1983 No. 14

COUNTY COURTS

County Court (Amendment) Rules (Northern Ireland) 1983

Made . . . . . *2nd February 1983*

Coming into operation . . . *14th March 1983*

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) Rules (Northern Ireland) 1983.

Interpretation

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

Amendment of the County Court Rules (Northern Ireland) 1981

3.—(1) After Order 6, there shall be inserted the Order 6A in Schedule 1 hereto.

(2) In Rule 2 of Order 33, for the figure "14" there shall be substituted the figure "12".

(3) After Form 279, there shall be inserted the Form 280 in Schedule 2 hereto.

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.

J. P. Higgins
John J. Curran
Timothy T. Ferriss
C. Nelson M. Rountree
Harold McKee
T. F. Glass

After consultation with the Lord Chief Justice I allow these Rules which shall come into operation on 14th March 1983.

Hailsham of St. Marylebone, C.

Dated 2nd February 1983.

(a) S.I. 1980/397 (N.I. 3); Article 47 was extended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), section 29

(b) S.R. 1981 No. 225 as amended by S.R. 1982 No. 368

SCHEDULE 1 Rule 3(1)

Order to be inserted after Order 6 of the County Court Rules (Northern Ireland) 1981

ORDER 6A

Service out of Northern Ireland

Interpretation

1. In this Order the following words and expressions have the following meanings, unless a contrary intention appears:—

"originating process" includes a third party notice but excludes a default or summary civil bill or an application for arbitration under Article 30 of the Order;

"interlocutory process" means an order, notice or summons made, given or issued in proceedings already commenced in or remitted to a county court;

"process" means an originating process or an interlocutory process;

"country" means a foreign country, or any country mentioned in Rule 7(5);

"country of service" means the country in which a process is to be served or is served pursuant to leave granted under this Order;

"convention country" means a foreign country with which a convention has been made relating to civil procedure including the service of documents issued from Northern Ireland in the foreign country and includes a country which is a party to the Hague Convention;

"Hague Convention" means the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial matters signed at The Hague on 15th November 1965(**a**);

"associated state" has the meaning given to it by the Interpretation Act 1978(**b**);

"colony" has the meaning given to it by the Interpretation Act 1978;

"applicant" means the party applying for or obtaining leave under this Order to serve a process out of Northern Ireland;

"respondent" means the party on whom the applicant seeks or obtains leave to serve a process.

Conditions of allowing service of originating process

2. The court may allow an originating process to be served out of Northern Ireland where—

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

(*b*) any act, deed, will, contract, obligation or liability affecting land situate within the division is sought to be construed, rectified, set aside or enforced in the proceedings; or

(*c*) any relief is sought against any person domiciled or ordinarily resident in Northern Ireland against whom an action may be commenced in the court by virtue of Order 1, Rule 1; or

(*d*) the claim is for the administration of the estate of any deceased person who had his last residence within the division, or for the execution (as to property situate within the division) of the trusts of any instrument of which the person to be served is a trustee, which ought to be executed according to the law of Northern Ireland; or

(*e*) the action begun by the originating process is brought against a defendant not domiciled or ordinarily resident in Scotland 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 of the court, or

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

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

(**a**) Cmnd. 3986
(**b**) 1978 c. 30

(*f*) the action begun by the originating process is brought against a defendant not domiciled or ordinarily resident in England and Wales or Scotland in respect of a breach committed within the jurisdiction of the court of a contract made within or out of that 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 of the court that rendered impossible the performance of so much of the contract as ought to have been performed within that jurisdiction; or

(*g*) the claim is founded on a tort committed in Northern Ireland; or

(*h*) any injunction is sought as to anything done, or to be done, in the division, or any nuisance in the division is sought to be prevented or removed; or

(*i*) any person out of Northern Ireland is a necessary or proper party to any proceedings properly commenced in the court against some other person duly served in Northern Ireland; or

(*j*) the claim is 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.

Conditions of allowing service of other process

3. The court may allow an interlocutory process to be served out of Northern Ireland 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.

England and Wales and Scotland

4.—(1) Subject to paragraph (2), where leave is asked from the court under Rule 2 to serve a process in England and Wales or in Scotland and it appears to the court that there may be a concurrent remedy in England and Wales or Scotland (as the case may be), the court shall have regard to the comparative cost and convenience of proceeding in the division, or in the place of residence of the respondent, and particularly to the powers and jurisdiction of the county courts in England and Wales and of the sheriff court in Scotland, respectively.

(2) Nothing in this Rule shall be construed as enabling leave to be given under paragraph (*e*) of Rule 2 where the respondent is domiciled or ordinarily resident in Scotland or under paragraph (*f*) of Rule 2 where the respondent is domiciled or ordinarily resident in England and Wales or Scotland.

Application to be supported by evidence

5.—(1) An application for leave to serve a process on a respondent out of Northern Ireland shall be ex parte to the judge (or in an action in which the amount claimed or the value of specific chattels claimed does not exceed £500, to the circuit registrar) and shall be supported by affidavit or other evidence—

(*a*) stating that in the belief of the deponent the applicant has a good cause of action; and

(*b*) showing—

(i) in what country and place the respondent is or may probably be found; and

(ii) whether the respondent is a United Kingdom national or not; and

(iii) the grounds on which the application is made.

(2) Leave shall not be granted unless it appears to the court that the case is a proper one for service out of Northern Ireland.

Date of hearing

6.—(1) When giving leave to serve a process out of Northern Ireland, the court shall fix a date on which the proceedings to which it relates will be heard.

(2) When exercising its powers under paragraph (1) of this Rule, the court shall have regard to the distance of the country of service.

Modes of service

7.—(1) Where leave has been given to serve a process out of Northern Ireland, service may, subject to the provisions of this Rule, be effected —

(*a*) through the court; or

(*b*) by the applicant or his agent.