STATUTORY RULES OF NORTHERN IRELAND

1992 No. 399

SUPREME COURT, NORTHERN IRELAND PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment No. 3) 1992

Made - - - -	*15th September 1992*
To be laid before Parliament	
Coming into operation	*1st November I992*

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 and all other powers enabling us in that behalf as follows:

Citation and commencement

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 3) 1992 and shall come into operation on 1st November 1992.

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

Interpretation

2. In Order 1, rule 3(1), after the definition of "Central Office" there shall be inserted the following definition—

> ""FAX" means the making of a facsimile copy of a document by the transmission of electronic signals;"

(**1**) 1978 c. 23

(**2**) S.R. 1980 No. 346; the relevant amending instruments are S.R. 1981 No. 224; S.R. 1983 No. 5; S R. 1984 No. 110, S.R. 1988 No. 7, S.R. 1989 No. 289, S.R. 1989 No. 498 and S.R. 1991 No. 330

Service abroad

3. Order 11, rule 1, shall be amended by substituting a semi-colon for the full stop at the end of sub-paragraph (p) and by adding thereafter the following sub-paragraphs—

"(q) the claim is made under the Financial Services Act 1986 or the Banking Act 1987:

(r) the claim is brought for money had and received or for an account or other relief against the defendant as constructive trustee, and the defendant's alleged liability arises out of acts committed, whether by him or otherwise, within the jurisdiction."

Entry of appearance

4. Order 12 shall be amended by inserting after rule 8 the following new rule—

"**Application by defendant where writ not served**

8A.—(1) Any person named as a defendant in a writ which has not been served on him may serve on the plaintiff a notice requiring him within a specified period not less than 14 days after service of the notice either to serve the writ on the defendant or to discontinue the action as against him.

(2) Where the plaintiff fails to comply with a notice under paragraph (1) within the time specified, the Court may, on the application of the defendant by summons, order the action to be dismissed or make such other order as it thinks fit.

(3) A summons under paragraph (2) shall be supported by an affidavit verifying the facts on which the application is based and stating that the defendant intends to contest the proceedings and a copy of the affidavit must be served with the summons.

(4) Where the plaintiff serves the writ in compliance with a notice under paragraph (1) or with an order under paragraph (2) the defendant must enter an appearance within the time limited for so doing."

Counterclaim and parties

5. Order 15 shall be amended as follows—

(1) In rule 3(2) after the words "a copy of the counterclaim" there shall be inserted the words "and in the case of a person who is not already a party to the action the defendant must issue the counterclaim out of the appropriate office and serve on the person concerned a sealed copy of the counterclaim, and a copy of the writ or originating summons by which the action was begun and of all other pleadings served in the action".

(2) In rule 3(5) after the word "namely", there shall be inserted the words "Order 6, rule 6(4) and (6)".

(3) In rule 7(4), after the words "by which the cause or matter was begun" there shall be inserted the words "and of all other pleadings served in the proceedings".

(4) After rule 8(2) there shall be inserted the following new paragraph—

"(2A) Together with the writ of summons served under paragraph (2) shall be served a copy of all other pleadings served in the action.".

Contents of affidavit

6. The following shall be substituted for Order 41, rule 5(1)—

"(1) Subject to—

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

(b) Order 86, rule 2(1);

(c) Order 113, rule 3;

(d) paragraph (2) of this rule, and

(e) any order made under Order 38, rule 3,

an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.".

Chancery Orders

7. Order 42, rule 7, shall be amended by substituting for the words "Central Office" the words "appropriate office".

8. Order 44, rule 2, shall be amended as follows—

(1) after paragraph (2) there shall be inserted the following paragraph—

"(2A) Order 6, rule 6(4) and (6) shall apply in relation to a notice of judgment under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff.";

(2) at the end of paragraph (3) a semi-colon shall be substituted for the full stop and there shall be added the following words—

"and the copy of the notice to be served shall be a sealed copy.";

(3) in paragraph (4) for the words "without entering an appearance" there shall be substituted the words "after entering an appearance".

Committal

9. Order 52, rule 8(2)(c) shall be amended by substituting for the words "if he is being committed for a fixed period, the length of that period", the words "the length of the period for which he is being committed".

Powers of the Court of Appeal

10.—(1) In Order 59, rule 11, the following paragraph shall be substituted for paragraph (4)—

"(4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court may, instead of ordering a new trial, substitute for the sum awarded by the jury such sums as appears to the Court to be proper; but except as aforesaid the Court of Appeal shall not have power to increase or reduce the damages awarded by a jury".

(2) Order 59, rule 11(4), as substituted by paragraph (11, shall not apply to any appeal set down before the coming into operation of this rule.

