

2022 No. 252

COUNTY COURTS

PROCEDURE

**The County Court (Amendment No. 2) Rules (Northern Ireland)
2022**

Made - - - -

13th October 2022

Coming into operation

6th January 2023

The County Court Rules Committee makes and the Department of Justice, after consultation with the Lady Chief Justice, allows the following Rules in exercise of the powers conferred by Article 47 of the County Courts (Northern Ireland) 1980(a) and paragraphs 10(2) and 10(5) of Schedule 6 to the Administration of Justice Act 1982(b).

Citation and commencement

1. These Rules may be cited as the County Court (Amendment No. 2) Rules (Northern Ireland) 2022 and shall come into operation on 6th January 2023.

Amendments to the County Court Rules (Northern Ireland) 1981

2. The County Court Rules (Northern Ireland) 1981(c) are amended as follows—

- (a) After Order 12, insert the new Order 12A set out in Schedule 1 to these Rules; and
- (b) after Order 25, insert the new Order 25A set out in Schedule 2 to these Rules.

(a) S.I. 1980/397 (N.I. 3); Article 47 was amended by the Constitutional Reform Act 2005 (c. 4) and paragraph 33 of Schedule 17 to, and paragraph 118 of Schedule 18 to, the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976)

(b) 1982 c. 53

(c) S.R. 1981 No 225; to which the most recent relevant amendments were made by S.R. 2016 No. 302, S.R. 2013 No. 140 and S.R. 2013 No. 19

*Patricia Smyth
Paul Brennen
Colin Mitchell
Sandra Crawford*

Dated 13th October 2022

In exercise of the powers conferred by Article 47(4) of the County Courts (Northern Ireland) Order 1980, I allow these Rules.

Sealed with the Official Seal of the Department of Justice on 20th October 2022



Naomi R Long
Minister of Justice

“ORDER 12A
SUMMARY JUDGMENT

Interpretation

1. In this Order—

- “application’ means an application for summary judgment made under rule 2 or rule 10 as the case may be;
- subject to rule 10, ‘defendant’ means a defendant against whom an application for summary judgment is made; and
- “judge’ means judge or, in relation to proceedings within the jurisdiction of the district judge, the district judge.

Application by plaintiff for summary judgment

2.—(1) Where in an action to which this rule applies a civil bill has been served on a defendant and that defendant has entered a notice of intention to defend in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the civil bill, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the judge for judgment against that defendant.

(2) Subject to paragraph (3), this rule applies to every action begun by civil bill other than an action which includes a claim by the plaintiff—

- (a) for libel, slander, malicious prosecution or false imprisonment;
- (b) pursuant to the ejectment, title or equity jurisdiction of the court; or
- (c) for committal of the defendant to prison.

(3) No application against the Crown may be made under this rule.

Manner in which an application shall be made

3.—(1) An application shall be made by lodging with the chief clerk notice in writing supported by an affidavit verifying the facts on which the claim, or the part of the claim to which the application relates, is based and stating that, in the deponent’s belief, there is no defence to the claim or part of the claim, as the case may be, or no defence except as to the amount of any damages claimed.

(2) The notice and a copy of the affidavit shall be served by the plaintiff on the defendant within 3 days of making the application.

Representations by defendant

4.—(1) The defendant may lodge representations in writing with the chief clerk within 14 days of service on him of the application and shall, at the same time, serve a copy on the plaintiff.

Consideration of application

5. Upon consideration of the application and any representations made under rule 4, the judge may—

- (a) grant the application without a hearing;
- (b) dismiss the application without a hearing;
- (c) list the application for a review hearing; or
- (d) list the application for substantive hearing upon such terms and conditions, if any, as he thinks fit,

and give such directions as he considers appropriate.

6. The chief clerk shall notify the plaintiff and defendant of any hearing listed under rule 5.

Judgment for the plaintiff

7.—(1) Unless on the hearing of an application—

- (a) the judge dismisses the application; or
- (b) the defendant satisfies the judge with respect to the claim, or the part of a claim to which the application relates, that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part,

the judge may give such judgment for the plaintiff against the defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed.

(2) The judge may, by order and subject to such conditions, if any, as may be just, stay enforcement of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

Leave to defend

8.—(1) A defendant may show cause against an application at any time by affidavit or otherwise to the satisfaction of the judge.

(2) Any affidavit made under this rule shall be lodged with the chief clerk and a copy shall be served on the plaintiff by the defendant.

(3) Where the application is listed for substantive hearing, any affidavit made under this rule shall be lodged and served no later than three days before the hearing date.

9. On dismissing an application, the judge may—

- (a) give a defendant leave to defend the action with respect to the claim, or the part of a claim to which the application related, either unconditionally or on such terms as to giving security or time as he thinks fit; or
- (b) order the defendant or, where the defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity—
 - (i) to produce any document; or
 - (ii) if it appears to the judge that there are special circumstances which make it desirable that that person should do so, to attend and be examined on oath.

Application for summary judgment on counterclaim

10.—(1) Where a defendant to an action begun by civil bill has served a counterclaim on the plaintiff then, subject to paragraphs (3) and (4), the defendant may, on the ground that

the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such a claim, apply to the judge for judgment against the plaintiff on that claim or part.

