1986 No. 347

COUNTY COURTS

County Court (Amendment No. 3) Rules (Northern Ireland) 1986

Made	*2nd December 1986*
Coming into operation . . .	*1st January 1987*

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

1. These Rules may be cited as the County Court (Amendment No. 3) Rules (Northern Ireland) 1986.

Interpretation

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

Amendment of the County Court Rules (Northern Ireland) 1981

3.—(1) Order 4 Rule 1 shall be amended, at paragraph (1), by deleting the words "the Inferior Courts Judgments Extension Act 1882(**c**)" and substituting the words "the Foreign Judgments (Reciprocal Enforcement) Act 1933(**d**) or the Civil Jurisdiction and Judgments Act 1982(**e**)".

(2) Order 5 shall be amended, at Rule 2, by inserting the following new paragraph:—

"(9) Where a claim made in the proceedings is one which the court has power to hear and determine by virtue of the Civil Jurisdiction and Judgments Act 1982 and the civil bill is to be served out of Northern Ireland, the particulars of claim shall contain a statement that the court has power under that Act to hear and determine the claim and that no proceedings involving the same cause of action are pending between the parties in England and Wales, Scotland or another Convention territory.

For the purpose of this paragraph, "Convention territory" means the territory or territories of any Contracting State, as defined by Section 1(3) of the Civil Jurisdiction and Judgments Act 1982, to which the Conventions as defined in section 1(1) of that Act apply.".

(3) Order 6A shall be amended as set out in Schedule 1.

(4) Order 39 shall be amended at Rule 4 by inserting after the word "business" the words "in Northern Ireland" and after the word "may" the words "(whether or not he is within the jurisdiction)".

(**a**) S.I. 1980/397 (N.I. 3)
(**b**) S.R. 1981 No. 225
(**c**) 1882 c. 31
(**d**) 1933 c. 13
(**e**) 1982 c. 27

(5) Order 40 shall be amended by revoking Part V (Inferior Courts Judgments Extension Act 1882) and inserting the new Part V (Enforcement of County Court Decrees outside Northern Ireland) set out in Schedule 2.

(6) Appendix 1 shall be amended as follows—

(*a*) by revoking Forms 177 and 178;

(*b*) by inserting in Form 280, at the end of item 1, the words "[or, where appropriate, state the grounds on which the process may be served out of Northern Ireland without the leave of the court]";

(*c*) by inserting the new Forms 295-298 as set out in Schedule 3.

(7) Appendix 2 shall be amended by deleting, at Part IX, the entry headed "INFERIOR COURTS JUDGMENTS EXTENSION ACT 1882" and substituting the following new entry:—

"ENFORCEMENT OF COUNTY COURT DECREES IN OTHER PARTS OF THE UNITED KINGDOM

Applicant's costs of obtaining a certificate in respect of a money provision contained in a decree	...	£6·45
And in addition £1·30 in respect of the affidavit together with the commissioner's fee (if any)."		

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
C. N. F. Rountree
B. J. A. C. Valentine
T. T. Ferris
B. F. Walker
K. G. Nixon

After consultation with the Lord Chief Justice, I allow these rules which shall come into operation on 1st January 1987.

Dated 2nd December 1986 *Hailsham of St. Marylebone, C.*

SCHEDULE 1 Rule 3(3)

Amendments to Order 6A

Order 6A shall be amended as follows:—

1. Rule 1 shall be amended as follows:—

(*a*) by inserting, after the definition of "convention country", the following new definition:—

" "convention territory" means the territory or territories of any Contracting State, as defined by section 1(3) of the Civil Jurisdiction and Judgments Act 1982, to which the conventions as defined in section 1(1) of that Act apply;";

(*b*) by inserting in the definition of "applicant", after the words "Northern Ireland", the words "or, where leave is not required, the party serving a process out of Northern Ireland";

(*c*) by inserting in the definition of "respondent", after the word "process", the words "or, where leave is not required, the party on whom a process is served out of Northern Ireland".

