entry day for the sitting at which the application is sought to be heard." substitute the words "28 days before the date fixed for the hearing.".
- (i) Rule 12(4) is hereby revoked.

PART IV

- (j) In Rule 13(2) for the words "14 days before the entry day for the sitting at which the application is to be heard" substitute the words "28 days before the date fixed for the hearing.";
- (k) In Rule 13(3) for the words "10 days before the entry day for the sitting at which the application is to be heard." substitute the words "28 days before the date fixed for the hearing.";
- (l) Rule 13(4) is hereby revoked.

Order 54

17. In Rule 2(9) delete the words "at the first sitting he deems practicable".

Order 58

18. In Rule 1(1) the reference to "entry day" is hereby revoked.

**New forms to be inserted in Principal Rules**

“FORM 9

**Ordinary civil bill**

Order 5, Rule 1(1)

[*Title as in Form 1*]

THE DEFENDANT is hereby required to appear at [ ] courthouse on a date and at a time to be notified to the parties by the Chief Clerk to answer the plaintiff's claim for £ [for damages] for [here state the cause or causes of action and if more than one, divide into paragraphs: if interest is claimed state the claim and set out particulars of the claim for interest or refer to a separate document wherein such particulars are set out].

**WARNING**

If you wish to dispute this claim against you, within 21 days after service of this civil bill on you, a notice of intention to defend these proceedings in Form 42 must be served on the plaintiff and a copy served on any other party to the proceedings and a copy delivered to the chief clerk at [address of court office]. If you fail to serve such a notice the plaintiff may proceed and obtain judgment against you in your absence and without further notice.

Dated this        day of        19 .

Signed

Plaintiff/Solicitor  
for the Plaintiff

Address

Served on the [        named] defendant this        day of  
19        [by means of ordinary first class post  
addressed to the defendant at the above  
address].

Signed

Plaintiff/Solicitor  
for the Plaintiff

Address







“FORM 55

**Default decree in proceedings relating to detention of goods**

(O. 12, r. 3)

[Heading as in Form 1]

No notice of intention to defend having been served by the defendant herein.

It is this day ordered and decreed that the defendant deliver to the plaintiff the goods described in the civil bill as [description of goods] or pay the plaintiff the value of the said goods to be assessed [and also damages for their detention to be assessed].

or

It is this day ordered and decreed that the defendant do pay the plaintiff the value of the goods described in the civil bill to be assessed [and also damages for the detention to be assessed].

Dated at        this        day of                    19

Signed

Chief Clerk”

“FORM 56

**Default decree in proceedings for possession of land**

(O. 12, r. 4)

[Heading as in Form 1]

No notice of intention to defend having been served by the defendant herein, it is this day ordered and decreed that the defendant do give the plaintiff possession of the land described in the civil bill as

Dated at        this        day of                    19

Signed

Chief Clerk”

**Amendments to Forms in Principal Rules**

## 1. In Forms 11, 12, 14 to 32 and 183 to 187:

- (a) the words (wherever they appear) “the sitting at which this civil bill is intended to be dealt with will commence on the            day of            19 and will be held at            ” are deleted;
- (b) for the words “required to appear at the aforesaid Court at the hour of on the            day of            19 \*” substitute the words “required to appear at [            ] courthouse on a date and at a time to be notified to the parties by the chief clerk”;
- (c) immediately before the words “Dated this            day of            19 ” insert the following:

**“WARNING**

If you wish to dispute this claim against you, within 21 days after service of this civil bill on you a notice of intention to defend these proceedings in Form 42 must be served on the plaintiff and a copy served on any other party to the proceedings and a copy delivered to the chief clerk at [address of court office]. If you fail to serve such a notice the plaintiff may proceed and obtain judgment against you in your absence and without further notice.”;

- (d) the words “\*Day for hearing as in court calendar” are deleted.

## 2. In Forms 10, 13 and 14 for the word “fourteen” (wherever it appears) substitute “21”.

## 3. In Form 37:

- (a) the words “the sittings at which” are deleted;
- (b) for the words “is intended to be dealt with will commence on the            day of            19 and will be held at” substitute “will be heard on the            day of            19 at”;
- (c) for the words “Day for hearing as in court calendar” substitute “Day for hearing as fixed by chief clerk.”.

## 4. In Form 45:

- (a) the words “The sittings at which this summons is intended to be dealt with will commence on the            day of            19 and will be held at            ” are deleted;
- (b) for the words “Day for hearing as in court calendar” substitute “Day for hearing as fixed by chief clerk.”.

## 5. In Form 47 the words “at these present sittings” are deleted.

## 6. In Forms 48 and 337 the words “at the present sittings” are deleted.

## 7. In Forms 71 to 79 the words “to appear at the [            ] sittings on the            day of            19 ” are deleted.

