1982 No. 217

SUPREME COURT PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 1982

Made . . . . . *14th July 1982*

Coming into operation . . . *1st September 1982*

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 pleading, 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 and commencement

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 1982 and shall come into operation on 1st September 1982.

(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(**b**) and, unless the context otherwise requires, a form referred to by number means the form so numbered in Appendix A to the Rules.

Bankruptcy and Companies Office

2. In Order 1, rule 14, there shall be inserted after the word "Companies" the word "Office".

Service of originating process

3. Order 10 shall be amended as follows:—

(1) The following paragraph shall be substituted for paragraph (1) of rule 1:—

"(1) Subject to the provisions of these Rules or any statutory provision a writ must be served personally on each defendant by the plaintiff or his agent."

(2) Paragraph (1) of rule 4 shall be amended by substituting for the words "by personal service on the defendant anywhere in Northern Ireland" the words "in accordance with the foregoing provisions".

Service of process abroad and State immunity

4. For rule 7 of Order 11 there shall be substituted the following rule:—

"*Service of process on a foreign State*

7.—(1) Subject to paragraph (4), where a person to whom leave has been granted under rule 1 to serve notice of a writ on a State, as defined in section 14 of the State Immunity Act 1978(**c**), wishes to have the notice served on that State, he must lodge in the Central Office—

(**a**) 1978 c. 23
(**b**) S.R. 1980 No. 346
(**c**) 1978 c. 33

(*a*) a request for service by the Secretary of State; and

(*b*) a copy of the notice of the writ; and

(*c*) except where the official language of the State is, or the official languages of the State include, English, a translation of the notice of the writ in the official language or one of the official languages of that State.

(2) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) of this rule as it applies in relation to a translation lodged under paragraph (5) of that rule.

(3) Documents duly lodged under this rule shall be sent by the Master (Queen's Bench and Appeals) to the Secretary of State with a request that the Secretary of State should arrange for the notice of the writ to be served.

(4) Where section 12(6) of the State Immunity Act 1978 applies and the State has agreed to a method of service other than that provided by the preceding paragraphs, the writ or notice of the writ may be served either by the method agreed or in accordance with the preceding paragraphs of this rule."

Default of appearance

5. In Order 13 the following rule shall be inserted after rule 7:—

"*Judgment against a State*

7A.—(1) Where the defendant is a State, as defined in section 14 of the State Immunity Act 1978 ("the Act"), 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 shall be supported by an affidavit—

(*a*) stating the grounds of the application,

(*b*) verifying the facts relied on as excepting the State from the immunity conferred by section 1 of the Act, and

(*c*) verifying that the writ has been served by being transmitted through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of the State, or in such other manner as may have been agreed to by the State, and that the time for entering an appearance, as extended by section 12(2) of the Act (by two months) where applicable, has expired.

(3) The application may be made ex parte but the Court hearing the application may direct a summons to be issued and served on that State, for which purpose such a direction shall include leave to serve the summons and a copy of the affidavit out of the jurisdiction.

(4) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof, and the grant of leave to enter judgment under this Order shall include leave to serve out of the jurisdiction—

(*a*) a copy of the judgment, and

(*b*) a copy of the affidavit, where not already served.

(5) The procedure for effecting service out of the jurisdiction pursuant to leave granted in accordance with the rule shall be the same as for the service of the notice of the writ under Order 11, rule 7(1), except where section 12(6) of the Act applies and an alternative method of service has been agreed."

Misjoinder and non-joinder of parties

6. Order 15, rule 6, shall be amended as follows:—

(1) Paragraph (2) shall be amended by inserting, at the beginning, the words "Subject to the provisions of this rule," and by omitting the words "but no person shall be added as a plaintiff" to the end.

(2) After paragraph (3) there shall be added the following paragraphs:—

"(4) No person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(5) No person shall be added or substituted as a party after the expiry of any relevant period of limitation unless either—

(*a*) the relevant period was current at the date when proceedings were commenced and it is necessary for the determination of the action that the new party should be added, or substituted, or

(*b*) the relevant period arises under the provisions of section 9A or 9B of the Statute of Limitations (Northern Ireland) 1958 and the Court directs that those provisions should not apply to the action by or against the new party.

In this paragraph "any relevant period of limitation" means a time limit under the Limitation Acts (Northern Ireland) 1958 to 1982.

(6) The addition or substitution of a new party shall not be regarded as necessary for the purposes of paragraph (5)(*a*) unless the Court is satisfied that—

(*a*) the new party is a necessary party to the action in that property is vested in him at law or in equity and the plaintiff's claim in respect of an equitable interest in that property is liable to be defeated unless the new party is joined, or

(*b*) the relevant cause of action is vested in the new party and the plaintiff jointly but not severally, or

(*c*) the new party is the Attorney General and the proceedings should have been brought by relator proceedings in his name, or

(*d*) the new party is a company in which the plaintiff is a shareholder and on whose behalf the plaintiff is suing to enforce a right vested in the company, or

(*e*) the new party is sued jointly with the defendant and is not also liable severally with him and failure to join the new party might render the claim unenforceable".

