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STATUTORY RULES OF NORTHERN IRELAND

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**1999 No. 333**

**SUPREME COURT, NORTHERN IRELAND  
PROCEDURE**

The Rules of the Supreme Court (Northern  
Ireland) (Amendment No. 2) 1999

Made - - - - 21st July 1999

To be laid before Parliament

Coming into operation 6th September 1999

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<sup>(1)</sup> 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 and commencement**

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 1999.

(2) These Rules shall come into operation on 6th September 1999.

**Interpretation**

2. In these Rules any reference to an Order by number or an Appendix by letter means the Order so numbered or the Appendix so lettered in the Rules of the Supreme Court (Northern Ireland) 1980<sup>(2)</sup>.

**Statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998**

3. Order 6<sup>(3)</sup> shall be amended by inserting after rule 2C the following new rule—

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(1) 1978 c. 23

(2) S.R. 1980 No. 346; relevant amendments are set out in subsequent footnotes to these Rules

(3) There are relevant amendments in S.R. 1983 No. 114

**“Claim for statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998**

**2D.** Where a plaintiff claims statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998(4), the endorsement on the writ must give particulars of the contract relied on and, in particular, must show:

- (a) that it is a claim for statutory interest under the Act;
- (b) the date from which the interest is payable;
- (c) the rate of statutory interest applicable to the claim;
- (d) the amount of interest due at a date not later than the date of the issue of the writ; and
- (e) any claim for further statutory interest from the date to which interest is already claimed to judgment or sooner payment.”.

**Summary judgment in fraud cases**

- 4. Order 14 shall be amended by the revocation of rule 1(2)(b).

**Third party directions**

5. Order 16, rule 4 shall be amended by substituting for paragraphs (1) and (2) the following paragraphs—

“(1) Subject to paragraphs (1A) and (2), if the third party enters an appearance the following provisions of this paragraph shall apply in relation to the conduct of the third party proceedings—

- (a) the defendant who issued the third party notice shall within 14 days of the entry of the third party’s appearance deliver a statement of claim to the third party;
- (b) the third party shall enter a defence to the statement of claim delivered by the defendant within 14 days of its delivery;
- (c) the defendant and the third party shall furnish to each other their respective lists of documents within 14 days of the third party serving his defence; and
- (d) the third party may appear in the trial of the action between the plaintiff and the defendant and shall be bound by any judgment or decision in the action in respect of liability, damages or costs.

(1A) Paragraph (1) shall not apply where the defendant who issued the third party notice at the same time—

- (a) applies to the Court by summons (to be served on all the other parties to the action) for directions; or
- (b) applies to the Court ex parte to receive and make a rule of Court (having the effect of an order) a consent of all parties providing for the conduct or disposal of the third party proceedings.

(2) If no summons is served on the third party and no ex parte application is made under paragraph (1A), the third party may, not earlier than 7 days after entering an appearance, apply to the Court by summons (to be served on all the other parties to the action) for directions or for an order to set aside the third party notice in place of the directions set out in paragraph (1).”.

## **Payments into court and out of court: the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997**

6.—(1) Order 22, rule 1(5) shall be amended by substituting for paragraph (2A) the following paragraph—

“(2A) Where a payment into Court is made which would following acceptance by a plaintiff be a compensation payment as defined in Article 3 of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(6) (in this Order referred to as “the 1997 Order”), the defendant must state in the notice he gives under paragraph (2) the gross amount of the compensation, the name and amount of any benefit by which the gross amount is reduced in accordance with Article 10 of and Schedule 2 to the 1997 Order and the net sum paid into Court, and a copy of the notice must at the same time be lodged in the appropriate office.”.

(2) For Form No. 20 in Appendix A there shall be substituted the new Form No. 20 set out in Schedule 1 to these Rules.

