1985 No. 102

COUNTY COURTS

County Court (Amendment No. 2) Rules (Northern Ireland) 1985

Made	*29th April 1985*
Coming into operation . . .	*19th May 1985*

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 by section 143(*a*) and (*b*) of the Consumer Credit Act 1974(**b**) 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. 2) Rules (Northern Ireland) 1985.

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(**c**).

Amendment of the County Court Rules (Northern Ireland) 1981

3.—(1) Order 1 shall be amended at Rule 1 by inserting, after the words "Order 26 Rule 5", the words "and Order 30 Rule 3".

(2) Order 12 shall be amended as follows—

(*a*) by deleting, at paragraph (2) of Rule 1, sub-paragraph (*b*) and substituting the following new sub-paragraph:—

"(*b*) where the claim is on foot of a hire-purchase agreement, a credit-sale agreement or a regulated agreement, as defined by the Consumer Credit Act 1974.";

(*b*) by deleting, at Rule 17, the words "section 139(1)(*b*) of the Consumer Credit Act 1974" and substituting the words "section 139(1)(*b*) or (*c*) of the Consumer Credit Act 1974".

(3) Order 26 shall be amended, at Rule 5, by deleting the words "Subject to section 49(1) of the Hire-Purchase Act (Northern Ireland) 1966" and substituting the words "Subject to Rule 3 of Order 30".

(4) Order 27 shall be deleted.

(5) Order 30 shall be amended by deleting the existing Rules and substituting the new Rules set out in Schedule 1.

(6) Appendix 1 shall be amended as follows—

(*a*) by deleting Forms 127 to 131 and Form 136;

(*b*) by inserting the new Forms set out in Schedule 2.

(**a**) S.I. 1980/397 (N.I. 3)
(**b**) 1974 c. 39
(**c**) S.R. 1981 No. 225

(7) Appendix 2 shall be amended, at Part IX, as follows—

(*a*) be deleting the first paragraph of the entry relating to Hire-Purchase and substituting the following new paragraph:—

"Where an order is made for recovery of possession of goods let under a hire-purchase agreement, the prima facie value of the goods for the purpose of costs shall be the total price less (*a*) the amount paid, and (*b*) the amount of arrears (if any) awarded by the decree or order, but this value may be varied by the Judge in his discretion and the costs shall be of the same amount as in proceedings for the recovery of a sum of money equal to the said value of the goods.";

(*b*) by deleting, in the third paragraph of the entry relating to Hire-Purchase, the words "The foregoing provisions shall apply to all hire-purchase agreements whether under the provision of the Hire-Purchase Act (Northern Ireland) 1966 or not.".

8. Order 33 shall be amended, at Rule 2, by deleting the figure "12" and substituting the figure "15".

Saving for earlier Rules

4. Except in relation to any provision of the Consumer Credit Act 1974 which applies to agreements entered into before 19th May 1985, nothing in rule 3(1) to (7) shall apply to agreements entered into before that date and the Rules in force immediately before 19th May 1985 shall continue to apply to those agreements.

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 Curran
Timothy T. Ferris
T. F. Glass
John R. Comerton
W. Hanna

After consultation with the Lord Chief Justice, I allow these rules which shall come into operation on 19th May 1985.

Dated 29th April 1985 *Hailsham of St. Marylebone, C.*

SCHEDULE 1 Rule 3(5)

Rules to be inserted in Order 30

Consumer Credit Act 1974

Interpretation

1. In this Order "the Act" means the Consumer Credit Act 1974(a), a section referred to by number means the section so numbered in the Act and expressions which are defined in the Act have the same meaning in this Order as they have in the Act.

Saving for earlier Rules

2. Except in relation to any provision of the Act which applies to agreements entered into before 19th May 1985, nothing in this Order shall apply to agreements entered into before that date and the Rules in force immediately before that date shall continue to apply to those agreements.

Where proceedings may be commenced

3.—(1) Subject to paragraphs (2) and (3), an action or application under the Act shall be commenced in accordance with Order 1.

