1978 No. 370

COUNTY COURTS

County Court (Amendment) Rules (Northern Ireland) 1978

Made . . . . . *8th December* 1978

Coming into operation . . . *1st February* 1979

To be laid before Parliament

The Secretary of State, in pursuance of section 146 of the County Courts Act (Northern Ireland) 1959(**a**) on the recommendation of the County Court Rules Committee and after consultation with the Lord Chief Justice, hereby makes the following rules:

Citation and commencement

1. These rules may be cited as the County Court (Amendment) Rules (Northern Ireland) 1978 and shall come into operation on 1st February 1979.

Interpretation

2. In these rules a reference to an Order by number or to an Appendix by letter is a reference to that Order or Appendix as numbered or lettered in the County Court Rules (Northern Ireland) 1976(**b**).

Amendment of the County Court Rules (Northern Ireland) 1976

3.—(1) Paragraph (6) of rule 2 of Order 5 is hereby revoked.

(2) For Order 12 there shall be substituted the Order set out in Schedule 1.

(3) After Order 28 there shall be inserted the Order 28A set out in Schedule 2.

(4) For Appendix K there shall be substituted the Appendix set out in Schedule 3.

(5) After Appendix X there shall be inserted the Appendix XA set out in Schedule 4.

Roy Mason
One of Her Majesty's Principal Secretaries of State

Northern Ireland Office
8th December 1978

(a) 1959 c. 25 (N.I.) as modified by S.I. 1973/2163 (1973 III, p. 7541)
(b) S.R. 1976 No. 374 (II, p. 1774)

SCHEDULE 1

Order to be substituted for Order 12 of the County Court Rules (Northern Ireland) 1976

ORDER 12

Default and Summary Actions (Appendix K)

PART I

GENERAL

Proceedings which may be commenced and dealt with as default or summary actions

1.—(1) Proceedings for a debt or liquidated amount, not being proceedings—

(*a*) against the Crown;

(*b*) against an infant or person of unsound mind;

may be commenced and dealt with as a default action in accordance with Part II or, subject to paragraph (2), as a summary action in accordance with Part III.

(2) Proceedings shall not be commenced or dealt with as a summary action—

(*a*) where the plaintiff is suing in person; or

(*b*) where the claim is on foot of a hire purchase or credit sale agreement.

(3) Paragraph (2)(*a*) shall not, subject to any direction of the court in relation to any particular proceedings, apply to a solicitor or firm of solicitors suing for costs.

PART II

DEFAULT ACTIONS

Default civil bill

2. A default action shall be commenced by a default civil bill in Form 1.

Notices to be annexed to default civil bills

3. There shall be annexed to the copy of a default civil bill served on the defendant a notice in Form 2 addressed to the plaintiff's solicitor or, where the plaintiff is suing in person, to the plaintiff and a notice in Form 3 addressed to the appropriate clerk of the Crown and peace.

Entry of default civil bill as a default action

4. If, on the expiration of fourteen days from the service of the copy of the default civil bill and notices, neither the plaintiff's solicitor nor the plaintiff nor the clerk of the Crown and peace has received notice from the defendant that he disputes his liability for the claim in whole or in part or alleges a counterclaim, the plaintiff's solicitor or, where the plaintiff is suing in person, the plaintiff, may enter the proceedings for hearing by the judge as a default action.

Proofs requisite for entry of default civil bill

5.—(1) Upon entry of the proceedings under Rule 4, the plaintiff shall lodge in the Office:

(*a*) the original default civil bill and original notices with endorsements of service or, where Order 6 Rule 3(3) applies, an affidavit of service, or, where Order 6 Rule 3(2)(*b*) or Rule 3(7) applies, the solicitor's certificate referred to in Rule 12 of Order 6;

(*b*) an affidavit in verification of the plaintiff's claim in Form 4 made by the plaintiff or on his behalf by some other person who can swear positively to the facts and sworn within a period of twenty-eight days ending on the entry day;

(*c*) a certificate in Form 5, which may be endorsed on the affidavit given under paragraph (*b*) and which shall be given within a period of seven days ending on the entry day, by the plaintiff's solicitor or, where the plaintiff is suing in person, the plaintiff, that a notice disputing his liability for the claim in whole or in part or alleging a counterclaim has not been received from the defendant and either that—

(i) no other communication has been received from the defendant; or

(ii) a copy of any such communication so received is attached;

and stating whether any part of the amount claimed in the affidavit made under paragraph (*b*) has to his knowledge been paid by the defendant.

(2) The solicitor's certificate referred to in Rule 12 of Order 6 shall be in Form 10.

Default decree

6.—(1) Upon consideration of the documents lodged under Rule 5 and on proof of service of the default civil bill and notices under Rule 3, the judge may without further evidence make a default decree in Form 6 against the defendant for the sum shown by the documents lodged under Rule 5 to have been due at the date of service of the default civil bill together with costs but crediting any amount actually paid after such service.

(2) Where the defendant fails within the time provided in Rule 4 to give notice that he disputes his liability for the claim in whole or in part or alleges a counterclaim but appears and proves to the satisfaction of the judge that he has just grounds for disputing his liability for the claim in whole or in part upon the merits or has a counterclaim, the judge may upon such terms as to costs and otherwise as to him seems just either hear and determine the case or adjourn the hearing and direct notice thereof to be given to the parties.

