

2005 No. 163

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

**The Rules of the Supreme Court (Northern Ireland)
(Amendment No. 2) 2005**

Made - - - - - 22nd March 2005

Coming into operation 18th April 2005

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, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 2005 and shall come into operation on 18th April 2005.

(2) In these Rules, “the principal Rules” means the Rules of the Supreme Court (Northern Ireland) 1980^(b) and an Order referred to by a number or an Appendix referred to by a letter means the Order so numbered or the Appendix so lettered in the principal Rules.

Amendment to the principal Rules

2.—(1) Order 38, rule 3(2) shall be amended as follows –

(a) in sub-paragraph (d), by replacing the full stop with a comma and adding the word “or”; and

(b) after sub-paragraph (d), by adding the following new sub-paragraph –

“(e) by the examination of witnesses orally by live television link, telephone or any other method of direct communication.”.

(2) Order 88 shall be amended as follows –

(a) for paragraph (a) of rule 3, there shall be substituted the following new paragraph –

“(a) where the mortgaged property is situated including its postal address (if any); and”;

(b) for paragraph (1) of rule 4A, there shall be substituted the following new paragraph –

“(1) Where the plaintiff –

^(a) 1978 c. 23

^(b) S.R. 1980 No. 346 to which the most recent relevant amendments were made by S.R. 1997 No. 265; S.R. 1999 No. 333; S.R. 2001 No. 254 and S.R. 2002 No. 202

- (a) claims in a mortgage action delivery of possession of land which comprises or includes a dwelling house because of failure to pay monies 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 relating to such land,

he shall, when serving a copy of the notice of appointment or any summons (not being an originating summons) for such a claim or application also serve on the defendant a notice in Form No. 10A in Appendix A.”;

- (c) in paragraph (2) of rule 4A, there shall be deleted the words “or 10B, as the case may be,”;
- (d) for paragraph (3) of rule 5A, there shall be substituted the following new paragraph –
 - “(3) In an action to which this rule applies –
 - (a) where the amount owing to a prior incumbrancer is unknown the plaintiff shall, not less than 4 clear days before the date fixed for the first hearing of the summons, serve upon that incumbrancer notice bearing the title and record number of the action and stating –
 - (i) the relief sought by the plaintiff in the action;
 - (ii) that the plaintiff is unaware of the amount (if any) owing to the prior incumbrancer and secured against the mortgaged property;
 - (iii) that the prior incumbrancer may apply to intervene in the proceedings if for any reason he thinks fit; and
 - (iv) the date, time and place fixed for the hearing;
 - (b) the court may direct an account to be taken of all incumbrances subsequent as well as prior to or contemporaneous with the plaintiff’s demand and an inquiry as to their respective priorities and the court may make an order for delivery of possession conditional on the result of such an account and inquiry.”.

Amendment of Appendix A of the principal Rules

- 3.** Appendix A shall be amended as follows –
 - (a) for Form 10A, there shall be substituted the new Form 10A set out in the Schedule to these Rules;
 - (b) Form 10B is hereby revoked; and
 - (c) for Form 38, there shall be substituted the new Form 38 set out in the Schedule to these Rules.

Brian Kerr
J. M. Nicholson
Anthony Campbell
Paul Girvan
Patrick Coghlin
Mark Horner
Bernard McCloskey
Tony Caher
Caroline A. McGonagle

Dated 18th March 2005

Signed by the authority of the Lord Chancellor

I concur

Baroness Ashton of Upholland
Parliamentary Under-Secretary of State, Department for Constitutional Affairs

Dated 22nd March 2005

SCHEDULE

Rule 3

No. 10A

Notice to defendant in lender's action for possession of dwelling house (O. 88, 4A)

[Heading as in Summons]

To *[name of defendant]*

General

This notice explains what you can do if you want the court to give you time to address the mortgage default in this application in which the plaintiff is seeking possession of residential premises by reason of your default. This notice does not deal with the procedure where you wish for any other reason to defend the plaintiff's claim or make a counterclaim. At the hearing the court will decide whether to make an order for possession and if so on what terms. In making that decision the court will take into account the information provided by the plaintiff and by you.

What are the court's powers to allow time to address mortgage default?

