

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

Northern Ireland Office
8th December 1978

One of Her Majesty's Principal
Secretaries of State

(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.

SCHEDULE 2

Order 28A to be inserted in the County Court Rules (Northern Ireland) 1976**ORDER 28A****Consumer Credit Act 1974 (Appendix XA)**

1.—(1) An application under section 139(1)(a) of the Consumer Credit Act 1974 (in this Order referred to as “the Act”) for the purpose of re-opening a credit agreement on the ground that it is extortionate shall be made by notice in the Form specified in Appendix XA.

(2) The applicant shall serve the notice of the application on the other party or parties to the agreement (who shall be the respondent or respondents to an application) and a copy of the notice on the clerk of the Crown and peace not less than twenty-eight days before the entry day for the sitting at which the application is to be heard.

(3) Upon receipt of the copy of the notice the clerk of the Crown and peace shall enter the application for hearing at the appropriate sitting of the court for the hearing of ordinary civil bills without the need for production of an entry sheet.

(4) The application shall be made to the court for the county court division in which the applicant resides or, where he is not resident in Northern Ireland, for the county court division in which the respondent or one of the respondents resides.

2.—(1) Where in proceedings by ordinary civil bill, being proceedings such as are specified in section 139(1)(b) of the Act, a defendant desires to have a credit agreement re-opened he shall before entry day 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.

(2) Paragraph (1) shall not apply where notice has been served under rule 17 of Order 12 and the action has been entered for hearing in accordance with that rule.

SCHEDULE 3

Appendix to be substituted for Appendix K of the County Court Rules (Northern Ireland) 1976

APPENDIX K

FORM 1

Default civil bill

ORDER 12, RULE 2

[Title as in Appendix A, Form 1]

The sittings at which this civil bill is intended to be dealt with will commence on the day of 19 and will be held at

THE DEFENDANT therefore is hereby required to appear at the aforesaid Court at the hour of on the day of 19 *, to answer plaintiff's claim set out below.

	£	p
The plaintiff claims		
Amount of Debt		
Particulars of Debt** (Set out particulars of debt with dates and items, if necessary)		
Costs and outlay (if paid within fourteen days of the service of this civil bill)		
Total		

Costs and outlay if paid after fourteen days from service will be payable on a higher scale.

Warning

A Decree may be obtained against you and enforced without further notice—

Unless within 14 days from the day this civil bill is served on you—

EITHER

You pay the amount claimed and the costs to the plaintiff's solicitor†,

OR

You notify both the plaintiff's solicitor and the clerk of the Crown and peace using the annexed Notices that you dispute liability for the claim in whole or in part or intend to make a counterclaim against the plaintiff.

Note: If you either dispute liability for the claim in whole or in part or intend to make a counterclaim you should complete and return both the attached Notices—one to the clerk of the Crown and peace and one to the plaintiff's solicitor†—and you should attend the Court at the time and place stated above when you will have an opportunity of being heard on your defence or counterclaim.

If you dispute liability for the claim in whole or in part or allege a counterclaim and the Court decides against you or if you do not return the annexed Notices but appear at the hearing to dispute liability for the claim in whole or in part or make a counterclaim the costs payable by you may be increased.

Signed

Plaintiff/Plaintiff's Solicitor

Address

Date

*Day for hearing as in court calendar.

**Where there is insufficient space on the civil bill for setting out particulars of the debt refer to and attach such particulars to original and copy civil bill.

†Substitute "plaintiff" if plaintiff is suing in person.

FORM 2

Notice to be posted by defendant to plaintiff or his solicitor**Summary/Default***

ORDER 12, RULES 3 AND 9

[Title as in Form 1]

To [name]

of [address] Plaintiff/Solicitor for the Plaintiff.

TAKE NOTICE that I [name] the defendant herein [*strike out the one of the following lines that does not apply to your case*]

1. Dispute liability for the plaintiff's claim in whole or in part.
2. Have a counterclaim against the plaintiff for [*state particulars of amount and circumstances*].

Signed

Defendant/Defendant's Solicitor

Address

Date

*Delete whichever is inapplicable.

Note: The name and address of the plaintiff's solicitor must be stamped on this Form before it is served on the defendant together with the civil bill.

FORM 3

Notice to be posted by defendant to Clerk of the Crown and Peace

Summary/Default*

ORDER 12, RULES 3 AND 9

[Title as in Form 1]

To the Clerk of the Crown and Peace
[address**]

TAKE NOTICE that I [name] the defendant
herein [strike out the one of the following lines that does not apply to your case]—

- 1. Dispute liability for the plaintiff's claim in whole or in part.
- 2. Have a counterclaim against the plaintiff for [state particulars of amount and circumstances].

Signed Defendant/Defendant's Solicitor

Address

Date

*Delete whichever is inapplicable.

**To be completed by plaintiff or his solicitor.

Note: The name and address of the plaintiff's solicitor must be stamped on this Form before it is served on the defendant together with the civil bill.