Where defendant disputes claim or alleges a counterclaim

7. Where the defendant gives notice within the time specified in Rule 4 that he disputes his liability for the claim in whole or in part or alleges a counterclaim, the plaintiff shall enter the action for hearing as an ordinary civil bill action and subsequent proceedings shall be had as if the action had been commenced in accordance with Order 5.

Part III

Summary Actions

Summary civil bill

8. A summary action shall be commenced by a summary civil bill in Form 7.

Notices to be annexed to summary civil bills

9. There shall be annexed to the copy of a summary civil bill served on the defendant a notice in Form 2 addressed to the plaintiff's solicitor and a notice in Form 3 addressed to the appropriate clerk of the Crown and peace.

Application for summary decree

10.—(1) If, on the expiration of fourteen days from the service of the copy of the summary civil bill and notices, the plaintiff's solicitor has not received notice from the defendant that he disputes his liability for the claim in whole or in part or alleges a counterclaim, the plaintiff's solicitor may make application in the Office on behalf of the plaintiff for a summary decree to be made against the defendant.

(2) Such application may be endorsed on the affidavit referred to in Rule 11.

11.—(1) Upon such application the plaintiff's solicitor shall lodge in the Office—

(*a*) the original summary civil bill and original notices with endorsements of service or, where Order 6 Rule 3(3) applies, an affidavit of service or, where Order 6 Rule 3(2)(*b*) or Rule 3(7) applies, the solicitor's certificate referred to in Rule 12 of Order 6;

(*b*) an affidavit in verification of the plaintiff's claim in Form 4 made by the plaintiff or on his behalf by some person who can swear positively to the facts and sworn within a period of twenty-eight days ending on the date of the application;

(*c*) a certificate in Form 8, which may be endorsed on the affidavit lodged under paragraph (*b*) and which shall be given within a period of seven days ending on the date of the application, by the plaintiff's solicitor that a notice disputing his liability for the claim in whole or in part or alleging a counterclaim has not been received from the defendant and either that—

(i) no other communication has been received from the defendant; or

(ii) a copy of any such communication so received is attached;

and stating whether any part of the amount claimed in the affidavit made under paragraph (*b*) has to his knowledge been paid by the defendant; and

(*d*) a summary decree in Form 9.

(2) The solicitor's certificate referred to in Rule 12 of Order 6 shall be in Form 10.

Summary decree

12. On the lodgment in the Office of the documents required by Rule 11—

(*a*) where the clerk of the Crown and peace has not received a notice from the defendant disputing his liability for the claim in whole or in part or alleging a counterclaim he may issue a summary decree in Form 9 for the sum shown by the documents lodged under Rule 11 to have been due at the date of service of the summary civil bill together with costs but crediting any amount actually paid after such service;

(*b*) where such a notice has been so received, the clerk of the Crown and peace shall inform the applicant accordingly and the proceedings shall continue in accordance with Rule 13 as if such a notice had also been received by the applicant.

Where defendant disputes liability or alleges a counterclaim or clerk of the Crown and peace refuses to issue a summary decree

13. Where the defendant gives notice within the time specified in Rule 10 that he disputes his liability for the claim in whole or in part or alleges a counterclaim or where the clerk of the Crown and peace refuses to issue a summary decree, either party may, upon seven days' notice to the other party, enter the action for hearing at the next or next but one sitting of the court and it shall thereupon proceed as if it had been commenced in accordance with Order 5. A copy of such notice shall be lodged in the Office on entry.

PART IV

MISCELLANEOUS PROVISIONS

Costs payable in settlement

14. Where a defendant pays the amount due within fourteen days from service of the default or summary civil bill and also within that period pays fifty per centum of the solicitor's costs in column 2 of Table 3 in Part I of Appendix ZK together with the plaintiff's outlay properly incurred to date of settlement he shall not be liable for any further costs.

Costs in certain cases

15. Any additional costs incurred by a plaintiff by reason of the fact that the defendant sent notice disputing his liability for the claim in whole or in part or alleging a counterclaim to the clerk of the Crown and peace only and not to the plaintiff's solicitor or the plaintiff, shall, unless the judge otherwise directs, be payable by the defendant.

Decree against one of two or more defendants

16. Where there are two or more defendants and one has failed to give notice that he disputes his liability for the claim in whole or in part or alleges a counterclaim and has not paid the sum due and costs, the plaintiff may proceed in accordance with the foregoing Rules of this Order to have a decree issued against that defendant, without prejudice to the plaintiff's right to proceed with the action against any other defendant.

Notice under section 139(1)(*b*) *of the Consumer Credit Act* 1974

17. Where a defendant in accordance with section 139(1)(*b*) of the Consumer Credit Act 1974 desires to have a credit agreement re-opened he shall serve notice that he so desires on the clerk of the Crown and peace and on the plaintiff's solicitor or, where the plaintiff is suing in person, on the plaintiff within fourteen days from service of the copy of the default or, as the case may be, summary civil bill and thereupon the plaintiff shall enter the action for hearing as an ordinary civil bill action and subsequent proceedings shall be had as if the action had been commenced in accordance with Order 5.