



Judicature (Northern Ireland) Act 1978

1978 CHAPTER 23

PART V

PRACTICE, PROCEDURE AND TRIALS

54 The Supreme Court Rules Committee

- (1) There shall be a committee known as the Northern Ireland Supreme Court Rules Committee (in this Act referred to as the Rules Committee) which, subject to subsection (2), shall consist of—
 - (a) the Lord Chief Justice who shall be chairman ;
 - (b) four judges of the High Court or the Court of Appeal nominated from time to time by the Lord Chief Justice;
 - (c) a practising member of the Bar of Northern Ireland nominated by the Lord Chancellor ;
 - (d) one other practising member of the Bar of Northern Ireland nominated by the Council thereof ;
 - (e) the president of the Incorporated Law Society of Northern Ireland or a member of the Council thereof nominated by him ; and
 - (f) a practising solicitor nominated by that Council,and shall have the functions conferred on it in relation to the making of rules of court by section 55.
- (2) Where any member of the Rules Committee is unable to act, the Lord Chief Justice or, in the case of a member nominated by any other authority or body, that authority or body may nominate another qualified person to act temporarily in his place.
- (3) Rules of court may be made and other powers of the Rules Committee exercised at a meeting of the Rules Committee by a majority consisting of not less than four members of whom the chairman of the meeting shall be one.
- (4) In the absence of the Lord Chief Justice, the senior judge present shall be chairman of the meeting.

- (5) The joint secretaries to the Rules Committee shall be such persons as the Lord Chancellor, after consultation with the Lord Chief Justice, may from time to time designate and one of the persons so designated shall be either the Principal Secretary to the Lord Chief Justice or another officer serving in the Supreme Court.
- (6) Any expenses incurred by the Rules Committee shall be paid by the Lord Chancellor.

55 Rules of court

- (1) Subject to any statutory provision, the Rules Committee may, with the concurrence of the Lord Chancellor, make rules with respect to—
 - (a) the pleading, practice and procedure in or affecting, and the forms used in connection with, any proceedings before the High Court and the Court of Appeal or any division, office, judge or officer of either such court or any person appointed by, or to assist, it including—
 - (i) the mode of proof of any fact;
 - (ii) the assessment of damages, compensation or other sums;
 - (iii) the payment of money into and out of court;
 - (iv) the circumstances in which and the terms on which a stay of proceedings or execution may be granted or an interim order (including an order authorising interim payments) may be made;
 - (v) costs (including the taxation of costs and security to be given for costs);
 - (vi) the recording of proceedings and the making available of transcripts thereof; and
 - (vii) the impounding and release of documents or exhibits;
 - (b) the conditions subject to which process may be served out of the jurisdiction of the High Court;
 - (c) the manner in which, the time within which and the conditions on which steps in any such proceedings as are mentioned in paragraph (a) may or must be taken ;
 - (d) the transfer of proceedings to or from any such court, division, judge, officer or person as is mentioned in that paragraph;
 - (e) the practice and procedure of the High Court in non-contentious probate business;
 - (f) the practice and procedure to be followed in exercising jurisdiction over the person, property or affairs of persons under any disability; and
 - (g) the extent to which and the circumstances in which documents filed in any such proceedings as are mentioned in paragraph (a) may be inspected and copied.
- (2) Subject to any statutory provision, the Rules Committee may, with the concurrence of the Lord Chancellor, make rules—
 - (a) regulating the sittings of any court, division or judge to which or to whom subsection (1)(a) applies and any sittings of statutory officers or persons appointed by, or to assist, such a court;
 - (b) authorising the exercise by a judge of the High Court of jurisdiction while sitting in chambers and prescribing when a judge exercising such jurisdiction is to be deemed to constitute the High Court or a court of the High Court;

- (c) providing for the distribution of business of the High Court amongst the several divisions of that court;
 - (d) requiring any prescribed part of the jurisdiction of the High Court to be exercised by two or more judges sitting together and fixing the number of judges by whom it shall be exercised ;
 - (e) prescribing what part of the business which may be transacted and of the jurisdiction which may be exercised by the High Court and the Court of Appeal may be transacted or exercised by statutory officers or officers serving in the Supreme Court and providing for the review of any jurisdiction exercised by such officers;
 - (f) regulating or providing for any other matter with respect to which the Committee is authorised to make rules under any other statutory provision (including any other provision of this Act) or for which provision was heretofore contained in rules of court made or deemed to have been made under section 7 of the Northern Ireland Act 1962;
 - (g) regulating or providing for any matter relating to practice or procedure heretofore regulated or provided for by a statutory provision repealed by section 122 and Schedule 7; and
 - (h) generally for the purposes of carrying any of the provisions of this Act into effect.
- (3) Rules made by the Rules Committee may amend or repeal any statutory provision in force immediately before the commencement of this section or any statutory provision (including a provision of this Act) re-enacting any such statutory provision so far as may be necessary or expedient in consequence of provision made by the rules.