8. In Forms 102 to 105 the words "at this present sittings" are deleted.
9. In Form 135:
  - (a) the words "The sittings at which this summons is intended to be dealt with will commence on the        day of        19        and will be held at        " are deleted;
  - (b) for the words "at the equity sittings of the aforesaid court" substitute the words "at        courthouse";
  - (c) for the words "Day for hearing as in court calendar" substitute the words "Day for hearing as fixed by chief clerk".
10. In Form 136 the words "at the equity sitting of the court for the above-named Division to be held" are deleted.
11. In Form 137:
  - (a) for the words "the sittings at which this summons is intended to be dealt with will commence on the        day of        19        and will be held at" substitute "This summons will be heard on the        day of        19 \*at        ";
  - (b) the words "at the equity sittings of the aforesaid court on the        day of        19 \*at the hour of        " are deleted;
  - (c) for the words "Day for hearing as in court calendar" substitute the words "Day for hearing as fixed by chief clerk."
12. In Forms 138 to 150, 238 and 239 the words "at the sittings" are deleted.
13. In Form 175 the words "at the sittings of this court" are deleted.
14. In Forms 151 and 152 for the words "at the        sittings, on the day of        19" substitute the words "at this court".
15. In Form 160 the words "or on the first opportunity thereafter" are deleted.
16. In Forms 167, 172 and 174:
  - (a) the words "The sittings at which this civil bill is intended to be dealt with will commence on the        day of        19        and will be held at        " are deleted;
  - (b) for the words "Day for hearing as in court calendar" substitute the words "Day for hearing as fixed by chief clerk".
17. In Form 173 the words "at the        sitting" are deleted.
18. In Forms 183 to 187 the words "or, in default thereof, the said Judge will proceed as justice shall require" are deleted.
19. In Form 192 the words "returnable to the        sittings of this Court at" are deleted.
20. In Forms 196 to 203, 206 and 209 the words ", place of sitting etc" and "commencing at        o'clock in the        noon on the        day of        19        " are deleted.

21. In Form 204 the words "at the sitting of the above court commencing" are deleted.
22. In Forms 205, 207 and 210 the words "at the sitting of the court commencing" are deleted.
23. In Forms 212 to 215, 226 to 229, 234 to 237, 242 and 244 the words "at the sitting [commencing]" are deleted.
24. In Forms 281 and 282, 284, 285, 299, 301, 303, 314, 315, 317 and 319 the words "at the sittings of the court for the above-named Division to be held at  
" are deleted.
25. In Form 283 the words "at the sitting for the above-named County Court/Recorder's Court" are deleted.
26. In Form 293 for the words "at the sitting of the Court for the above-named Division to be held at" substitute "at  
Courtthouse".
27. In Forms 295 and 296 for the words "for the sittings of" substitute "in" and the words "held at on the day of 19 " are deleted.
28. In Form 310 the words "the sittings at which the Petition in" and "will commence" are deleted.
29. In Forms 330, 331, 342, 367, and 372 for the words "at the sitting" substitute "on the day of 19 ".
30. In Forms 341, 343 and 365 for the words "for hearing at the sittings" substitute "on the day of 19 ".
31. In Forms 347 the words "the sitting of" are deleted.
32. In Form 348 for the words "at the sittings" substitute "on the day of 19 ".
33. In Forms 376, 377 and 378 the words "heard at the sitting" are deleted.

**Amendments to Principal Rules consequential to removal of summary and default civil bill procedures**

1. In Order 5, Rule 2(4) for the words from “unless such particulars are” to “service of the civil bill” substitute the words “set out full particulars of his demand in the civil bill”.

2. In Order 6:

(a) Rule 2(8) is hereby revoked; and

(b) in Rule 3(4) the words “a default or summary civil bill issued under Order 12 or” are hereby revoked.

(c) for Rule 8 there shall be substituted the following Rule:

“A process server shall, as soon as possible after he has received a civil bill serve it upon the defendant.”.

3. In Order 7, Rule 2 is hereby revoked.

4. In Order 14, Rule 5(2) the words from “(a) where the defendant” to the words “(b) in any other case” are hereby revoked.

5. In Order 25, Rule 15, paragraphs (2) and (3) are hereby revoked.

6. In Order 26:

(a) Rule 4(2) is hereby revoked; and

(b) Rule 9(b) is hereby revoked.

7. In Order 33:

(a) in Rule 1A the words “commenced otherwise than by default or summary civil bill” are hereby revoked; and

(b) in Rule 7(1) the words “(not being a decree in a default or summary action)” are hereby revoked.

8. In Order 39, Rule 6(1)(c) for heads (i), (ii) and (iii) substitute the words “where he has not served a notice of intention to defend in Form 42 and judgment has been entered in accordance with Order 12 or where he has failed to appear at the hearing.”.

9. In Order 55, Rule 11(1) is hereby revoked.

10. Forms 40, 50, 51A, 57, 58 and 59 are hereby revoked.

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

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

- (i) provide for a new system for the entry of cases for hearing in the county court by means of service of a certificate of readiness when the case is ready to be heard;
- (ii) introduce a requirement that in defended cases the defendant must serve a notice of intention to defend within 21 days of service of the civil bill;
- (iii) provide for the compulsory exchange of medical and other expert evidence;
- (iv) replace the summary and default civil bill procedures with a single default judgment procedure;
- (v) permit service of civil bills and other documents by ordinary first class post;
- (vi) make other minor amendments.