1984 No. 110

SUPREME COURT, NORTHERN IRELAND
PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment) 1984

Made	*22nd March 1984*
Coming into operation . . .	
As to rules 1, 5, and 14	*1st May 1984*
As to rules 2-4, 6-13 and 15	*in accordance with rule 1*
To be laid before Parliament	

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(**a**) 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 as follows:

Citation, interpretation and commencement

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment) 1984 and shall come into operation when section 2 of the Civil Jurisdiction and Judgments Act 1982(**b**) comes into force, except for rules 1, 5 and 14 which shall come into operation on 1st May 1984.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court (Northern Ireland) 1980(**c**) and, unless the context otherwise requires, a form referred to by number means the form so numbered in Appendix A to those Rules.

Issue of writ

2. Order 6, rule 6, shall be amended as follows:—

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

"(1) No writ or notice of writ which is to be served out of the jurisdiction shall be issued without the leave of the court unless it complies with the following conditions, that is to say—

(*a*) each claim made by the writ is either—

(i) one which by virtue of the Civil Jurisdiction and Judgments Act 1982 the Court has power to hear and determine, or

(ii) one which by virtue of any other statutory provision the Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction; and

(*b*) where a claim made by the writ is one which the Court has power to hear and determine by virtue of the Civil Jurisdiction and Judgments Act 1982, the writ is indorsed before it is issued with a statement that the Court has power under the Act to hear and determine the claim, and that no

(**a**) 1978 c. 23
(**b**) 1982 c. 27
(**c**) S.R. 1980 No. 346; the relevant amending instruments are S.R. 1982 No. 217 and S.R. 1983 No. 5

proceedings involving the same cause of action are pending between the parties in England and Wales, Scotland or another Convention territory.''.

(2) By adding, after paragraph (6) the following new paragraph:—

''(7) For the purposes of this rule, 'Convention territory' means the territory or territories of any Contracting State, as defined by section 1(3) of that Act, to which the Conventions as defined in section 1(1) of that Act apply.''

Service of writ in pursuance of contract

3. Order 10, rule 3, shall be amended as follows:—

(1) By substituting in paragraph (2), for the words from ''has been granted'' to the end, the words—

''has been granted under Order 11, rule 1(1) or service of the writ or notice thereof is permitted without leave under Order 11, rule 1(2).''

(2) By adding after paragraph (2) the following new paragraph:—

''(3) Where a contract contains an agreement conferring jurisdiction to which Article 17 of Schedule 1 or Article 17 of Schedule 4 to the Civil Jurisdiction and Judgments Act 1982 applies and the writ or notice thereof is served under Order 11, rule 1(2) the writ or notice thereof shall be deemed to have been duly served on the defendant.''

Service of process out of the jurisdiction

4. Order 11 shall be amended as set out in Schedule 1 hereto.

Application to set aside writ, etc.

5. Order 12, rule 8 shall be amended by substituting for the words, ''within 14 days after entering the appearance'', the words ''within the time limited for service of a defence''.

Proof of service of writ and of jurisdiction

6. Order 13 shall be amended by inserting after rule 7A the following new rule:—

''*Judgments under the Civil Jurisdiction and Judgments Act 1982*

7B.—(1) Where a writ or notice of a writ has been served out of the jurisdiction under Order 11, rule 1(2)(*a*) or has been served within the jurisdiction on a defendant domiciled in England and Wales or Scotland or in any other Convention territory the plaintiff shall not be entitled to enter judgment under this Order except with the leave of the Court.

(2) An application for leave to enter judgment may be made ex parte and shall be supported by an affidavit stating that in the deponent's belief—

(*a*) each claim made by the writ is one which by virtue of the Civil Jurisdiction and Judgments Act 1982 the Court has power to hear and determine,

(*b*) no other court has exclusive jurisdiction within the meaning of Schedule 1 or under Schedule 4 to that Act to hear and determine such claim, and

(*c*) where the writ or notice thereof is served out of the jurisdiction under Order 11, rule 1(2)(*a*), such service satisfied the requirements of Schedule 1 or, as the case may require, of Article 20 of Schedule 4 to that Act,

and giving in each case the sources and grounds of such belief.

(3) 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 and "Convention territory" means the territory or territories of any Contracting State, as defined by section 1(3) of that Act, to which the Conventions as defined in section 1(1) of that Act apply.".

