STATUTORY RULES OF NORTHERN IRELAND

2002 No. 202

SUPREME COURT, NORTHERN IRELAND PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 2002

Made - - - -	*17th April 2002*
To be laid before Parliament	
Coming into operation	*21st June 2002*

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) 2002 and shall come into operation on 21st June 2002.

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

Arrangement of Orders

2. In the Arrangement of Orders at the beginning of the principal Rules—

(a) in the entry for Order 83 for the words "Reopening of agreements under The Consumer Credit Act 1974" there shall be substituted the words "The Consumer Credit Act 1974"; and

(b) in the entry for Order 112 for the words "blood tests" substitute the words "scientific tests".

(**1**) 1978 c. 23

(**2**) S.R. 1980 No. 346 to which the most recent relevant amendments were made by S.R. 1989 No. 287, S.R. 1992 No. 399, S.R. 1996 No. 321, S.R. 2001 No. 254

Consumer Credit Act 1974

3. For Order 83 there shall be substituted the new Order set out in Schedule 1 to these Rules.

Mortgage Actions

4. Order 88 shall be amended as follows—

(a) by substituting for rule 4B the following new rule—

"**4B.**—(1) Where the plaintiff—

(a) claims in a mortgage action delivery of possession of land which comprises or includes a dwelling house, or

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

he shall, not less than four clear days before the date fixed for the first hearing of the summons or application and unless the court otherwise directs, post to or insert through the letter box at the property a sealed envelope addressed to "The Occupier" and containing a notice in Form 10C of Appendix A.

(2) Paragraph (4) of rule 4 shall apply to service of a notice under this rule as it applies to service under paragraph (2) or (3) of that rule save that a copy of the notice in Form 10C shall be attached to the certificate proving service";

(b) by adding at the end of rule 5A the following new paragraph—

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

Tests for Determining Parentage

5. In Order 112—

(a) for the heading, substitute "APPLICATIONS FOR USE OF SCIENTIFIC TESTS IN DETERMINING PARENTAGE";

(b) for the words "blood samples", wherever they appear, substitute the words "bodily samples"; and

(c) for the words "blood tests", wherever they appear, substitute the words "scientific tests".

Declaration as to Parentage, Legitimacy or Legitimation

6. Rules 2 to 3A, 6(a) and 18(1) of Order 98 are hereby revoked.

Forms

7. Appendix A shall be amended as follows—

(a) for Form No. 10C there shall be substituted the new Form 10C in Schedule 2 to these Rules;

(b) in the heading to Form No. 48 the words "[PARENTAGE] [LEGITIMACY OR LEGITIMATION]" shall be deleted; and

(c) Forms No. 48B and 48D are revoked.

Saving

8. The amendments to the principal Rules made by these rules shall not apply in respect of proceedings commenced before 21st June 2002.

R. D. Carswell
Anthony Campbell
Brian Kerr
M. P. Girvan
Hugh P. Kennedy
Caroline McGonagle
Dated 17th April 2002 *Tony Caher*

I concur

Dated 23rd May 2002. *Irvine of Lairg,* C.

SCHEDULE 1 Rule 3

"Order 83

The Consumer Credit Act 1974

Interpretation

1. In this Order—

"the Act" means The Consumer Credit Act 1974(**3**) and a section referred to by number means the section so numbered in the Act and expressions which are defined in the Act have the same meaning in this Order as they have in the Act; and

a reference to proceedings or claims which relate to a regulated agreement shall be deemed to include a reference to proceedings or claims which relate to a security for a regulated agreement or to a debt or other liability arising under a regulated agreement.

Assignment of business

2. Proceedings under the Act shall be assigned to the Queen's Bench Division, with the exception of proceedings relating to an agreement secured by a mortgage which shall be assigned to the Chancery Division.

Commencement of proceedings

3.—(1) Save as otherwise provided in these Rules, proceedings under the Act may be commenced by writ or originating summons.

(2) Where proceedings brought by the creditor relate to a regulated agreement the originating process shall contain a statement clarifying which claim or claims relate to a regulated agreement.

Default of appearance or defence

4.—(1) Notwithstanding Order 13 or Order 19, no judgment in default of appearance or in default of defence in respect of claims which relate to a regulated agreement may be entered without the leave of the court unless the writ of summons contains a statement as required by rule 3(2) and there is produced a certificate by the plaintiff's solicitors or (if he sues in person) an affidavit stating that—

(a) the regulated agreement is not secured by a mortgage;

(b) a default notice in proper form as required by sections 87 and 88 was duly served in sufficient time before the commencement of proceedings and has not been complied with by the debtor or surety;

(c) it is not necessary to apply for an enforcement order granting leave to enforce (the creditor having complied with the relevant requirements of the Act and regulations made thereunder);

(d) there has been no breach of the requirement in section 141(5) as to the joinder of parties to the proceedings; and

(e) no notice of intention to apply for a time order or notice of intention to have a credit agreement reopened as extortionate has been filed in the Central Office or the Chancery Office (as the case may be) or received by the plaintiff.

(**3**) 1974 c. 39

(2) Notwithstanding Order 65 rule 9, where the leave of the Court is required for judgment in default of appearance or defence, the summons and a copy of the affidavit must be served on every other party to the proceedings.

Joinder of parties

5.—(1) Where the debtor or any surety has not been served with a writ or originating summons commencing proceedings relating to a regulated agreement, the Court may, on an application which may be made ex parte and shall be grounded upon an affidavit, dispense with the requirement in section 141(5) (all parties to a regulated agreement and any surety to be parties to any proceedings).

(2) In proceedings relating to a regulated agreement where—

(a) the plaintiff was not one of the original parties to the agreement, and

(b) the former creditor's rights and duties under the agreement have passed to the plaintiff by operation of law or assignment,

the requirement in section 141(5) shall not apply to the former creditor, unless the Court shall otherwise direct.

(3) Notice of an application under paragraph (1) shall be served on such person as the Court may direct.

(4) This rule shall apply without prejudice to Order 15.

Action to recover possession of goods under a regulated hire-purchase agreement

6. In an action to recover possession of goods under a regulated hire-purchase agreement the statement of claim or (as the case may be) the affidavit filed in support of the originating summons shall include the following particulars—

(a) the date of the agreement and the parties thereto, with sufficient particulars to enable the debtor to identify the agreement, and details of any sureties;

(b) where the plaintiff was not one of the original parties to the agreement, the means by which the rights and duties of the creditor under the agreement passed to him;

(c) a statement that the agreement is a regulated agreement;

(d) the place where the agreement was signed by the debtor (if known);

(e) whether a default notice or a notice under section 76(1) has been served on the debtor, and the date and method of service;

(f) the goods claimed;

(g) the total price;

(h) the amount paid by or on behalf of the debtor;

(i) the date when the right to demand recovery of the goods accrued;

(j) the amount of arrears accrued at the date when the right to demand recovery of the goods accrued;

(k) the amount of any further balance under the agreement being the total price less—

(a) the amount paid; and

(b) any arrears; and

(l) the amount (if any) claimed in addition to the delivery of the goods, stating the cause of action in respect of which each such claim is made.