56 Control and publication of rules

- (1) Rules made by the Rules Committee shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.
- (2) The Rules Committee shall not, except with the concurrence of the Treasury, make a rule which may involve an increase in expenditure out of public funds; but the validity of such a rule shall not, in any proceedings in any court, be called in question either by the court or by any party to the proceedings on the ground only that the Treasury did not concur or are not expressed to have concurred in the making of the rule.
- (3) The Rules Committee shall be an authority to which section 1(2)(1)(i) of the Statutory Rules Act (Northern Ireland) 1958 applies so that rules made by the Rules Committee shall be statutory rules for the purposes of that Act.
- (4) Such of the joint secretaries to the Rules Committee as the Lord Chancellor may designate shall, in relation to rules of court, be the responsible officer within the meaning of sections 2 and 4 of the Statutory Rules Act (Northern Ireland) 1958.

57 High Court and Court of Appeal to be continuing courts

- (1) The High Court and the Court of Appeal shall be continuing courts with vacations regulated by rules of court.

- (2) Rules of court shall provide for the hearing during vacation by judges and officers of the High Court and the Court of Appeal of all such causes and matters as may require to be immediately or promptly heard.

58 Sittings of High Court and Court of Appeal

- (1) Subject to rules of court, such numbers of judges and courts shall sit as may be required to dispose of the business of the High Court and the Court of Appeal.
- (2) The places at which the High Court and the Court of Appeal sit outside the Royal Courts of Justice and the places outside the Royal Courts of Justice at which any other business of those courts may be conducted shall be determined in accordance with directions given by the Lord Chancellor.
- (3) The High Court may, on the application of any party to an action or issue to be tried by the court, order that the trial be held in some other place if the court is of opinion that it would be more just or convenient for the trial to be so held.

59 Award of costs

- (1) Subject to the provisions of this Act and to rules of court and to the express provisions of any other statutory provision, the costs of and incidental to all proceedings in the High Court and the Court of Appeal, including the administration of estates and trusts, shall be in the discretion of the court and the court shall have power to determine by whom and to what extent the costs are to be paid.
- (2) Save as otherwise provided by any statutory provision passed after this Act or by rules of court, if damages or other relief awarded could have been obtained in proceedings commenced in the county court, the plaintiff shall not, except for special cause shown and mentioned in the judgment making the award, recover more costs than would have been recoverable had the same relief been awarded by the county court.
- (3) Where any statutory provision whether passed before or after the commencement of this Act confers jurisdiction on the High Court or any judge thereof in regard to any matter without expressly conferring jurisdiction to award or deal otherwise with the costs of the proceedings connected with that matter, subsection (1) shall apply so as to authorise the court or judge, in its or his discretion, to award and deal with such costs.
- (4) Nothing in this section shall alter the practice in any criminal cause or matter.

60 Taxation of costs.

- (1) The jurisdiction of the High Court, the Court of Appeal and the Crown Court in relation to the taxation of costs shall be vested in the Master (Taxing Office) or such other statutory officer as may be designated for the purpose by the Lord Chancellor after consultation with the Lord Chief Justice and shall be exercised in accordance with rules of court.
- (2) Costs may be taxed and recovered in any action notwithstanding the death of the party to or against whom those costs were awarded.

61 Trial with assessors.

- (1) In any cause or matter before the High Court or the Court of Appeal, other than a criminal proceeding by or in the name of the Crown, the court may, if it thinks it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear the cause or matter wholly or partly with their assistance.
- (2) The remuneration, if any, to be paid to an assessor shall be determined by the court.

62 Trial with and without jury

- (1) Subject to subsection (2), an action or an issue of fact in an action in the High Court in which a claim is made in respect of—
 - (a) libel;
 - (b) slander;
 - (c) malicious prosecution;
 - (d) false imprisonment;
 - (e) personal injury or death alleged to have been caused by negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract, or of provision made by or under a statutory provision or independently of any contract or any such provision),shall, if any party to the action so requests, be tried with a jury.
- (2) The court may, on the application of any party to an action referred to in subsection (1), order that the action or any (issue of fact in the action shall be tried without a jury if it is of opinion that such trial—
 - (a) will substantially involve matters of account;
 - (b) will require any protracted examination of documents or accounts or any technical, scientific or local investigation which cannot conveniently be made with a jury;
 - (c) will be unduly prolonged ; or
 - (d) is for any special reason (to be mentioned in the order) unsuitable to be tried with a jury.
- (3) Subject to subsection (4), any other action or any issue of fact therein shall be tried without a jury.
- (4) The court may, in any action referred to in subsection (3), order that the action or any issue of fact in the action shall be tried with a jury if it is of opinion that by reason of an allegation of actual fraud or actual undue influence or for some other reason the trial may more suitably be had with a jury.
- (5) Subject to subsections (1) and (3), the High Court may in accordance with rules of court order that different questions of fact arising in any action be tried at different times or by different modes of trial.
- (6) Her Majesty may by Order in Council from time to time amend this section so as to alter the classes of action in which and the terms and conditions on which a trial shall or may be had with a jury.
- (7) No recommendation shall be made to Her Majesty in Council to make an Order under this section unless a draft of the Order has been approved by resolution of each House of Parliament.

