STATUTORY RULES OF NORTHERN IRELAND

2005 No. 163

SUPREME COURT, NORTHERN IRELAND PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 2005

Made - - - -	*22nd March 2005*
To be laid before Parliament	
Coming into operation	*18th April 2005*

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(**1**) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers as follows:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 2005 and shall come into operation on 18th April 2005.

(2) In these Rules, "the principal Rules" means the Rules of the Supreme Court (Northern Ireland) 1980(**2**) and an Order referred to by a number or an Appendix referred to by a letter means the Order so numbered or the Appendix so lettered in the principal Rules.

Amendment to the principal Rules

2.—(1) Order 38, rule 3(2) shall be amended as follows –

(a) in sub-paragraph (d), by replacing the full stop with a comma and adding the word "or"; and

(b) after sub-paragraph (d), by adding the following new sub-paragraph –

"(e) by the examination of witnesses orally by live television link, telephone or any other method of direct communication.".

(2) Order 88 shall be amended as follows –

(**1**) 1978 c. 23

(**2**) S.R. 1980 No. 346 to which the most recent relevant amendments were made by S.R. 1997 No. 265; S.R. 1999 No. 333; S.R. 2001 No. 254 and S.R. 2002 No. 202

(a) for paragraph (a) of rule 3, there shall be substituted the following new paragraph –

"(a) where the mortgaged property is situated including its postal address (if any); and";

(b) for paragraph (1) of rule 4A, there shall be substituted the following new paragraph –

"(1) Where the plaintiff –

(a) claims in a mortgage action delivery of possession of land which comprises or includes a dwelling house because of failure to pay monies secured by the mortgage; or

(b) applies for the removal or variation of a stay or suspension contained in an order for delivery of possession made as a result of such a claim in a mortgage action relating to such land,

he shall, when serving a copy of the notice of appointment or any summons (not being an originating summons) for such a claim or application also serve on the defendant a notice in Form No. 10A in Appendix A.";

(c) in paragraph (2) of rule 4A, there shall be deleted the words "or 10B, as the case may be,";

(d) for paragraph (3) of rule 5A, there shall be substituted the following new paragraph –

"(3) In an action to which this rule applies –

(a) where the amount owing to a prior incumbrancer is unknown the plaintiff shall, not less than 4 clear days before the date fixed for the first hearing of the summons, serve upon that incumbrancer notice bearing the title and record number of the action and stating –

(i) the relief sought by the plaintiff in the action;

(ii) that the plaintiff is unaware of the amount (if any) owing to the prior incumbrancer and secured against the mortgaged property;

(iii) that the prior incumbrancer may apply to intervene in the proceedings if for any reason he thinks fit; and

(iv) the date, time and place fixed for the hearing;

(b) the court may direct an account to be taken of all incumbrances subsequent as well as prior to or contemporaneous with the plaintiff's demand and an inquiry as to their respective priorities and the court may make an order for delivery of possession conditional on the result of such an account and inquiry.".

Amendment of Appendix A of the principal Rules

3. Appendix A shall be amended as follows –

(a) for Form 10A, there shall be substituted the new Form 10A set out in the Schedule to these Rules;

(b) Form 10B is hereby revoked; and

(c) for Form 38, there shall be substituted the new Form 38 set out in the Schedule to these Rules.

Brian Kerr
J. M. Nicholson
Anthony Campbell
Paul Girvan
Patrick Coghlin
Mark Horner
Bernard McCloskey
Tony Caher
Caroline A. McGonagle

Dated 18th March 2005

Signed by the authority of the Lord Chancellor
I concur

Baroness Ashton of Upholland
Parliamentary Under-Secretary of State,
Department for Constitutional Affairs

Dated 22nd March 2005

SCHEDULE Rule 3

No. 10A**Notice to defendant in lender's action for possession of dwelling house**(O. 88, 4A)

[*Heading as in Summons*]

To [*name of defendant*]

General

This notice explains what you can do if you want the court to give you time to address the mortgage default in this application in which the plaintiff is seeking possession of residential premises by reason of your default. This notice does not deal with the procedure where you wish for any other reason to defend the plaintiff's claim or make a counterclaim. At the hearing the court will decide whether to make an order for possession and if so on what terms. In making that decision the court will take into account the information provided by the plaintiff and by you.

What are the court's powers to allow time to address mortgage default?

Under agreements not regulated under the Consumer Credit Act 1974

The court's powers are set out in detail in the Administration of Justice Act 1970 section 36 and the Administration of Justice Act 1973 section 8. Broadly if the court is satisfied you are likely to be able to remedy the default in payment by discharging within a reasonable time the relevant sum or sums (which in a mortgage involving payment by instalments normally means either the arrears of those instalments or the entire mortgage debt) the court may –

- adjourn the proceedings for a time to enable you to make payment;
- make an order for possession but suspend it on terms as to payment;
- make an order for possession, but put a stay on it for a time to allow you to discharge the entire mortgage debt, normally by sale or remortgage of the premises;
- where an order for possession has already been made but the circumstances have since changed, vary the terms or stay execution of the order.

Under agreements regulated under the Consumer Credit Act 1974

Broadly if the court is satisfied that it is just to do so having regard to the means of the debtor and any surety and the interests of the creditor it may

- make a time order (an order providing for the payment of any sum due under either a regulated agreement or a security for that agreement by such instalments payable at such times as the court considers reasonable);
- vary the terms of the regulated agreement or the mortgage or other security (for the purpose of a time order or any other order relating to a regulated agreement);
- suspend or make conditional (for the same purpose) the operation of any order relating to the regulated agreement.

What steps should you take if you want the Court to exercise such powers on the hearing of the plaintiff's claim?

You should *immediately* consider taking the following steps –

(a) **consulting a solicitor or taking other advice** (e.g., from Housing Rights Service or a branch of the Citizens Advice Bureau);

(b) **preparing (or having your advisers prepare) a detailed written budget** setting out your income and outgoings and indicating the resources available to discharge the relevant sum or sums – *you should complete the form of budget attached to this Notice, or a similar form, and bring it with you to the hearing*;

(c) **working out carefully what you consider to be your best realistic proposal** to address the relevant sum or sums;

(d) **if you intend to sell the mortgaged premises but have not yet found a purchaser, bringing with you a letter from an estate agent establishing –**

(i) that the premises are on the market;