2. By substituting for Rule 2 the following new Rule:—

"*Cases in which service of originating process out of Northern Ireland is permissible*

2.—(1) Except in proceedings to which paragraph (2) or (3) apply, service of an originating process out of Northern Ireland is permissible with the leave of the court where—

(*a*) relief is sought against a person domiciled in Northern Ireland;

(*b*) an injunction is sought ordering the defendant to do or refrain from doing anything within Northern Ireland (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);

(*c*) the claim is brought against any person duly served within or out of Northern Ireland and a person out of Northern Ireland is a necessary or proper party thereto;

(*d*) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract being (in either case) a contract which—

(i) was made within Northern Ireland, or

(ii) was made by or through an agent trading or residing within Northern Ireland on behalf of a principal trading or residing out of Northern Ireland, or

(iii) is by its terms, or by implication, governed by the law of Northern Ireland;

(*e*) the claim is brought in respect of a breach committed within Northern Ireland of a contract made within or out of Northern Ireland, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of Northern Ireland that rendered impossible the performance of so much of the contract as ought to have been performed within Northern Ireland;

(*f*) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within Northern Ireland;

(*g*) the whole subject-matter of the proceedings is land situate within Northern Ireland (with or without rent or profits);

(*h*) the proceedings are brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate within Northern Ireland;

(*i*) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights or rights of security in or over movable property, or to obtain authority to dispose of movable property, situate within Northern Ireland;

(*j*) the claim is brought to execute the trusts of a written instrument, being trusts that ought to be executed according to the law of Northern Ireland and of which the person to be served with the originating process is a trustee, or for any relief or remedy which might be obtained when such a claim is brought;

(*k*) the claim is made for the administration of the estate of a person who died domiciled in Northern Ireland or for any relief or remedy which might be obtained in any such action;

(*l*) the claim is brought to enforce any judgment or arbitral award;

(*m*) the claim is brought against a defendant not domiciled in England and Wales or Scotland in respect of a claim by the Commissioners of Inland Revenue for or in relation to any of the duties or taxes which have been, or are for the time being, placed under their care and management;

(*n*) the claim is brought in respect of contributions under the Social Security (Northern Ireland) Act 1975;

(*o*) the claim is made for a sum to which the Directive of the Council of the European Communities dated 15th March 1976 No. 76/308/EEC applies, and service is to be effected in a country which is a member state of the European Economic Community.

(2) Service of originating process out of Northern Ireland is permissible without the leave of the court where each claim made is one which the court has power to hear and determine by virtue of the Civil Jurisdiction and Judgments Act 1982 made in proceedings to which the following conditions apply—

(*a*) no proceedings between the parties concerning the same cause of action are pending in the courts of any part of the United Kingdom or of any other Convention territory, and

(*b*) (i) the defendant is domiciled in any part of the United Kingdom or of any other Convention territory, or

(ii) the proceedings begun by the originating process are proceedings to which Article 16 of Schedule 1 or Article 16 of Schedule 4 to that Act refers, or

(iii) the defendant is a party to an agreement conferring jurisdiction to which Article 17 of Schedule 1 or Article 17 of Schedule 4 to that Act applies.

(3) Service of originating process out of Northern Ireland is permissible without the leave of the court where each claim made is one which by virtue of any other enactment the court has power to hear and determine notwithstanding that the person against whom the claim is made is not within Northern Ireland or that the wrongful act, neglect or default giving rise to the claim did not take place within Northern Ireland.

(4) For the purposes of this Rule domicile is to be determined in accordance with the provisions of sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982.''.

3. By substituting for Rule 3 the following new Rule:—

''*Service of interlocutory process out of Northern Ireland*

3. Service of an interlocutory process out of Northern Ireland is permissible with the leave of the court on a person who is already a party to the proceedings and, in the case of a defendant, respondent or third party, has been served with the originating process but leave shall not be required for such service in any proceedings in which the originating process may by these Rules or under any enactment be served out of Northern Ireland without leave.''.

4. Rule 4 shall be amended by substituting for the words ''(1) Subject to paragraph (2), where leave is asked'', the words ''Where leave is asked'' and by revoking paragraph (2).

5. Rule 5 shall be amended as follows:—

(*a*) by substituting, in paragraph (1)(*b*)(iii), for the word ''made'' the words ''made; and'';

(*b*) by inserting the following new paragraph:—

''(iv) Where the application is made under Rule 2(1)(*c*), the grounds for the deponent's belief that there is between the applicant and the person on whom an originating process has been served a real issue which the applicant may reasonably ask the court to try.''.

6. Rule 6 shall be amended by inserting the following new paragraph:—

"(3) Where a process may be served out of Northern Ireland without leave, the date of the hearing to be shown on that process shall be fixed by the Chief Clerk having regard to the distance of the country of service.".

7. Rule 7 shall be amended, at paragraph (1), by substituting for the words "Where leave has been given to serve a process" the words "Where a process is to be served".

8. Rule 9 shall be amended by inserting, after paragraph (4), the following new paragraph:—

"(4A) Where the leave of the court is required to serve a process out of Northern Ireland, the applicant shall file with the request a copy of the order of the court granting such leave.".