## **Hearsay evidence**

7. Order 38 shall be amended as follows—

- (a) in rule 1, for “the Civil Evidence Act (Northern 1971”(7) there shall be substituted “the Civil Evidence (Northern Ireland) Order 1997”(8);
- (b) for Part III there shall be substituted the following Part—

### **“III.**

#### **HERESAY EVIDENCE ADMISSABLE UNDER THE CIVIL EVIDENCE (NORTHERN IRELAND) ORDER 1997**

##### **Interpretation and application**

18.—(1) In this Part of this Order “hearsay evidence” means evidence consisting of hearsay within the meaning of Article 3(3) of the Civil Evidence (Northern Ireland) Order 1997 (in this rule referred to as “the 1997 Order”).

(2) Expressions used in this Part of this Order and in the 1997 Order have the same meaning in this Part as they have in that Order.

(3) This Part of this Order applies in relation to the trial or hearing of an issue or question arising in a cause or matter, and to a reference, inquiry or assessment of damages, as it applies to the trial or hearing of a cause or matter.

##### **Power to call witness for cross-examination on hearsay evidence**

19.—(1) Where a party to civil proceedings adduces hearsay evidence of a statement made by a person but does not call the person who made the statement to give evidence, the Court may, on the application of another party, allow that other party to call and cross-examine the person on the statement as if he had been called by the first-mentioned party and as if the hearsay statement were his evidence in chief.

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(5) There is a relevant amendment in [S.R. 1990 No. 267](#)

(6) [S.I. 1997/1183 \(N.I. 12\)](#)

(7) [1971 c. 36 \(N.I.\)](#)

(8) [S.I. 1997/2983 \(N.I. 21\)](#)

(2) Where the Court allows another party to call and cross-examine the person who made the statement, it may give such directions as it thinks fit to secure the attendance of that person as a witness and as to the procedure to be followed.

### **Credibility**

**20.** If—

- (a) a party has indicated an intention to adduce hearsay evidence of a statement made by a person who will not be called to give evidence;
- (b) another party wishes to attack the credibility of the person who made the statement,

that other party shall, so far as is reasonable in the circumstances, notify the party tendering the hearsay evidence of his intention.

### **Powers exercisable in chambers**

**21.** The jurisdiction of the court under this Part of this Order may be exercised in chambers.”.

## **Appeals by way of case stated to the Court of Appeal**

**8.** Order 61(9) shall be amended by adding at the end the following rules—

### **“Application for leave to appeal to the Court of Appeal from the Special Immigration Appeals Commission**

**13.—**(1) An application for leave to appeal to the Court of Appeal under section 7 of the Special Immigration Appeals Commission Act 1997(**10**) shall be made within 28 days of the date of the Special Immigration Appeals Commission’s decision to refuse leave to appeal.

(2) Such an application shall be made ex parte by lodging the following documents in the Central Office, namely:

- (a) a certified copy of the Commission’s decision to refuse to grant leave to appeal; and
- (b) a statement of the grounds of the application.

(3) The proper officer shall notify the parties of the determination of the Court of Appeal.

(4) Where leave to appeal has been granted the applicant shall notify the Chairman of the Commission.

### **Appeal from the Special Immigration Appeals Commission**

**14.—**(1) Where leave to appeal to the Court of Appeal under section 7 of the Special Immigration Appeals Commission Act 1997 has been granted by the Special Immigration Appeals Commission, or by the Court of Appeal, the time limit specified in rule 1(2)(a) for lodging the requisition to state the case shall be calculated from the date leave was so granted.

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(9) There is a relevant amendment in [S.R. 1994 No. 286](#)

(10) [1997 c. 68](#)

(2) On entering the appeal for hearing a copy of the order granting leave to appeal by the Commission or by the Court of Appeal must be lodged in the Central Office together with the case stated and the requisition for hearing.”.

### **Mortgage actions**

9.—(1) Order 88 shall be amended as follows—

(a) after rule 4 there shall be inserted the following new rule—

**“Claim for possession of dwelling: notice to defendant in default of payment**

**4A.—**(1) Where the plaintiff—

- (a) claims in a mortgage action delivery of possession of land comprising or including a dwelling-house because of failure to pay moneys secured by the mortgage; or
- (b) applies for the removal or variation of a stay or suspension contained in an order for delivery of possession made as a result of such a claim in a mortgage action,

he shall, when serving a copy of the notice of appointment or when serving any summons (not being an originating summons) for such a claim or application, also serve on the defendant a notice in Form 10A in Appendix A.