Costs

11. Order 62 shall be amended as follows—

(1) For rule 6(7) and 8, there shall be substituted the following—

"(7) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within 14 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts and the costs occasioned by and thrown away as a result of his failure to admit the facts shall be borne by him.

(8) If a party—

(a) on whom a list of documents is served in pursuance of Order 24, or

(b) on whom a notice to admit documents is served under Order 27, rule 5,

give notice of non-admission of any of the documents in accordance with Order 27, rule 4(2) or 5(2), as the case may be, the costs of proving that document and the costs occasioned by and thrown away as a result of his non-admission shall be borne by him.".

(2) After rule 7(5), there shall be added the following—

"(6) Subject to paragraph (7), where a party is entitled to costs under rule 6(7) or (8) the amount of the costs may be assessed by the Court and may be ordered to be paid forthwith.

(7) No order may be made under paragraph (6) in a case where the person against whom the order is made is an assisted person within the meaning of the statutory provisions relating to legal aid.".

(3) In rule 18(3) for the sum "L6.50" there shall be substituted the sum "£8.00".

(4) Appendix 3 shall be amended as set out in the Schedule hereto.

Service of documents

12. Order 65, rule 5, shall be amended as follows—

(1) By substituting for paragraph (1)(c) the following paragraph—

"(c) by FAX in accordance with paragraph (2A)."

(2) By inserting the following paragraph after paragraph (2)—

"**2A.**—(1) Service by FAX may be effected where—

(a) the party serving the document acts by a solicitor,

(b) the party on whom the document is served acts by a solicitor and service is effected by transmission to the business address of such a solicitor,

(c) the solicitor acting for the party on whom the document is served has indicated in writing to the solicitor serving the document that he is willing to accept service by FAX at a specified FAX number and the document is transmitted to that number; and for this purpose the inscription of a FAX number on the writing paper of a solicitor shall be deemed to indicate that such solicitor is willing to accept service by FAX at that number in accordance with this paragraph unless he states otherwise in writing, and

(d) as soon as practicable after service by FAX the solicitor acting for the party serving the document dispatches a copy of it to the solicitor acting for the other party by any of the other methods prescribed for service by paragraph (1), and if he fails to do so, the document shall be deemed never to have been served by FAX.

(2) Where the FAX is transmitted on a business day before 4.00 p.m. it shall, unless the contrary is shown, be deemed to be served on that day, and, in any other case, on the business day next following.

(3) In this rule "business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday as defined in Order 3, rule 2(6).".

Mortgage actions

13. Order 88 shall be amended as follows—

(1) Rule 4 shall be omitted and the rules following shall be renumbered accordingly.

(2) In rule 4 (as renumbered)—

(a) paragraph (3) and

(b) in paragraph (4) the words from "A copy of the affidavit" to the end shall be omitted.

(3) In rule 5(1) (as renumbered) the words "(other than an action to which rule 5A applies)" shall be inserted after the words "an action".

(4) After rule 5, the following new rule shall be inserted—

"**Action for the enforcement of orders charging land by site**

5A.—(1) This rule applies to a mortgage action in the Chancery Division to enforce an order charging land by sale of the property charged.

(2) The affidavit in support of the originating summons must—

(a) identify the charging order sought to be enforced and the subject matter of the charge;

(b) specify the amount in respect of which the charge was imposed and the balance outstanding at the date of the affidavit;

(c) verify, so far as known, the debtor's title to the property charged;

(d) identify any prior incumbrances on the property charged, stating, so far as is known, the names and addresses of the incumbrancers and the amounts owing to them;

(e) set out the plaintiff's proposals as to the manner of sale of the property charged together with estimates of the gross price which would be obtained on a sale in that manner and of the costs of such a sale; and

(f) where the property charged consists of land in respect of which the plaintiff claims delivery of possession—

(i) give particulars of every person who to the best of the plaintiff's knowledge is in possession of the property charged or any part of it; and

(ii) state, in the case of a dwelling house, whether a charge has been registered pursuant to Article 6 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 and if so, on whose behalf, and whether he has served notice of the proceedings on the person on whose behalf the charge is registered".

Funds in Court: Chancery Division>ision

14. Order 92 shall be amended as follows—

(1) By inserting, after rule 3, the following new rule—

"**Payments into Court under section 26, Banking Act 1987**

3A. Where the Bank of England, having sold shares in pursuance of an order under section 26 of the Banking Act 1987, pays the proceedings of sale, less the costs of the sale, into court, it shall cause an affidavit to be made and filed setting out the names and, so far as known, the addresses of the persons beneficially entitled to the proceeds of sale and shall lodge a copy of the order.".

(2) In rule 4, by substituting for the words "or 3" the words ", 3 or 3A".

Applications etc. to High Court: Chancery Division

15. Order 93 shall be amended by inserting, after rule 6, the following new rules—