(2) The provisions of this Order shall apply with any necessary modifications to an application made under this rule.

(3) This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 2(2).

(4) No application against the Crown may be made under this rule.

Directions as to further conduct of the action

11. Where the judge—

- (a) orders that a defendant or plaintiff has leave (whether conditional or unconditional) to defend an action or counterclaim, as the case may be, with respect to a claim or a part of a claim; or
- (b) gives judgment for a plaintiff or a defendant on a claim or a part of a claim but also orders that enforcement of the judgment be stayed pending the trial of a counterclaim or the action, as the case may be,

the judge may give directions as to the further conduct of the action.

Costs

12.—(1) On disposing of an application, the judge may make such order as to costs as he considers appropriate.

(2) Without prejudice to paragraph (1)—

- (a) if an application is made under rule 2 where the action is not within this Order or if it appears to the judge that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, the judge may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid forthwith; and
- (b) the judge shall have the same power to dismiss an application made under rule 10 as he has under sub-paragraph (a) to dismiss an application made under rule 2, and that sub-paragraph shall apply accordingly with the necessary modifications.

Right to proceed with residue of action or counterclaim

13.—(1) Where on an application under rule 2 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

(2) Where on an application under rule 10 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

Setting aside judgment

14. Any judgment against a party who does not appear at the hearing of an application may be set aside or varied by the judge on such terms as he thinks just.”

“ORDER 25A**ORDERS FOR PROVISIONAL DAMAGES FOR PERSONAL INJURIES****Application and interpretation**

1.—(1) This Order applies to actions to which paragraph 10 of Schedule 6 to the Administration of Justice Act 1982(a) (referred to as “paragraph 10” in this Order) applies.

(2) In this Order—

- “award of provisional damages” means an award of damages for personal injuries under which—
 - (a) damages are assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in paragraph 10; and
 - (b) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration;
- “judge” means judge or, in relation to proceedings within the jurisdiction of the district judge, the district judge.

Order for provisional damages

2.—(1) The court may, on such terms as it thinks just and subject to the provisions of this rule, make an award of provisional damages if—

- (a) the plaintiff has claimed provisional damages; and
- (b) the court is satisfied that the action is one to which paragraph 10 applies.

(2) An order for an award of provisional damages shall specify the disease or type of deterioration in respect of which an application may be made at a future date and shall also, unless the court otherwise determines, shall specify the period within which such application may be made.

(3) The judge may, on the application of the plaintiff made within the period, if any, specified in paragraph (2), by order extend that period if it thinks it just to do so and the plaintiff may make more than one such application.

(4) An order for an award of provisional damages may be made in respect of more than one disease or type of deterioration and may in respect of each disease or deterioration specify a different period within which an application may be made at a future date.

(5) Order 12 shall not apply in relation to an action in which the plaintiff claims provisional damages.

Offer to submit to an award

3.—(1) Where an application is made for an award of provisional damages any defendant may at any time (whether or not he makes a payment into court) make a written offer to the plaintiff—

- (a) to tender a sum of money (which may include) an amount, to be specified, in respect of interest) in satisfaction of the plaintiff’s claim for damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in paragraph 10 and identifying the disease or deterioration in question; and

(a) 1982 c.53

(b) to agree to the making of an award of provisional damages.

(2) Any offer made under paragraph (1) shall not be brought to the attention of the court until after the court has determined the claim for an award of provisional damages.

(3) Where an offer is made under paragraph (1) the plaintiff, may within 21 days after receipt of the offer, give written notice to the defendant of his acceptance of the offer and shall on such acceptance make an application to the judge for an order in accordance with the provisions of rule 2(2).

Application for award of further damages

4.—(1) This rule applies where the plaintiff, pursuant to an award of provisional damages, claims further damages.

(2) No application for further damages may be made after the expiration of the period, if any, specified under rule 2(2), or of such period as extended under rule 2(3).

(3) The plaintiff shall give not less than 3 months' written notice to the defendant of his intention to apply for further damages and, if the defendant is to the plaintiff's knowledge insured in respect of the plaintiff's claim, to the insurers.

(4) The plaintiff may apply to the judge for directions as to the future conduct of the action within 21 days after the expiry of the period of notice referred to in paragraph (3).

(5) On the hearing of the application for directions the judge shall give such directions as may be appropriate for the future conduct of the action including, but not limited to, the disclosure of medical reports and the place, mode and date of the hearing of the application for further damages.

(6) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the order for the award of provisional damages.

(7) The court may include in an award of further damages simple interest at such rate as it thinks fit on all or any part thereof for all or any part of the period between the date of notification of the plaintiff's intention to apply for further damages and the date of the award."

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the County Court Rules (Northern Ireland) 1981 (S.R. 1981 No. 225) to—

- insert a new Order 12A which prescribes a procedure for applications for summary judgment where a notice of intention to defend has been served; and
- insert a new Order 25A which prescribes the procedure for applications for provisional assessment of damages in personal injury cases.

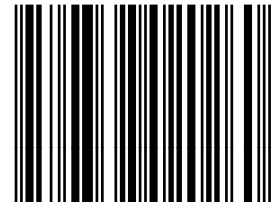
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