Under agreements not regulated under the Consumer Credit Act 1974

The court's powers are set out in detail in the Administration of Justice Act 1970 section 36 and the Administration of Justice Act 1973 section 8. Broadly if the court is satisfied you are likely to be able to remedy the default in payment by discharging within a reasonable time the relevant sum or sums (which in a mortgage involving payment by instalments normally means either the arrears of those instalments or the entire mortgage debt) the court may –

- adjourn the proceedings for a time to enable you to make payment;
- make an order for possession but suspend it on terms as to payment;
- make an order for possession, but put a stay on it for a time to allow you to discharge the entire mortgage debt, normally by sale or remortgage of the premises;
- where an order for possession has already been made but the circumstances have since changed, vary the terms or stay execution of the order.

Under agreements regulated under the Consumer Credit Act 1974

Broadly if the court is satisfied that it is just to do so having regard to the means of the debtor and any surety and the interests of the creditor it may –

- make a time order (an order providing for the payment of any sum due under either a regulated agreement or a security for that agreement by such instalments payable at such times as the court considers reasonable);
- vary the terms of the regulated agreement or the mortgage or other security (for the purpose of a time order or any other order relating to a regulated agreement);
- suspend or make conditional (for the same purpose) the operation of any order relating to the regulated agreement.

What steps should you take if you want the Court to exercise such powers on the hearing of the plaintiff's claim?

You should *immediately* consider taking the following steps –

- (a) **consulting a solicitor or taking other advice** (e.g., from Housing Rights Service or a branch of the Citizens Advice Bureau);
- (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 relevant sum or sums – *you should complete the form of budget attached to this Notice, or a similar form, and bring it with you to the hearing;*
- (c) **working out carefully what you consider to be your best realistic proposal** to address the relevant sum or sums;
- (d) **if you intend to sell the mortgaged premises but have not yet found a purchaser, bringing with you a letter from an estate agent establishing –**
 - (i) that the premises are on the market;

- Your attention is drawn to the notes appended to this Notice.*

(Signed)

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

DATE OF HEARING:

CASE RECORD No.

DATE FORM COMPLETED:

FINANCIAL STATEMENT/BUDGET FORM FOR COMPLETION IN ADVANCE OF HEARING
OF MORTGAGE ACTION FOR POSSESSION OF RESIDENTIAL PROPERTY

	Weekly*	Monthly*
INCOME		
Net Wages of Defendant 1		
Net Wages of Defendant 2		
Child Benefit		
Other State Benefits (excluding any mortgage assistance) or Tax Credits (not already included in the above figures):		
1.		
2.		
3.		
Pensions		
Contributions from other members of household		
Maintenance		
Mortgage assistance		
Total weekly / monthly income		
OUTGOINGS		
1st Mortgage		
2nd Mortgage		
Rates		
Rent		
Insurance – house / contents		
Insurance – life / endowment		
Unsecured loan(s):		
(1)		
[date of expiry:]		
(2)		
[date of expiry:]		
Childminding		
Credit Card Payment		
Credit Union Loan		
[date of expiry:]		

NB: ** All weekly figures for income or outgoings should be expressed also as monthly amounts.

	Weekly*	Monthly*
Maintenance		
Food		
Milk		
Prescription Charges / Medicine		
Landline Phone		
Mobile Phone		
Heating: oil / gas / coal / other fuel		
Electricity		
Car: Tax: Insurance: Maintenance:		
Petrol / Diesel		
Television / TV Licence		
Bus / train / taxi		
School fees		
School lunches		
Pocket money		
Clothes		
Catalogue		
Pet Food / Veterinary fees		
Toiletries / Nappies		
Cigarettes		
Alcohol		
Hobbies		
Sundries		
TOTAL weekly / monthly outgoings		
TOTAL Income		
TOTAL Outgoings Including Mortgage		
Surplus out of which to address arrears (But see note below)		

NOTE – In addition to the above-mentioned details, the Court must be given details of the following which you must also consider when working out your best realistic proposal to address the default in mortgage payments –

- (a) any source of income or assets not mentioned above;
- (b) any debts or liabilities not mentioned above; and
- (c) any change in circumstances (including any anticipated future change) which may affect your ability to make payments in respect of the plaintiff's mortgage.

Notice of Application to the High Court for bail

(O. 79, r. 2)

In the High Court of Justice in Northern Ireland

Queens Bench Division

(Crown Side)

In the matter of⁽¹⁾ _____ an applicant for bail of⁽²⁾ _____Date of Birth⁽³⁾ _____Take notice that the applicant ordered to be committed to/ detained in⁽⁴⁾ _____
hereby applies to the High Court for an order that he be released from custody⁽⁵⁾

* pending his trial

* pending the hearing of his appeal

upon such terms and conditions as the court may think just.