Issue and service of, and entry of appearance to, third party notice

7. Order 16, rule 3 shall be amended by substituting before the full stop at the end of paragraph (4) a colon, and by adding at the end the words:—

"Provided that in the application of Order 11, rule 1(1)(*c*) leave may be granted to serve a third party notice outside the jurisdiction on any necessary or proper party to the proceedings brought against the defendant.".

Service out of the jurisdiction of an originating summons for leave to enforce an arbitral award

8. Order 73, rule 5 shall be amended by omitting in paragraph 1(*a*) the words "or for leave to enter an award as a judgment" and shall be further amended by inserting after rule 5(1) the following new paragraph:—

"(1A) Service out of the jurisdiction of an originating summons for leave to enforce an award is permissible with the leave of the court whether or not the arbitration is governed by the law of Northern Ireland."

Admiralty proceedings: Merchant Shipping (Oil Pollution) Act 1971(**a**) *and Merchant Shipping Act 1974*(**b**)

9. Order 75, rule 4 shall be amended as follows:—

(1) Paragraph (1) shall be amended by substituting for the words "in rule 2(1)(i)" the words "in rule 2(1)(*a*) *or* (*b*)".

(2) There shall be inserted after paragraph (1) the following new paragraph:—

"(1A) Service out of the jurisdiction of a writ or notice thereof in an act containing any such claim as is mentioned in rule 2(1)(*c*) is permissible with the leave of the Court."

(3) paragraph (3) shall be amended by substituting for the words "Paragraph (1)" the words "Paragraphs (1) and (1A)".

10. Order 75, rule 5(8) shall be amended by omitting the full stop at the end of the first sentence and by inserting at that point the words "and in the case of a claim in respect of a liability incurred under section 1 of the Merchant Shipping (Oil Pollution) Act 1971, the facts relied on as establishing that the Court is not prevented from entertaining the action by reason of section 13(2) of that Act".

Partners — application of Order 81 to individual traders

11. Order 81, rule 8 shall be amended by inserting, after the words "may" the words "whether or not he is within the jurisdiction,".

(**a**) 1971 c. 59
(**b**) 1974 c. 43

Reciprocal enforcement of judgments

12. Order 71 shall be amended as follows:—

(1) By substituting in the title, for the words:

"I. RECIPROCAL ENFORCEMENT" the words "I. RECIPROCAL ENFORCEMENT: THE ADMINISTRATION OF JUSTICE ACT 1920 AND THE FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT 1933", and by substituting in the title of Part II, for the words "EUROPEAN COMMUNITY JUDGMENTS" the words "ENFORCEMENT OF EUROPEAN COMMUNITY JUDGMENTS".

(2) By revoking rule 12 and by adding at the end of Part II the part ("III. RECIPROCAL ENFORCEMENT: THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982") set out in the Schedule 2 hereto.

Reference to the European Court

13. Order 114, rule 1 shall be amended by inserting, after the words "Coal and Steel Community", the words", or for a ruling on the interpretation of the Conventions referred to in section 1(1) of the Civil Jurisdiction and Judgments Act 1982".

Interest on legacies

14. Order 44, rule 10 shall be amended by substituting, for the figure "£5", the figure "£6".

Forms

15. Appendix A shall be amended by the addition of the forms set out in Schedule 3 hereto.

Dated 29th November 1983

Lowry
Donald Murray
J. B. E. Hutton
R. D. Carswell
Owen Catchpole

I concur,
Dated 22nd March 1984

Hailsham of St. Marylebone, C.

Order 11 shall be amended as follows:—

1. By substituting for rule 1 the following rule:—

"*Principal cases in which service of writ out of jurisdiction is permissible*

1.—(1) Provided that the writ does not contain any claim mentioned in Order 75, rule 2(1) and is not a writ to which paragraph (2) of this rule applies, service of a writ or notice of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ—

(*a*) relief is sought against a person domiciled within the jurisdiction;

(*b*) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (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 a person duly served within or out of the jurisdiction and a person out of the jurisdiction 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 the jurisdiction, or

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

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

(iv) contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of the contract;

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

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

(*g*) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;

(*h*) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction;

(*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 moveable property, or to obtain authority to dispose of moveable property, situate within the jurisdiction;

(*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 writ is a trustee, or for any relief or remedy which might be obtained in any such action;

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

(*l*) the claim is brought in a probate action within the meaning of Order 76;

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

(*n*) 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;