7. In Order 16, rule 10, the words and commas ", either as a third party or as one of two or more joint tortfeasors liable in respect of the same damage," shall be omitted.

Pleadings

8. Order 18 shall be amended by adding after paragraph (6) of rule 12 the following paragraph:—

"(7) Where particulars are given pursuant to a request, or order of the Court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order."

Amendment of writ or pleading with leave

9. Order 20, rule 5, shall be amended by substituting, for the existing paragraph (4), the following paragraph:—

"(4) An amendment to alter the capacity in which a party sues may be allowed under paragraph (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired."

Discontinuance

10. Order 21, rule 2, shall be amended by inserting:—

(*a*) at the beginning of paragraph (1) and paragraph (2), the words "Subject to paragraph (2A),"; and

(*b*) after paragraph (2), the following new paragraph:—

"2A. A party in whose favour an interim payment has been ordered, in accordance with Order 29, rule 14, may not discontinue any action or counterclaim, or withdraw any particular claim therein, except with the leave of the Court or the consent of all the other parties."

Admissions

11. Order 27 shall be amended as follows:—

(1) In the title of rule 2 the word "facts" shall be omitted.

(2) In rule 2 there shall be substituted for the words "the facts" the words "such facts or such part of his case, as may be".

(3) In the title of rule 3 the words "of facts" shall be omitted.

(4) In rule 3 there shall be inserted after the word "fact" the words "or of part of a case".

Interim payments

12. For the existing Parts II and III of Order 29 there shall be substituted the Part set out in Schedule A hereto.

Applications and proceedings in Chambers

13. Order 32 shall be amended as follows:—

(1) Paragraph (3) of rule 4 shall be omitted.

(2) The following rule shall be inserted after rule 12—

"*Application for a direction under the Statute of Limitations*

12A. The jurisdiction to direct, under section 9D of the Statute of Limitations (Northern Ireland) 1958, that section 9A or 9B of that Act should not apply to an action or to any specified cause of action to which the action relates shall be exercisable by the Court."

Setting down for trial actions begun by writ

14. Order 34, rule 4(2), shall be amended by inserting after the words "the proper chronological order" a comma, and the following words:—

"save that voluntary particulars of any pleading and particulars to which Order 18, rule 12(7), applies shall be placed immediately after the pleading to which they relate".

Proceedings at trial

15. Order 35, rule 4(5)(*c*), shall be amended by inserting the word "not" before the word "shall".

Issue of writ of subpoena

16. Order 38 shall be amended as follows:—

(1) Paragraph 3 of rule 12 shall be omitted.

(2) In rule 14, the words from "by filing" to the end of the rule shall be omitted.

Affidavits

17. Order 41 shall be amended as follows:—

(1) In rule 1(4)—

(*a*) After the words "the first person and" there shall be inserted a comma followed by the words "unless the Court otherwise directs,".

(*b*) At the end of the paragraph there shall be added the following paragraph:—

"In the case of a deponent who is giving evidence in a professional, business or other occupational capacity the affidavit may, instead of stating the deponent's place of residence, state the address at which he works, the position he holds and the name of his firm or employer, if any."

(2) In paragraph (2) of rule 11 the figure "(3)" shall be substituted for the figure "(2)" where the latter secondly occurs.

Judgments

18. Order 42, rule 9, shall be amended as follows:—

(1) In paragraphs (2) and (3) for the figure "15" there shall be substituted the figure "14".

(2) In paragraph (3) for the words "section 58 of the said Act" there shall be substituted the words "Article 58 of the said Order".

Enforcement of judgments

19. Order 45 shall be amended as follows:—

In rule 2(1)(*b*), rule 3, and the cross heading to rule 5, for the words "rule 5" substitute the words "rule 4".

Judicial review – Divisional Court

20. In rule 2 of Order 53, the following paragraph shall be added after paragraph (6):—

"(7) A court of two or more judges exercising jurisdiction pursuant to this rule shall be called a Divisional Court."

Habeas corpus

21. In Order 54 the following rule shall be added after rule 10:—

"*Divisional Court*

11. A court of two or more judges exercising jurisdiction pursuant to this Order shall be called a Divisional Court."

Appeals and references to the High Court

22. Order 55 shall be amended as follows:—

(1) The following rule shall be added after rule 12:—

"12A. The proper officer shall send a copy of any order made under this Part to the Chief Clerk of the county court appealed from."

(2) The following rule shall be substituted for rule 19:—

"*References*

19.—(1) Subject to paragraph (2), the rules of this Part shall apply mutatis mutandis to any case not otherwise provided for where by any statutory provision, any matter or question, whether of law or fact, may be submitted or referred to the Court for its decision or opinion.

(2) Where the Registrar of Titles refers an application under section 53 of the Land Registration Act (Northern Ireland) 1970 to the High Court for decision, the time limit imposed by rules 14(2) and 15(1) shall be 6 weeks instead of 21 days."