(2) An action against a debtor or hirer—

(*a*) brought by a creditor or owner to enforce a regulated agreement or any security relating to it; or

(*b*) brought to enforce any linked transaction;

may be brought in a court for the division in which the debtor or hirer resided or carried on business at the date on which he last made a payment under the regulated agreement.

(3) An application by a debtor or hirer or any surety under section 129(1)(*b*) (time orders), 132(1) (financial relief for hirer), 139(1)(*a*) (re-opening of extortionate agreements) or 142(1)(*b*) (declarations) may be brought in a court for the division in which the debtor, or, as the case may be, the hirer or surety resides or carries on business.

Joinder of parties

4.—(1) All the parties to a regulated agreement, and any surety, shall be made parties to any proceedings relating to the agreement, subject to the discretion of the Judge to direct otherwise at the hearing.

(2) Without prejudice to paragraph (1), the judge may, on an ex parte application grounded upon an affidavit setting forth the facts as provided by section 70(3) or 73(8), make an order that the supplier or the negotiator, as the case may be, shall be made a party to the proceedings against the creditor, and the judge may, before making such order, require such notice of the application to be served as he thinks fit.

Action to recover possession of goods under a hire-purchase agreement

5. An action to recover possession of goods under a hire-purchase agreement shall be commenced by civil bill stating the following particulars—

(*a*) the date of the agreement and the parties thereto, with sufficient particulars to enable the debtor to identify the agreement;

(*b*) where the plaintiff was not one of the original parties to the agreement, the means by which the rights and duties of the creditor under the agreement passed to him;

(*c*) whether the agreement is a regulated agreement;

(*d*) the goods claimed;

(*e*) the total price;

(*f*) the amount paid by or on behalf of the debtor;

(*g*) the date when the right to demand recovery of the goods accrued;

(*h*) the amount of arrears accrued at the date when the right to demand recovery of the goods accrued;

(a) 1974 c. 39

(*i*) the amount of any further balance under the agreement (being the total price less (*a*) the amount paid and (*b*) any arrears); and

(*j*) the amount (if any) claimed in addition to the delivery of the goods, stating the cause of action in respect of which each such claim is made.

Particulars to be given in other claims arising out of a hire-purchase agreement

6. Where a plaintiff's claim arises out of a hire-purchase agreement but is not brought to recover possession of goods, he shall state in his originating process the following particulars—

(*a*) the date of the agreement and the parties thereto, with sufficient particulars to enable the debtor to identify the agreement;

(*b*) where the plaintiff was not one of the original parties to the agreement, the means by which the rights and duties of the creditor under the agreement passed to him;

(*c*) whether the agreement is a regulated agreement;

(*d*) the goods let under the agreement;

(*e*) the total price;

(*f*) the amount paid by or on behalf of the debtor;

(*g*) the amount (if any) claimed as being due and unpaid in respect of any instalment or instalments of the total price; and

(*h*) particulars of any other claim and the circumstances in which it arises.

Conditional sale agreements

7. The provisions of Rules 5 and 6 shall apply to conditional sale agreements as they apply to hire-purchase agreements subject to the following modifications—

(*a*) for any reference to the debtor there shall be substituted a reference to the buyer; and

(*b*) for any reference to a hire-purchase agreement or to goods let under the agreement, there shall be substituted a reference to the conditional sale agreement, or to goods to be sold under the agreement, as the case may be.

Protection Orders

8.—(1) An application under section 131 may, where the exigencies of the case so require, be made *ex parte*, upon lodgment by the applicant in the Office of a requisition setting forth the nature of the application.

(2) Every other application under section 131 shall be by motion on notice in Form 281.

Enforcement Orders

9.—(1) Subject to paragraph (2), an application for an enforcement order shall be made by notice in Form 282.

(2) If, apart from the need to obtain an enforcement order, a creditor is entitled to payment of the money or possession of the goods or land to which the agreement relates, an application for an enforcement order shall be made in the course of an action to enforce the agreement.

