

1995 No. 282

COUNTY COURTS

County Court (Amendment No. 3) Rules
(Northern Ireland) 1995

Made 11th July 1995

Coming into operation 1st September 1995

*except Rule 12 which comes
into operation on 31st August 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. 3) 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.

Service of civil bills

2.—(1) In Order 6, Rule 2(7) for the words “On or before the day following the last day for service” substitute the words “As soon as practicable after service”.

(2) In Order 6, Rule 3(2) for the words “directed under this Rule or Rule 6, 7, 9 and 11” substitute the words “required by any statutory provision or direction of the court”.

New arrangements for entry and listing of civil bills

3.—(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.

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

(b) S.R. 1981 No. 225 most recently amended by S.R. 1995 No. 151

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 judge or the district judge as the case may be.

(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.”.

Applications for dismisses in remitted actions

4. In Order 8, Rule 6(1) for the words “at any time during the sittings named in the order or the next succeeding sittings” substitute the words “at any time after a period of 4 months has elapsed from the date of the order for remittal”.

Third Party Procedure

5.—(1) In Order 11, Rule 1(2) the words “and shall be entered in the same manner as a civil bill” are revoked.

(2) 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 the third party 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 party or parties to the proceedings and deliver to the chief clerk a notice of intention to defend in Form 42A.

(2) A third party 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 in writing of the other party or parties or with the leave of the judge or the district judge as the case may be.

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”.

Payments into court

6. In Order 21, Rule 2(2) for the words “subject to paragraphs (3) and (4)” substitute the words “subject to paragraph (4)”.

Medical evidence

7. In Order 24 there shall be inserted after Part II the following new Part III:—

“PART III

MEDICAL EVIDENCE

Application

35. This Part applies to all proceedings for damages in respect of personal injury or death except (while liability remains an issue) actions grounded on an allegation of medical or surgical negligence.

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."

Consumer Credit Act applications

8. In Order 30, Rule 11:

- (a) in paragraph (4) for the words from "Rule 17 of Order 12" to the end substitute the words "paragraph (5).";
- (b) after paragraph (4) there shall be inserted the following new paragraph:

"(5) Where a defendant in accordance with section 139(1)(b) or (c) of the Consumer Credit Act 1974 desires to have a credit agreement re-opened he shall serve notice that he so desires on the chief clerk and on the plaintiff's solicitor or, where the plaintiff is suing in person, on the plaintiff within 21 days from the date of service upon him of the civil bill."

Service by post and by FAX

9.—(1) In Order 43, after Rule 19, there shall be inserted the following new Rule:

"Date when documents served by post deemed to be served"

19A.—(1) Where a civil bill or any other document is served by ordinary first class post under these Rules, unless the contrary is proved, the document shall be deemed to have been served on the second business day after posting (excluding the day of posting).

(2) In this Rule "business day" has the same meaning as in Rule 27."

(2) In Order 43 after Rule 26 there shall be inserted the following new Rule:

"Service by FAX"

27.—(1) In this Rule:

- (a) "FAX" means the making of a facsimile copy of a document by the transmission of electronic signals;

(b) “business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a public holiday.

(2) Any document the service of which by post is permitted in these Rules other than a civil bill, petition, summons, notice or other document required or authorised to be served for the purposes of initiating any proceedings in a county court may be served by FAX in accordance with paragraphs (3) and (4).

(3) Service by FAX may be effected where—

- (a) the party serving the document acts by a solicitor;
- (b) the party on whom the document is served acts by a solicitor and service is effected by transmission to the business address of such a solicitor;
- (c) the solicitor acting for the party on whom the document is served has indicated in writing to the solicitor serving the document that he is willing to accept service by FAX at a specified FAX number and the document is transmitted to that number; and for this purpose the inscription of a FAX number on the writing paper of a solicitor shall be deemed to indicate that such solicitor is willing to accept service by FAX at that number in accordance with this paragraph unless he states otherwise in writing; and
- (d) as soon as practicable after service by FAX the solicitor acting for the party serving the document despatches a copy of it to the solicitor acting for the other party by any of the other methods prescribed for service in these Rules, and if he fails to do so, the document shall be deemed never to have been served by FAX.

(4) Where the FAX is transmitted on a business day before 4.00 pm it shall, unless the contrary is shown, be deemed to be served on that day, and, in any other case, on the business day next following.”.

Costs in undefended proceedings

10.—(1) In Order 55, Rule 11(2) is hereby revoked.

(2) 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 enters 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) Subject to paragraph (4) the costs awarded to a solicitor where he enters 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 of Part III Table 1 or Part VI Table 1 or the appropriate scale in the Schedule to Part VIII.

