STATUTORY RULES OF NORTHERN IRELAND

1999 No. 19

SUPREME COURT, NORTHERN IRELAND PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment) 1999

To be laid before Parliament

Made - - - - 20th January 1999
Coming into operation in accordance with rule 1(1) and (2)

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) 1999 and except as provided by paragraph (2) shall come into operation on 15th February 1999.

(2) Rule 9 shall come into operation on 12th April 1999.

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

Assignment to Family Division

2. Order 1, rule 12(b) shall be amended by the addition of the following sub-paragraph—

"(xii) the Family Homes and Domestic Violence (Northern Ireland) Order 1998(**3**).".

(**1**) 1978 c. 23
(**2**) S.R. 1980 No. 346; relevant amendments are referred to where they arise in subsequent footnotes in these Rules
(**3**) S.I.1998/1071 (N.I. 6)

Notice of action to non-parties bound by judgment under Article 32 of the Wills and Administration Proceedings (Northern Ireland) Order 1994(4)

3.—(1) Order 15 shall be amended by inserting after rule 13 the following rule—

"**Notice of action to non-parties bound by judgment**

13A.—(1) At any stage in an action to which this rule applies, the Court may, on the application of any party or of its own motion, direct that notice of the action be served on any person who is not a party but who will or may be affected by any judgement given therein.

(2) An application under this rule may be made *ex parte* and shall be supported by an affidavit stating the grounds of the application.

(3) Every notice of an action under this rule shall be in Form No. 35A in Appendix A and the copy to be served shall be a sealed copy accompanied by a copy of the writ or originating summons of all other pleadings served in the action and of the affidavit mentioned in paragraph (2).

(4) A person may, within 14 days of service on him of a notice under this rule, enter an appearance to the writ or originating summons and shall thereupon become a party to the action, but in default of such appearance and subject to paragraph (5) he shall be bound by any judgment given in the action as if he were a party thereto.

(5) If at any time after service of such notice on any person the writ or originating summons is amended so as substantially to alter the relief claimed, the Court may direct that the judgment shall not bind such person unless a further notice together with a copy of the amended writ or originating summons is served upon him under this rule.

(6) This rule applies to any action relating to—

(a) the estate of a deceased person, or

(b) property subject to a trust.

(7) Order 6, rule 6(4) and (6) shall apply in relation to a notice of an action under this rule as if the notice were a writ and the person by whom the notice is issued the plaintiff.".

(2) Appendix A shall be amended by inserting after Form 35 the Form 35A set out in Schedule 1 to these Rules.

Proceedings under Articles 33 and 35 of the Wills and Administration Proceedings (Northern Ireland) Order 1994

4. Order 93 shall be amended by adding after rule 8 the following rules—

"**Applications under Article 33 of the Wills and Administration Proceedings (Northern Ireland) Order 1994**

9. An application to the Court under Article 33 of the Wills and Administration Proceedings (Northern Ireland) Order 1994 shall be begun by ex parte originating summons.

Applications under Article 35 of the Wills and Administration Proceedings (Northern Ireland) Order 1994

10.—(1) An application to the Court under Article 35 of the Wills and Administration Proceedings (Northern Ireland) Order 1994 for an order appointing a substituted personal representative or terminating the appointment of an existing personal representative shall

(4) **S.I. 1994/1899 (N.I. 13)**

be made by originating summons or, if made in a pending action, by summons or motion in that action.

(2) All the existing personal representatives and, notwithstanding anything in Order 15, rule 4(2) and subject to any direction of the Court, all persons (other than the plaintiff) having a beneficial interest in the estate must be made parties to the application.

(3) Such an application must be supported by—

(a) a sealed or certified copy of the grant of probate or letters of administration;

(b) an affidavit containing the grounds of the application and the following particulars so far as the plaintiff can gain information with regard to them—

(i) short particulars of the property comprised in the estate, with an approximate estimate of its income and capital value;

(ii) short particulars of the liabilities of the estate;

(iii) particulars of the persons who are in possession of the documents relating to the estate;

(iv) the names of the beneficiaries and short particulars of their respective interests;

(v) the name, address and occupation of any proposed substituted personal representative;

(c) where the application is for the appointment of a substituted personal representative—

(i) a signed or, in the case of a corporation, sealed consent to act; and

(ii) an affidavit as to the fitness of the proposed substituted personal representative, if an individual, to act.

(4) On the hearing of an application under the said Article 35 the personal representative shall produce to the Court the grant of representation to the deceased's estate and, if an order is made under Article 35, the grant (together with the sealed copy of the order) shall be sent to and remain in the custody of the Probate and Matrimonial Office until a memorandum of the order has been endorsed on, or permanently annexed to, the grant.".

Excusing of jurors

5. Order 33 shall be amended by inserting after rule 4 the following rule—

"**Excusing of jurors**

4A.—(1) Subject to paragraphs (2) to (5) of this rule the powers of a judge under Articles 10 and 11(1) of the 1996 Order may be exercised by the Principal Clerk of the Central Office.

(2) A person dissatisfied with a decision of the Principal Clerk of the Central Office made in the exercise of the powers conferred by Article 10 or 11(1) of the 1996 Order may appeal to a judge in accordance with paragraph (3) of this rule.

(3) An appeal under this rule shall be commenced by the appellant giving notice of appeal to the Principal Clerk of the Central Office and such notice shall be in writing and shall specify the matters upon which the appellant relies in support of his appeal.

(4) A judge shall not dismiss an appeal under this rule unless the appellant has been given an opportunity of making representations.

(5) Where an appeal under this rule is decided in the absence of the appellant, the Principal Clerk of the Central Office shall notify him of the decision as soon as possible.

(6) In this rule "the 1996 Order" means the Juries (Northern Ireland) Order 1996(**5**).".

Defamation actions

6. Order 82 shall be amended as follows—

(a) for rule 3 there shall be substituted the following rule—

"**Obligation to give particulars**

3.—(1) Where in any action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.

(2) Where in an action for libel or slander the defendant alleges that, insofar as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(3) Without prejudice to Order 18, rule 8, but subject to paragraph (4), where the defendant makes an allegation as described in paragraph (2), the plaintiff shall serve a reply specifically admitting or denying any such allegation raised by the defendant and specifying any fact or matter upon which he relies in opposition to the defendant's allegations.

(4) No reply shall be required under paragraph (3) where all the facts or matters on which the plaintiff intends to rely in opposition to the defendant's allegations as described in paragraph (2) are already particularised elsewhere in the pleadings.

(5) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(6) Without prejudice to Order 18, rule 12, the plaintiff must give full particulars in the statement of claim of the facts and matters on which he relies in support of his claim for damages, including details of any conduct by the defendant which it is alleged has increased the loss suffered and of any loss which is peculiar to the plaintiff's own circumstances.

(7) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.";

(b) after rule 3 there shall be inserted the following rule—

(**5**) S.I. 1996/1141 (N.I. 6)