(3) Where a creditor wishes to apply for an enforcement order as provided for by paragraph (2) he shall endorse the originating process with a statement to that effect.

(4) The notice of application under paragraph (1) and the endorsement provided for by paragraph (3) shall state the circumstances rendering an enforcement order necessary.

(5) The applicant shall serve the notice of application under paragraph (1) on the other party or parties to the agreement (who shall be the respondent or respondents to the application) and a copy of the notice on the chief clerk not less than twenty-eight days before the entry day for the sitting at which the application is to be heard.

(6) Upon receipt of the copy of the notice the chief clerk shall enter the application for hearing at the appropriate sitting of the court for the hearing of ordinary civil bills without the need for production of an entry sheet.

Orders under section 86(2), 92(1) or (2) or 126

10. Rule 9 shall apply to an application for an order under section 86(2) (enforcement of a partly secured or unsecured regulated agreement on the death of the debtor or hirer), 92(1) (entry into premises to take possession of goods), 92(2) (recovery of possession of land where

debtor is in breach of a regulated conditional sale agreement) or 126 (enforcement of a land mortgage securing a regulated agreement) as it applies to an enforcement order, so however that in the case of an order under section 86(2) the personal representatives of the deceased debtor or hirer shall be made parties to the proceedings in which the order is sought.

Re-opening of extortionate agreements

11.—(1) An application under section 139(1)(*a*) for the purpose of re-opening a credit agreement on the ground that the credit bargain is extortionate shall be made by notice in Form 283.

(2) Paragraphs (5) and (6) of Rule 9 shall apply to a notice of application under paragraph (1) of this Rule.

(3) Where in county court proceedings of a type specified in section 139(1)(*b*) or (*c*) a debtor or surety desires to have a credit agreement re-opened he shall before entry day serve notice of motion in Form 281 that he so desires on the chief clerk and on the other party or parties to the proceedings or their solicitors.

(4) Paragraph (3) shall not apply where notice has been served under Rule 17 of Order 12 and the action has been entered for hearing in accordance with that Rule.

Time Orders

12.—(1) An application for a time order under section 129(1)(*b*) shall be made by notice in Form 284 and shall state the following particulars—

(*a*) the date of the agreement and the parties to it, with sufficient particulars to enable the respondent to identify the agreement and details of any sureties;

(*b*) if the respondent was not one of the original parties to the agreement, the name of the original party to the agreement;

(*c*) the names and addresses of the persons to be served with the application;

(*d*) the place where the agreement was signed by the applicant;

(*e*) details of the notice served by the respondent giving rise to the application;

(*f*) (if known) the total unpaid balance due under the agreement and the amount of any arrears together with the amount and frequency of the payments specified by the agreement;

(*g*) the applicant's proposals as to payment of any arrears and of future instalments together with details of his means;

(*h*) where the application relates to a breach of the agreement other than the non-payment of money, the applicant's proposals for remedying it.

(2) Paragraphs (5) and (6) of Rule 9 shall apply to a notice of application under paragraph (1) of this Rule.

Financial relief for hirer

13.—(1) An application by a hirer for an order under section 132(1) shall be made by notice in Form 285.

(2) Paragraphs (5) and (6) of Rule 9 shall apply to a notice of application under paragraph (1) of this Rule.

Application for variation, etc.

14.—(1) An application under section 130(6) (variation, etc., of time orders), 133(6) (revocation, etc., of return orders or transfer orders) or 135(4) (variation of conditional or suspended orders) shall be made by notice in Form 285.

(2) Paragraphs (5) and (6) of Rule 9 shall apply to a notice of application under paragraph (1) of this Rule.

Declarations

15.—(1) An application for a declaration under section 142(1)(*b*) or 142(2) shall be made by notice in Form 285.

(2) Paragraphs (5) and (6) of Rule 9 shall apply to a notice of application under paragraph (1) of this Rule.