1990 No. 269

COUNTY COURTS

County Court (Amendment No. 2) Rules (Northern Ireland) 1990

Made . . . . . *18th July 1990*

Coming into operation . . *3rd September 1990*

We, the County Court Rules Committee, appointed by the Lord Chancellor under Article 46 of the County Courts (Northern Ireland) Order 1980(**a**), 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. 2) Rules (Northern Ireland) 1990.

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

Discovery of documents

2. Order 15 shall be amended as follows—

(*a*) by substituting for Rule 1 the following new rule:

"*Discovery of documents*

1.—(1) Any party to any proceedings may give notice in writing to any other party requiring him to make discovery by serving on the party giving such notice a list, in Form 68, of the documents which are or have been in his possession, custody or power relating to any matter in question in the proceedings.

(2) The written notice given in accordance with paragraph (1) shall be in Form 68A.

(3) If the party to whom the notice has been given does not comply with it within fourteen days from its receipt the party who has given the notice may apply to the chief clerk for an order directing the other party to make discovery.

(4) An application under paragraph (3) may be made ex parte without notice by lodging with the chief clerk a certificate of application in Form 68B.

(a) S.I. 1980/397 (N.I. 3)
(b) S.R. 1981 No. 225

(5) On the receipt of an application in Form 68B the chief clerk may:

(*a*) make an order directing the other party to make discovery; or

(*b*) refer the application to the judge in chambers.

(6) The chief clerk, or where the application has been referred to the judge in chambers, the judge may order discovery in Form 68 to be verified by affidavit in Form 68C and make either generally or limited to certain classes of documents as he thinks fit, but discovery shall not be ordered if and so far as it appears that it is not necessary either for disposing fairly of the proceedings or for saving costs.

(7) The chief clerk shall notify the applicant of the outcome of his application.

(8) If an order for discovery is made it shall be drawn up by the chief clerk in Form 69, and served by the applicant on the party against whom it is made.

(9) Any party to the proceedings may on giving at least five days' notice in writing to the other party, appeal to the judge against a decision of the chief clerk to make an order directing discovery, and pending the outcome of the appeal the order made by the chief clerk shall be stayed.

(10) The judge may at any time make an order for discovery on the application of a party notwithstanding that notice in Form 68A has not been given, where the judge is satisfied that there were reasonable grounds for not giving it.

(11) Any order made under this Order (including an order made on appeal) may on sufficient cause being shown be revoked or varied by a subsequent order or direction of the judge made or given at or before the trial of the cause or matter in connection with which the original order was made.

(12) A party who has provided a list of documents in compliance with this rule must allow the other party to inspect the documents included in Part I of Schedule 1 to such list and to take copies thereof.

(13) Without prejudice to Rule 9, a party who has provided a list of documents in compliance with this rule shall not afterwards be at liberty to put in evidence any document not included in Part I of Schedule 1 to such list unless he satisfies the judge that he had some cause or excuse which the judge deems sufficient for not including such document, in which case the judge may allow the document to be put in evidence on such terms as to costs or otherwise, as he thinks fit.";

(*b*) in Rule 2—

(i) in paragraph (1), after the word "possession", there shall be inserted the word ", custody" and after the words "to the issues," there shall be inserted the words "and which has not been discovered under Rule 1",

(ii) in paragraph (3) the words from "within two days" to "such affidavit, then" shall be deleted,

(iii) in paragraph (6) the words "except such as are referred to in the affidavits of the party against whom the application is made" shall be deleted;

(c) in Rule 5(1) for the words "an affidavit of" there shall be substituted the words "a list of".

Amendment of Appendix 1

3. Appendix 1 shall be amended by substituting for Forms 68 and 69 the new forms set out in the Schedule.

Amendment of Appendix 2

4. Appendix 2 shall be amended by substituting in Part IX for the table of "Solicitor's Costs" under "INTERLOCUTORY APPLICATIONS (other than equity)" the following table—

"**Solicitor's Costs**

Instructions and drawing notice of motion or certificate of application for discovery, filing and serving copy	...	£ 6·24
Attending before Judge or Circuit Registrar on notice or ex parte	...	£13·65
Drawing up list of documents under Order 15	...	£25·00 (or such other amount as the Judge or Circuit Registrar may allow)

These items are not to be allowed against the other party unless certified by the Judge, Circuit Registrar or chief clerk.".

We, the undersigned members of the County Court Rules Committee, having by virtue of the powers vested in us in this behalf made the foregoing rules, do hereby certify the same under our hand and submit them to the Lord Chancellor accordingly.

John K. Pringle
John J. Curran
J. F. B. Russell
K. G. Nixon
Raymond T. Kerr
Brian F. Walker
S. D. Massey
Barry Valentine

Dated 30th May 1990.

After consultation with the Lord Chief Justice, I allow these rules which shall come into operation on 3rd September 1990.

Dated 18th July 1990 *Mackay of Clashfern*, C.

SCHEDULE Rule 3

Forms to be inserted in Appendix 1

FORM 68

List of documents

ORDER 15, RULE 1(1)

[*Title as in Form 1*]

The following is a list of the documents relating to the matters in question in these proceedings which are or have been in the possession, custody or power of the above-named plaintiff [or defendant] A.B. [and which is served in compliance with the order herein dated the day of 19]

1. The plaintiff [or defendant] has in his possession, custody or power the documents relating to the matters in question in these proceedings enumerated in Schedule 1.

2. The plaintiff [or defendant] objects to produce the documents enumerated in Part II of Schedule 1 on the ground that [stating the ground of objection].

3. The plaintiff [or defendant] has had, but has not now, in his possession, custody or power the documents relating to the matters in question in these proceedings enumerated in Schedule 2.

4. Of the documents in Schedule 2, those numbered in that Schedule were last in the plaintiff's [or defendant's] possession, custody or power on [stating when] and the remainder on [stating when].

   [Here state what has become of the documents and in whose possession they now are].

5. Neither the plaintiff [or defendant], nor his solicitor nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description whatever relating to any matter in question in these proceedings, other than the documents enumerated in Schedules 1 and 2.

Schedule 1

PART I

[Here enumerate in a convenient order the documents (or bundles of documents, if of the same nature, such as invoices) in the possession, custody or power of the party in question which he does not object to produce, with a short description of each document or bundle sufficient to identify it.]

PART II

[Here enumerate as aforesaid the documents in the possession, custody or power of the party in question which he objects to produce.]