(2) Paragraph (4) of rule 4 shall apply to service of a notice under this rule as it applies to service under paragraph (2) or (3) of that rule.”;

(b) in rule 5, for paragraph (6) there shall be substituted the following new paragraph—

“(6) Where the plaintiff claims payment of moneys secured by a mortgage, the affidavit must show how the payment is calculated, including—

- (a) the amount of the advance and the amounts and dates of any periodic payments and any interest claimed;
- (b) the amount which would have been paid (after taking into account any adjustment for early settlement) in order to redeem the mortgage at the date of commencement of the proceedings and at a stated date not more than 14 days after the date of commencement of the proceedings, specifying the amount of the solicitor’s costs and administrative charges which would be payable;
- (c) the dates between which a particular rate of interest applied, the number of days in that period and the capital on which the interest was calculated.”.

(2) In Appendix A there shall be inserted after Form 10 new Form 10A as set out in Schedule 2 to these Rules.

### **Minor amendment**

10. Order 94(11) shall be amended by adding at the end of rule 2(1)(12) the following new sub-paragraph—

“(xii) section 7 of the Special Immigration Appeals Commission Act 1997(13).”.

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(11) Order 94 was inserted by S.R. 1980 No. 433

(12) There are amendments of Order 94, rule 2 in S.R. 1983 No. 183, S.R. 1983 No. 407, S.R. 1990 No. 267, S.R. 1993 No. 143 and S.R. 1994 No. 286

(13) 1997 c. 68

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Dated 2nd June 1999

*R. D. Carswell  
J. M. Nicolson  
Anthony Campbell  
Brian Kerr  
F. P. Girvan  
R. Weatherup  
Tony Caher*

I concur

Dated 21st July 1999

*Irvine of Lairg, C.*

SCHEDULE 1

Rule 6(2)

Form to be substituted in Appendix A for Form No. 20

No. 20

Notice of payment into court

(O.22 rr 1, 2)

[*Heading as in action*]

Take notice that—

The defendant            has paid £            into            court.

The said £            is in satisfaction of [the cause of action] [all the causes of action] in respect of which the plaintiff claims [and after taking into account and satisfying the above-named defendant's cause of action for            in respect of which he counterclaims].

*or*

The said £            is in satisfaction of the following causes of action in respect of which the plaintiff claims, namely,            [and after taking into account *as above*].

*or*

Of the said £            , £            is in satisfaction of the plaintiff's causes[s] of action for [and after taking into account *as above*].

*For cases where the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 applies so that the payment in, following acceptance by the plaintiff, would be a compensation payment as defined by Article 3 of that Order add the following particulars—*

The gross amount of the compensation is £            .

The defendant has reduced this sum by £            in accordance with Article 10 of and Schedule 2 to the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 calculated as follows:

Name of Benefit	Amount
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Accordingly, £            is the net sum paid into court.

Dated the            day of

SCHEDULE 2

Rule 9(2)

**Form to be inserted in Appendix A after Form 10**

No. 10A

Notice to defendant in lender's action for possession  
of dwelling-house on default of mortgage payment

(O.88, r. 4A)

[*Heading as in summons*]

To [name of defendant] of

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Take notice that:

1. The Court has statutory powers to adjourn the proceedings or (at any time before the execution of a judgment or order) stay or suspend execution of a judgment or order for possession or postpone the date of delivery of possession for such period or periods as the Court thinks reasonable if it appears to the Court that in the event of its exercising the power the mortgagor is likely to be able to within a reasonable period to pay any sums due under the mortgage or to remedy a default consisting of a breach of any other obligation arising under or by virtue of the mortgage.

2. Those powers are set out in section 36 of the Administration of Justice 1970 as amended by section 8 of the Administration of Justice Act 1973. Since the Court must be satisfied under those sections that the mortgagor within a reasonable time is likely to be able to pay any sums due under the mortgage, there must be material before the Court which is of sufficient weight to satisfy the Court of that likelihood.

