STATUTORY RULES OF NORTHERN IRELAND

2001 No. 254

SUPREME COURT, NORTHERN IRELAND PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment) 2001

Made - - - -	*23rd June 2001*
To be laid before Parliament.	
Coming into operation	*5th September 2001*

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) 2001 and shall come into operation on 5th September 2001.

(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 entry for Order 1 in the Arrangement of Orders at the beginning of the principal Rules after the word "Citation" there shall be inserted the words "overriding objective,".

The overriding objective

3. After Order 1, rule 1, there shall be inserted the following new rule—

(**1**) 1978 c. 23
(**2**) S.R. 1980 No. 346; to which the most recent relevant amendments were made by S.R. 1991 No. 334, S.R. 1992 No. 399, S.R. 1995 No. 2, S.R. 1996 No. 283, S.R. 1997 No. 265 and S.R. 1999 No. 333

"**The overriding objective**

1A.—(1) The overriding objective of these Rules is to enable the Court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable—

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate to—

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases.

(3) The Court must seek to give effect to the overriding objective when it—

(a) exercises any power given to it by the Rules; or

(b) interprets any rule.".

Contents of affidavit

4. For Order 41, rule 5 there shall be substituted the following new rule—

"**5.** An affidavit may contain statements of information or belief with the sources and grounds thereof.".

5. In Order 86, rule 2(1) the words from "Unless the Court" to the end shall be omitted.

6. In Order 113, rule 3 the words from "and unless the Court" to the end shall be omitted.

7. The following rules shall be omitted and the principal Rules shall be renumbered, as appropriate—

(a) Order 14, rule 2(3) and rule 4(2);

(b) Order 116, rule 3(4), rule 10(2), rule 20(4), rule 21(3), rule 30(7) and rule 34(2); and

(c) Order 118, rule 9(1).

Service of notice of judgment on person not a party

8. Order 44, rule 2(1) shall be amended as follows –

(i) in sub-paragraphs (*a*) and (*b*) the word "or" shall be omitted;

(ii) in sub-paragraph (*c*) there shall be added at the end the word "or"; and

(iii) after sub-paragraph (*c*) there shall be added the following new sub-paragraph—

"(d) the possession of land,".

Short Form Taxation

9. Order 62, rule 32A shall be amended by substituting for paragraph (1) the following new paragraph—

"(1) Where one or more items of disbursement are in dispute between the parties the Taxing Master may conduct a taxation in accordance with this rule (hereinafter referred to as "short form taxation").".

Mortgage actions

10. Order 88 shall be amended as follows—

(a) after rule 1(1)(*g*) there shall be added the following new sub-paragraph—

"(h) an enforcement order or a time order where a regulated agreement is secured by a mortgage.";

(b) for paragraph (2) of rule 1 there shall be substituted the following new paragraph—

"(2) In this Order—

"the Act of 1974" means the Consumer Credit Act 1974(**3**);

"enforcement order", "time order" and "regulated agreement" have the same meaning as in section 189(1) of the Act of 1974; and

"mortgage" includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.";

(c) in rule 2—

(i) in sub-paragraph (*a*) the word "or" where it appears for the second time shall be omitted;

(ii) in sub-paragraph (*b*) there shall be added at the end the word "or"; and

(iii) after sub-paragraph (*b*) there shall be added the following new sub-paragraph—

"(c) an enforcement order or a time order where a regulated agreement is secured by a mortgage of any such property";

(d) paragraph (5) of rule 4 shall be omitted and the principal Rules shall be renumbered accordingly;

(e) for rule 4A there shall be substituted the following new rule—

"**Claim for possession: notice to be sent to defendant in default of payment**

4A.—(1) Where the plaintiff—

(a) claims in a mortgage action delivery of possession of land 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,

he shall, when serving a copy of the notice of appointment or when serving any summons (not being an originating summons) for such a claim or application, also serve on the defendant—

(i) where the mortgaged property comprises or includes a dwelling house and the secured monies comprise or include indebtedness other than as described in (ii), a notice in Form No.10A in Appendix A;

(**3**) 1974 c. 39

(ii) where the secured monies comprise or include a debt under either a regulated agreement or a security provided for such an agreement, a notice in Form No.10B in 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 10A or 10B, as the case may be, shall be attached to the certificate proving service.";

(f) After rule 4A there shall be inserted the following new rule—

"**Claim for possession of land: notice to occupiers**

4B.—(1) This rule applies where the plaintiff –

(a) claims in a mortgage action delivery of possession of land, 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.

(2) Where the plaintiff believes that someone other than the defendant is in occupation of the property he shall not less than four clear days before the day fixed for the first hearing of the summons or application serve on the person believed to be in occupation of the property a notice in Form No.10C in Appendix A.

(3) Where the plaintiff is not aware that any person other than the defendant is in occupation of the property, 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, affix to the main door or other conspicuous part of the property a notice in Form No.10C or (if practicable) post to, or insert through the letter-box at, the property a sealed envelope containing such a notice addressed to the occupiers (not being the defendant) of the property without naming them.

(4) 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 No.10C shall be attached to the certificate proving service.";

(g) for paragraph (2) of rule 5 there shall be substituted the following new paragraph—

"(2) The affidavit must exhibit—

(a) the original mortgage or a true copy thereof, and

(b) where the mortgage secures a regulated agreement, the original agreement or a true copy thereof

and the original mortgage (or, in the case of a registered charge, the certificate of charge) and the original agreement must be produced at the hearing of the summons.";

(h) for paragraph (2A) of rule 5 there shall be substituted the following new paragraph—

"(2A) The affidavit must state whether the debt which is secured by the mortgage arose under a regulated agreement and, if so, specify—

(a) the date on which any notice required by section 76 or section 87 of the Act of 1974 was given,

(b) where the plaintiff has obtained or is now applying for an enforcement order, particulars of any enforcement order obtained or, as the case may be, the circumstances which render such an order necessary, and

(c) the amount of a day's interest.";

(i) for sub-paragraph (*b*) of rule 5(3) there shall be substituted the following—

"(b) the amount of the periodic repayments and payments of interest required to be made;

(bb) the rate of interest payable—

(i) at the commencement of the mortgage;

(ii) at the commencement of the proceedings; and

(iii) at the date of the affidavit,";

(j) for sub-paragraph (*a*) of rule 5(4) there shall be substituted the following new sub-paragraph—

"(a) give particulars of the inquiries made as to the occupation of the mortgaged property and of the plaintiff's knowledge, information and belief as to—

(i) whether or not the property is occupied; and

(ii) if it is believed to be occupied, the identity of every person believed to be in occupation.".

(k) in rules 5(4)(*b*) and 5A(2)(*f*)(ii) after the words "Order 1984" there shall be inserted the words "or Article 6 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998(**4**)".

Forms

11. For Form No.1 in Appendix 4 to Order 62 there shall be substituted the new Form No.1, and after Form No. 10A in Appendix A there shall be inserted the new Forms No. 10B and No. 10C, set out in the Schedule to these Rules.

Savings

12. Nothing in these Rules shall affect any proceedings which are pending immediately before these Rules come into operation and the rules in operation before that day shall continue to apply to those proceedings.

R. D. Carswell
Anthony Campbell
Brian Kerr
Hugh P. Kennedy
Caroline A. McGonigle
Tony Caher

Dated 6th June 2001.

(**4**) S.I.1998/1071 (N.I. 6)