STATUTORY RULES OF NORTHERN IRELAND

1996 No. 295

COUNTY COURTS

County Court (Amendment No. 3) Rules (Northern Ireland) 1996

Made - - - -	*10th July 1996*
Coming into operation	*2nd September 1996*

We, the County Court Rules Committee, appointed by the Lord Chancellor under Article 46 of the County Courts (Northern Ireland) Order 1980(**1**) in exercise of the powers conferred on us by Article 47 of that Order and all other powers enabling us in that behalf, hereby make the following rules:—

Citation and interpretation

1.—(1) These rules may be cited as the County Court (Amendment No. 3) Rules (Northern Ireland) 1996.

(2) In these rules a reference to an Order or Appendix by number is a reference to that Order or Appendix as numbered in the County Court Rules (Northern Ireland) 1981(**2**).

Preservation and inspection of property

2. Order 14 shall be amended as follows—

(a) by the insertion of the following new rule after rule 10

"**Application under Article 42A(1) or 42B(3) of the Order**

10A.—(1) An application for an order—

(a) under Article 42A(1) of the Order in respect of property which may become the subject matter of subsequent proceedings in a county court or as to which any question may arise in any such proceedings, or

(b) under Article 42B(3) of the Order in respect of property which is not the property of or in the possession of any party to the proceedings

shall be made by notice in writing in Form 70A and the person against whom the order is sought shall be respondent to the application.

(**1**) S.I.1980/397 (N.I. 3)
(**2**) S.R. 1981 No. 225 to which the most recent relevant amendments were made by S.R. 1988 No. 112; S.R. 1990 No. 269 and S.R. 1995 No. 151

(2) The notice shall be filed with the chief clerk and shall be served on the respondent, and in the case of an application under Article 42B(3) on the parties to the proceedings at least 7 days before the date fixed for hearing.

(3) The notice shall be supported by an affidavit which must specify or describe the property in respect of which the order is sought and show, if practicable by reference to any civil bill (or other originating process) served or intended to be served in the proceedings or subsequent proceedings, that it is property which is or may become the subject matter of the proceedings or as to which any question arises or may arise in the proceedings.

(4) A copy of the supporting affidavit shall be served with the notice on every person on whom the notice is required to be served.

(5) An order made under Article 42A(1) or 42B(3) may be made conditional on the applicant giving security for the costs of the person against whom it is made or on such other terms, if any as the court thinks just.

(6) No such order shall be made if it appears to the court—

(a) that compliance with the order, if made, would result in the disclosure of information relating to a secret process, discovery or invention not in issue in the proceedings and;

that the application would have been refused on that ground if—

(i) in the case of an application under Article 42A(1), the subsequent proceedings had already been begun, or

(ii) in the case of an application under Article 42B(3) the person against whom the order is sought were a party to the proceedings";

(b) by the substitution in rule 11 for the words "Rule 6, 7, 8, 9 or 10" the words "Rule 6, 7, 8, 9, 10 or 10A".

Discovery of documents

3. Order 15 shall be amended by the insertion of the following new rule after rule 5—

"**Application under Article 42A(2) or 42B(2) of the Order**

5A.—(1) An application for an order

(a) under Article 42A(2) of the Order for the disclosure of documents before the commencement of proceedings; or

(b) under Article 42B(2) of the Order for the disclosure of documents by a person who is not party to the proceedings

shall be made by notice in writing in Form 68D and the person against whom the order is sought shall be the respondent to the application.

(2) The notice shall be filed with the chief clerk and shall be served on the respondent and in the case of an application under Article 42B(2) on the parties to the proceedings at least 7 days before the date fixed for hearing.

(3) The notice shall be supported by an affidavit which must—

(a) in the case of an application under Article 42A(2) state the grounds on which it is alleged that the applicant and the respondent are likely to be parties to subsequent proceedings in the court in which a claim in respect of personal injuries is likely to be made;

(b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any civil bill (or other originating summons) served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of a claim for personal injuries made or likely to be made in the proceedings and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

(4) A copy of the supporting affidavit shall be served with the notice on every person on whom the notice is required to be served.

(5) An order under the said Article 42A(2) or 42B(2) for the disclosure of documents shall be in Form 68E; and

(a) may be made conditional on the applicant giving security for the costs of the person against whom it is made or on such other terms, if any, as the court thinks just;

(b) shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been in his possession, custody or power and if not then in his possession, custody or power, when he parted with them and what has become of them.

(6) No person shall be compelled by virtue of such an order to produce any documents which he could not be compelled to produce

(a) in the case of an application under Article 42A(2), if the subsequent proceedings had already been begun; or

(b) in the case of an application under Article 42B(2) if he had been served with a writ of subpoena duces tecum to produce the documents at trial.

(7) In this rule "a claim for personal injuries" means a claim in respect of personal injuries to a person or in respect of a person's death".

Costs

4. Order 55 shall be amended by the addition of the following new rule—

"**Applications under Article 42A(2) or 42B of the Order**

21. Where an application is made in accordance with Order 14 rule 10A or Order 15 rule 5A for an order under Article 42A(2) or 42B the person against whom the order is sought shall, unless the court otherwise directs, be entitled to his costs of the application and of complying with any order made thereon".

Forms

5. Appendix 1 shall be amended by the insertion of new Forms 68D, 68E and 70A set out in the Schedule.