

1972. No. 331

[C]

COUNTY COURT RULES

Amendment of County Court Rules (Northern Ireland) 1965

RULES, DATED 4TH DECEMBER 1972, MADE BY THE SECRETARY OF STATE UNDER SECTION 146 OF THE COUNTY COURTS ACT (NORTHERN IRELAND) 1959.

I, THE RIGHT HONOURABLE WILLIAM WHITELAW, M.C., M.P., one of Her Majesty's Principal Secretaries of State, in exercise of the powers conferred on me by section 146 of the County Courts Act (Northern Ireland) 1959(a) and section 1(1) of the Northern Ireland (Temporary Provisions) Act 1972(b) and all other powers me enabling in that behalf, on the recommendation of the County Court Rules Committee and after consultation with the Lord Chief Justice, do hereby make the following Rules:—

Citation and commencement

1. These Rules may be cited as the County Court (Amendment) Rules (Northern Ireland) 1972 and shall come into operation on 28th December 1972.

Amendment of Rules of 1965

2. The provisions of the County Court Rules (Northern Ireland) 1965(c) specified in the first column of the Schedule are hereby amended to the extent specified in the second column thereof.

Dated this 4th day of December 1972.

W. S. I. Whitelaw,
One of Her Majesty's Principal
Secretaries of State.

(a) 1959. c. 25.
(b) 1972. c. 22.

(c) S.R. & O. (N.I.) 1965, No. 261.

SCHEDULE

Amendments to the County Court Rules (Northern Ireland) 1965

Provision amended	Amendment
Order 3:	<p>In Order 3 after Rule 8 there shall be added the following Rule:—</p> <p><i>“Proceedings Against Estates Act (N.I.) 1971.</i></p> <p>8A.—(1) Where any person against whom an action would have lain has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.</p> <p>(2) Without prejudice to the generality of paragraph (1), an action brought against “the personal representatives of AB deceased” shall be treated for the purposes of that paragraph, as having been brought against his estate.</p> <p>(3) An action purporting to have been commenced against a defendant who has died shall, if the cause of action survives and no grant of probate or administration has been made, be treated as having been brought against his estate in accordance with paragraph (1).</p> <p>(4) In any such action as is referred to in paragraph (1) or (3)—</p> <p>(a) the plaintiff shall apply to the judge for an order appointing a person to represent the deceased’s estate for the purpose of the proceedings or, if a grant of probate or administration has been made since the issue of the civil bill, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed, or as the case may be against the personal representative, as if he had been substituted for the estate;</p> <p>(b) the judge at any stage of the proceedings and on such terms as he thinks just and either on his own motion or on application may make any such order as is mentioned in sub-paragraph (a) and allow such amendments (if any) to be made and make such other order as he thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.</p> <p>(5) Before making an order under paragraph (4) the judge may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as he thinks fit.</p>

Provision amended	Amendment
Order 3: (Contd.)	(6) Where no grant of probate or administration has been made, any decree granted in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings."
Order 6: Rule 1	In Order 6 in Rule 1 after paragraph (c) there shall be added the following paragraph— “(d) in an action such as is referred to in Rule 8A(2) of Order 3 (where a civil bill is issued against “the personal representatives of AB deceased”) when a copy thereof is filed in the Office.”
Order 6: Rule 3	In Order 6 in Rule 3 after paragraph (9) there shall be added the following paragraph— “(10) Where a civil bill is issued in an action such as is referred to in Rule 8A(2) or (3) of Order 3 and cannot be served because no grant of probate or administration has been made, a copy of the civil bill shall be filed by delivery to the Office as soon as it appears that the defendant is dead and that it cannot be served otherwise for the purpose of commencing the action.”
Order 8: Rule 6	In Order 8 in Rule 6(1) the words “order for hearing and the other” shall be omitted and for the words “said order” there shall be substituted the words “notice of remittal served on him by the proper officer of the Supreme Court in accordance with Rule 11(1)(a) of Order 54F of the Rules of the Supreme Court (Northern Ireland) 1936”. In Order 8 after Rule 6(3) there shall be added the following paragraph:— “(4) In relation to an action to which Order 22 Rule 9(6) applies, paragraphs (1) and (3) shall have effect as if the reference— (a) to the plaintiff or defendant were, as the case may be, to the defendant or plaintiff; and (b) to a copy of the writ of summons or other originating process were to the original thereof together with particulars of the counterclaim.”
Order 22: Rule 9	In Order 22 in Rule 9(1) the words “and the order for hearing” shall be omitted and in Rule 9(2) and (3) the words “and order for hearing” shall be omitted in both places where they occur. In Order 22 at the end of Rule 9 there shall be added the following paragraphs—

Provision amended	Amendment
	<p>“(5) Before lodging the writ of summons or other originating process in accordance with this Rule, the plaintiff shall ascertain that the clerk of the Crown and peace has received a copy of the order of remittal and all documents filed in the proceedings in the High Court in accordance with Rule 11(1)(b) of Order 54F of the Rules of the Supreme Court (Northern Ireland) 1936 and shall at the time of such lodgment attach to the summons or other process a certified copy of the notice of remittal served on him by the proper officer of the Supreme Court in accordance with Rule 11(1)(a) of that Order.</p> <p>(6) Where the only issue in the action remitted for hearing in a County Court arises solely on a counterclaim by a defendant, this Rule shall apply as if for references to the plaintiff and to the original writ of summons or other originating process there were substituted references to the defendant and to a copy of such writ or other process together with particulars of the counterclaim, as the case may be.”</p>
Order 22: Rule 13	In Order 22 in Rule 13(1) sub-paragraph (a) shall be omitted.
Order 35: Rule 6	In Order 35 in Rule 6(1) for the word “executed” there shall be substituted the word “enforced”; and in Rule 6(2) for the words “to levy execution against any person as a partner” there shall be substituted the words “to enforce it against a partner or otherwise” and for the words “execution to be levied” there shall be substituted the words “application to be made for enforcement under the Judgments (Enforcement) Act (Northern Ireland) 1969”.
Order 42: Rule 3	The Rule is revoked.

EXPLANATORY NOTE

(This note is not part of the Rules, but is intended to indicate their general purport.)

These Rules amend the general procedural rules in the county court, namely, the County Court Rules (Northern Ireland) 1965.

The amendments to Order 3 and to Order 6 consequent on the Proceedings Against Estates Act (Northern Ireland) 1971 are to enable a civil bill to be issued against "the personal representatives of AB deceased" where the cause of action has survived against his estate but no grant of probate or administration has been made. Provision is also made for a civil bill issued against a deceased for such a cause of action to be treated as having been issued in an action against the estate.

The amendments to Order 8, 22 and 42 are consequential on the provisions of Order 54F inserted by the Rules of the Supreme Court (Northern Ireland) (No. 2) 1971 (S.R. & O. (N.I.) 1971, No. 153).

The amendment to Order 35 is to make provision for application to the judge for leave to enforce a decree not only against a partner in a firm but also another person sought to be made liable.