Case details⁽⁶⁾

Court Location and Date	Offences on which committed and/or detained	Scheduled/ non-scheduled/ Both⁽⁷⁾	Date and Court remanded to	Date of Committal and Court committed to

Name and Station of Police Officer in charge of the case _____

Name(s) of co-accused (if any) _____

Where application is made pending an appeal⁽⁸⁾(a) Applicant is appealing against⁽⁵⁾:

* conviction

* sentence

* conviction and sentence

(b) Sentence imposed _____

(c) Court to which appeal lies _____

(d) Date fixed for hearing (if known) _____

The grounds on which this application is made are as follows⁽⁹⁾:

First Applications Monday – Friday term time

First applications, lodged before noon, will normally be listed for hearing the next working day.

Please indicate if this application will be ready to proceed in this timeframe:

YES		NO	
-----	--	----	--

If no please indicate preferred listing date: _____

First Applications for offences listed in Schedule 9 of the Terrorism Act 2000

First applications lodged in term time after noon on a Thursday and before noon on a Friday will be offered a Saturday morning hearing.

Please indicate if this application could be listed on a Saturday at 9.30 a.m.

YES		NO	
-----	--	----	--

If no please indicate preferred listing date: _____

Second and Subsequent Applications

Second and subsequent applications, for all types of offences, will normally be listed a clear working day after time of receipt of application by the Bail Office.

Please indicate if this application will be ready to proceed in this timeframe:

YES		NO	
-----	--	----	--

If no please indicate preferred listing date: _____

Previous applications (if any) for bail⁽¹⁰⁾ before a magistrates' court and/or the High Court in respect of this offence:

Date	Court	Result

Sureties

In the event of the applicant being admitted to bail the following persons would be willing to stand as surety(ies) for due surrender of the applicant to his bail:

Name⁽¹¹⁾ _____ Name _____
Address _____ Address _____
Occupation _____ Occupation _____

Solicitor details (For completion by the applicant's solicitor):

Name: _____ Firm: _____
Address: _____ E-mail address: _____
Telephone and fax number: _____

Personal Applicants

The Governor of the place of detention must facilitate the signature of this form by applicants who are not legally represented.

Signature of applicant⁽¹²⁾ _____

Date: _____

To: The Central Office, Royal Courts of Justice ⁽¹³⁾ (centraloffice@courtsni.gov.uk)

For office use only:

Date received	Time received

NOTES

- (1) Insert full name of applicant.
- (2) State home address of applicant.
- (3) State date of birth of applicant.
- (4) State place to which he/she has been committed or in which he/she is detained (specify if he/she is a new committal).
- (5) Delete whichever is not applicable.
- (6) It is essential that the correct court and remand date is stated otherwise the application may be delayed.
- (7) Legal Aid will only be considered in respect of scheduled offences.
- (8) If the application for bail is for purpose of appeal, copy notice of appeal MUST be lodged.
- (9) Set out the grounds on which the application is made. No affidavit is required in support of this application.
- (10) Here give date(s) of previous applications, the court to which they were made and the result.
- (11) The name(s) of a surety or sureties may be inserted here although it is not necessary to give these details at this point.
- (12) Where the applicant is not represented by a solicitor, the applicant must sign the application.
- (13) Two copies of this form must be completed. Where completed by the applicant in person they must be sent to the Central Office, Royal Courts of Justice, by the Governor of the prison or other place where the applicant is detained.

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend Order 38 (Evidence) of the Rules of the Supreme Court (Northern Ireland) 1980 so as to allow evidence of any particular fact to be given by live television link, telephone or any other method of direct communication.

These Rules also amend Order 88 (Mortgage actions) so as to –

- include any postal address for the security in the description in the originating summons;
- reflect the requirement for notice to be sent in certain circumstances to prior mortgagees;

Appendix A to the principal Rules is amended by replacing Forms 10A and 10B with a new Form 10A: a single form of notice explaining to mortgagor defendants the procedures in residential property cases, should they wish to apply for time to address their obligations:

- (i) under agreements which are regulated by the Consumer Credit Act 1970; and
- (ii) under agreements which are not so regulated and to which the Court's powers under section 36 of the Administration of Justice Act 1970 and section 8 of the Administration of Justice Act 1973 are applicable.

The new Form 10A includes an explanation of the requirement for production of a letter from an estate agent by a defendant who is seeking time to find a purchaser and complete a sale of the mortgaged property. The new notice will also have attached to it a form of detailed written budget.

These Rules also substitute a new Form 38 (Notice of application to the High Court for bail) into Appendix A of the principal Rules to allow for information regarding readiness to proceed to be included in the notice of application.

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