63 Trial of challenge for cause in civil actions

Where an action or issue therein is to be tried in the High Court with a jury, any challenge to the array or to the polls for cause shall be tried by the judge before whom the jury is to be empanelled.

64 Jury in civil actions

- (1) The jury for the trial in the High Court of any action or any issue therein shall consist of seven persons, and in relation to such trial sections 41 and 42 of the Juries Act (Ireland) 1871 (which relate to the selection of a jury) shall have effect as if for the word " twelve " wherever occurring there were substituted the word " seven ".
- (2) The trial judge may at his discretion at any stage in the course of such trial discharge the jury or any member or members thereof.
- (3) Where in the course of such trial the jury is discharged, the trial may with the consent of the parties be continued without a jury.
- (4) Where in the course of such trial any member of the jury dies or is discharged by reason of illness or any other cause, the jury shall at the discretion of the judge, so long as the number of its members is not reduced below six, and may with the consent of the parties so long as the number of its members is not reduced below four, be considered as remaining for all purposes properly constituted.

65 Rules of court in relation to juries in civil actions

- (1) Subject to this Act, rules of court may be made concerning the challenging, empanelling and discharge of jurors and juries and the conditions subject to which refreshment may be supplied to them at any stage of the trial of an action or issue therein and may prescribe the number of peremptory challenges, being not less than three or more than six, to be allowed to each party in civil proceedings.
- (2) Unless and until such rules are made, the law in force at the commencement of this Act shall apply to the matters referred to in subsection (1).

66 Certain affidavits taken abroad admissible without proof of seal etc.

A document purporting to have affixed or impressed on it or subscribed to it the seal or signature of a court, judge, notary public or person having authority to administer oaths in England and Wales, Scotland, the Republic of Ireland or any part of the Commonwealth in testimony of an affidavit being taken before it or him in such place shall be admitted in evidence without proof of the seal or signature being the seal or signature of that court, judge, notary public or person.

67 Subpoenas in other parts of the United Kingdom

- (1) In connection with any cause or matter in or pending before the High Court, the Court of Appeal or any inferior court or tribunal in aid of which the High Court may act, a judge of the High Court, or (in the case of a cause or matter in or pending before the Court of Appeal) of the Court of Appeal, may, if satisfied that it is proper to compel—
 - (a) the personal attendance at any proceedings of any witness not within the jurisdiction of the court; or

- (b) the production by any such witness of any document or exhibit at any proceedings,
- order that a writ of subpoena ad testificandum or writ of subpoena duces tecum shall issue in special form commanding the witness, wherever he shall be within the United Kingdom, to attend the proceedings, and the service of any such writ in any part of the United Kingdom shall be as valid and effectual to all intents and purposes as if it had been served within the jurisdiction of the court.
- (2) A writ of subpoena ad testificandum or duces tecum may be issued under this section for the purpose of enforcing any order made by the High Court requiring any person to give evidence respecting any paper or writing being or purporting to be testamentary or to lodge in the Probate and Matrimonial Office any such paper or writing which may be shown to be in his possession or under his control.
- (3) References in subsection (1) to proceedings include references to proceedings before an officer of a court or tribunal, an examiner or commissioner appointed by the court (including an examiner or commissioner appointed to take evidence outside the jurisdiction of the court) or an official or special referee or arbitrator.
- (4) Every writ issued under this section shall have at its foot a statement to the effect that it is issued by the special order of a judge, and no such writ shall issue without such a special order.
- (5) If any person served with a writ issued under this section does not appear as required by the writ, the High Court, on proof to the satisfaction of the court of the service of the writ and of the default, may transmit a certificate of the default under the seal of the court or under the hand of a judge of the court, if the service was in Scotland to the Court of Session in Edinburgh, and if the service was in England or Wales to the High Court of Justice in London, and the court to which the certificate is so sent shall thereupon proceed against and punish the person so having made the default in like manner as if that person had neglected or refused to appear in obedience to process issued out of that court.
- (6) No court shall in any case proceed against or punish any person for having made such default as aforesaid unless it is shown to the court that a reasonable and sufficient sum of money to defray the expenses of coming and attending to give evidence and of returning from giving evidence was tendered to that person at the time when the writ was served upon him.
- (7) Nothing in this section shall alter or affect—
- (a) the power of the High Court to issue a commission for the examination of witnesses out of the jurisdiction of the court in any case in which, notwithstanding this section, the court thinks fit to issue such a commission ;
or
 - (b) the admissibility of any evidence at any trial where such evidence was heretofore by law receivable on the ground of any witness being beyond the jurisdiction of the court, and the admissibility of any such evidence shall be determined as if this section and any statutory provision reproduced by this section had not passed.