3. There are a number of steps you should immediately consider taking if you want the Court to exercise its discretion under those powers in your favour, namely—

- (a) **consulting a solicitor or taking other advice** (for example, from the Housing Rights Service or a branch of the Citizen’s Advice Bureaux);
- (b) **preparing (or having your advisers prepare) a detailed written budget** setting out your income and outgoings and indicating the resources available to discharge the arrears on the mortgage (where your mortgage involves payment by instalments) or the entire mortgage debt, if necessary by regular payments over a period of time in addition to the normal regular payments you are required to make under your mortgage;
- (c) **working out carefully what you consider to be your best realistic proposal** to discharge arrears of instalments or the entire mortgage debt; if you (with the help of your advisers, if any) cannot realistically propose that you discharge the arrears of mortgage payments or the entire mortgage debt out of resources other than the mortgaged property itself, you should consider whether you should try to sell the mortgaged property (or, if practical, a part of it) in order to discharge the debt, with a view to seeking the exercise of the Court’s discretion so as to give you an adequate opportunity to sell the property;
- (d) **attending the hearing** as detailed in the notice of appointment or summons that has been served on you, where you should be in a position to provide—
  - (i) an explanation for the default in meeting your obligations under the mortgage;
  - (ii) details of your financial and other relevant circumstances;
  - (iii) your best realistic proposal to discharge the outstanding debt or, where (or insofar as) the mortgage debt is repayable by instalments, the arrears of mortgage instalments together with any normal mortgage instalments that become due;
- (e) **bringing to the hearing documents** to vouch details of your financial and other relevant circumstances (for example, your current or prospective salary, employment prospects and/or state benefits) and, where appropriate, documents relating to your endeavours to sell the premises or obtain a new loan on the security of the premises.

**Your attention is drawn to the notes appended to this notice.**

Dated the            day of

(Signed)

Solicitor for the Plaintiff



## NOTES

Details of the matters set out in paragraph 3(b), (c) and (d) should wherever possible be provided to the Court in advance of your attendance at the hearing, preferably by way of affidavit or affidavits exhibiting copies of all relevant documents and sworn by you and any other witnesses whose evidence you wish the Court to take into account. **Affidavits should be filed in the Chancery Office, Room 1-19A, First Floor, Royal Courts of Justice, Chichester Street, BELFAST BT1 3JF.** Where it is not possible to provide the documents and information referred to in advance of the hearing by way of affidavit, the Court may be prepared to consider oral evidence of those matters at the hearing or may adjourn the hearing to ensure that those matters are put on affidavit.

**IF YOU DO NOT TAKE APPROPRIATE STEPS PURSUANT TO THIS NOTICE YOUR FAILURE TO DO SO IS AT YOUR OWN RISK**

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## EXPLANATORY NOTE

*(This note is not part of the Rules.)*

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980. The amendments are as follows—

- (a) Order 6 is amended to prescribe the particulars to be endorsed on a writ where statutory interest is claimed under the Late Payment of Commercial Debts (Interest) Act 1998;
- (b) Order 14, rule 1(2)(b) is revoked so as to allow the summary judgment procedure to be applied to claims involving allegations of fraud;
- (c) Order 16, rule 4 is amended to provide automatic directions for the conduct of third party proceedings on the entering of an appearance by the third party;
- (d) Order 22 is amended in consequence of the new arrangements in relation to payments into court where the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 applies;
- (e) Order 38 is amended in consequence of the Civil Evidence (Northern Ireland) Order 1997 principally to provide that where a hearsay statement is adduced in civil proceedings that the maker of the statement may be called and cross-examined;
- (f) Orders 61 and 94 are amended to make provision for appeals by way of case stated to the Court of Appeal (with leave) from the Special Immigration Appeals Commission;
- (g) Order 88 is amended—
  - (i) to insert a new rule 4A requiring a plaintiff in a mortgage action for possession of a dwelling to serve a notice on the defendant setting out particulars in relation to the Court's powers to adjourn proceedings or stay or suspend the execution of a judgment under section 36 of the Administration of Justice Act 1970 (as amended by section 8 of the Administration of Justice Act 1973); and
  - (ii) to substitute for the present rule 5(6) a new provision requiring a plaintiff claiming payment of money in a mortgage action to set out in greater detail how his claim is calculated.

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