(4) Notwithstanding paragraph (3), the amount of 50% of the scale fee prescribed by paragraph (3) (being the costs awarded to a solicitor where he enters judgment on behalf of a plaintiff in accordance with Order 12, Rule 2 and damages are assessed under Order 12, Rules 13 or 16) may be increased in the discretion of the judge or district judge”.

Amendments to Forms

11.—(1) In Forms 38 and 39 for the words “ordinary, equity, summary and default civil bills” substitute the words “ordinary and equity civil bills”.

(2) In Form 39 in the cross-heading for the words “Order 6, Rule 2(14)” substitute the words “Order 6, Rule 2(13)”.

(3) For Form 42 there shall be substituted the new Forms 42 and 42A set out in the Schedule.

(4) For Form 49 there shall be substituted the new Form 49 set out in the Schedule.

(5) For Forms 53, 54, 55, 56 and 57 there shall be substituted the new Forms 53, 54, 55, 56 and 57 set out in the Schedule.

(6) In Form 70, in the cross heading immediately before the words “Order 16, Rule 3”, insert the words “Order 12, Rule 13(2)(ii)”.

(7) In Form 283 the words “at the sitting for the above-named County Court/Recorder’s Court commencing” are revoked.

Revocations

12. In the County Court (Amendment No. 2) Rules (Northern Ireland) 1995(a) the following provisions are hereby revoked:

(a) Rule 2(1);

(b) Rule 4(1);

(c) Rule 6(1);

(d) Rule 8(3);

(e) in Schedule 4, Forms 42, 53, 54, 55 and 56;

(f) in Schedule 5, paragraph 25.

Transitional Provisions

13.—(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.

J. F. B. Russell
Raymond T. Kerr
James A. Agnew
Brian J. Stewart

Dated 29th June 1995

After consultation with the Lord Chief Justice, I allow these Rules, which shall come into operation on 1st September 1995 except Rule 12 which shall come into operation on 31st August 1995.

Dated 11th July 1995

Mackay of Clashfern, C.

“FORM 49

Third party notice

(O.11 r.1(1))

[Title as in Form 1]

TAKE NOTICE that this action has been brought by the plaintiff against the defendant for and that the defendant claims against you that—

[he is entitled to contribution for you to the extent of]

[he is entitled to be indemnified by you against liability in respect of]

The grounds of the defendant’s claim are

[or other relief, if any sought].

WARNING

If you wish to dispute this claim against you, within 21 days after service of this third party notice on you, a notice of intention to defend these proceedings in Form 42A must be served on the defendant 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 court may proceed to hear and determine the plaintiff’s claim against the defendant and the defendant’s claim against you, and to give judgment against you in your absence without further notice.

Dated this day of 19

[Solicitor for] Defendant.

To the Third Party”.

“FORM 53

Default decree in proceedings for liquidated amount

(O.12 r.1)

[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 plaintiff do recover from the defendant the sum of £ together with the sum of £ for costs.

Dated at this day of 19

(Seal)

Signed

Chief Clerk”

Default decree in proceedings for unliquidated damages

(O.12 r.2)

[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 pay the plaintiff damages to be assessed by the district judge.

Dated at this day of 19

(Seal)

Signed

Chief Clerk"

"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

(Seal)

Signed

Chief Clerk"

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

(Seal)

Signed

Chief Clerk"

"FORM 57

Decree in proceedings where damages assessed by the judge/district judge

(O.12 r. 14)

Whereas on the day of 19 interlocutory judgment for damages to be assessed under Order 12, Rule 2 was entered herein by the chief clerk and whereas a summons in Form 70 was issued and served on all the parties for the assessment of damages herein it is this day ordered and decreed that the plaintiff do recover from the defendant the sum of £ for damages, together with the sum of £ for costs and the sum of £ for witness expenses.

Dated at this day of 19

(Seal)

Signed

Chief Clerk."

(This note is not part of the Rules.)

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

- (i) deem service by post to be effected on the second business day after posting;
- (ii) permit service of certain documents by FAX;
- (iii) prescribe a new form of decree where interlocutory judgment for an unliquidated amount has been entered by the chief clerk and damages have been assessed by the judge or district judge;
- (iv) prescribe a new Form of Third Party Notice and Notice of Intention to Defend a Third Party Notice;
- (v) make other minor amendments.

These Rules also revoke certain provisions of the County Court (Amendment No. 2) Rules (Northern Ireland) 1995 and re-enact with amendments those provisions.