FORM 4

Affidavit to obtain a default/summary decree

ORDER 12, RULE 5(1)(b), RULE 11(1)(b)

[Title as in Form 1]

I* [Here insert name, residence, occupation and description]

aged
of

in the County of _____ [the plaintiff in this case**] make oath and say
that the sum of £ _____ being the sum of which the plaintiff now seeks a
Decree is now due and owing by the defendant to the plaintiff over and above all
just and fair allowances and no part thereof has been in any manner paid, satisfied
or discharged [save as hereinafter set out***—

]

The defendant is neither an infant nor a person of unsound mind [and the debt
sued for is not a debt due on foot of a hire purchase or credit sale agreement****].

[I am in the employment of the plaintiff as***** and am duly authorised by
the plaintiff to make this affidavit and it is within my own knowledge that all the
facts above deposed to are true.]

Sworn before me at* _____ this _____ day of _____ in the County
of _____ 19 _____

Deponent.

Signed

Commissioner for Oaths/Justice of the Peace/Solicitor

This Affidavit is filed on behalf of the Plaintiff by his solicitor
of _____

*Please state address with reasonable precision.

**Strike out if plaintiff is not deponent.

***Delete if not applicable.

****To be included where affidavit is to obtain a summary decree. Where affidavit is
to obtain a default decree the words may be deleted.

*****To be included where plaintiff is not the deponent.

FORM 7

Summary civil bill

ORDER 12, RULE 8

[Title as in Form 1]

To the defendant

	£	p
The plaintiff claims		
Amount of Debt		
Particulars of Debt* (Set out particulars of debt with dates and items, if necessary)		
Costs and outlay (if paid within fourteen days of the service of this civil bill)		
Total		

Costs and outlay if paid after fourteen days from service will be payable on a higher scale.

Warning

A Decree may be obtained against you and enforced without further notice—
Unless within 14 days from the day this civil bill is served on you—

EITHER

You pay the amount claimed and the costs to the plaintiff's solicitor

OR

You notify both the plaintiff's solicitor and the clerk of the Crown and peace using the annexed Notices that you dispute liability for the claim in whole or in part or intend to make a counterclaim against the plaintiff.

Note: If you either dispute liability for the claim in whole or in part or intend to make a counterclaim you should complete and return both the attached Notices—one to the clerk of the Crown and peace and one to the plaintiff's solicitor—and you will in due course receive a notice of the day on which you should attend the Court where you will have an opportunity of being heard on your defence or counterclaim.

If you dispute liability for the claim in whole or in part or allege a counterclaim and the Court decides against you, the costs payable by you may be increased.

Signed

Plaintiff's Solicitor.

Address

Date

*Where there is insufficient space on the civil bill for setting out particulars of the debt refer to and attach such particulars to original and copy civil bill.

FORM 10

Solicitor's certificate as to service of summary/default civil bill

ORDER 6, RULE 12 AND ORDER 12, RULES 5(2) AND 11(2)

I, _____, the solicitor personally in charge of the within-named summary/default proceedings on behalf of the plaintiff HEREBY CERTIFY that a true copy of the summary/default civil bill in the action the original of which is attached hereto together with the following enclosures, namely:—

- (a) notice to be posted to the plaintiff or his solicitor (Form 2);
- (b) notice to be posted to the clerk of the Crown and peace (Form 3); and
- * (c) copy particulars of plaintiff's claim,

were posted and contained in an envelope bearing the serial number and date shown on the attached post office receipt by a member of my office staff aged 16 years and upwards and state as follows:—

- (a) the address on the envelope is to the best of my knowledge and belief that of the last known place of abode of the person to be served;
- (b) that the envelope has not been returned to me or my staff as undelivered; and
- (c) that the post office advice of delivery exhibited hereto relates to that envelope.

Signed

Solicitor:

Address

Date

*This paragraph to be included where particulars of claim not fully stated in civil bill, i.e. where separate particulars have been served.

EXPLANATORY NOTE

(This note is not part of the rules but is intended to indicate their general purport).

These rules amend Order 12 of the County Court Rules (Northern Ireland) 1976 as to the procedure in default and summary actions.

They increase the period within which an affidavit of debt may be sworn in a default action to twenty-eight days and the period within which the solicitor's certificate under rule 5(c) or 11(c) (as to payments made by defendant after action commenced) may be given is increased to seven days.

Other minor amendments are made to the summary and default procedure and a new Appendix K (Forms) is substituted for the present one.

Order 5 is amended to remove the requirement as to the particulars previously required to be stated in a civil bill in a moneylender's action and provision is made in the rules for service of notice by the defendant where he desires in accordance with section 139(1)(b) of the Consumer Credit Act 1974 to have a credit agreement re-opened. This is consequent upon the coming into force of sections 137 to 140 of that Act and the repeal of section 1 of the Moneylenders Act 1900 and sections 10 and 11 of the Moneylenders Act (Northern Ireland) 1933 (see the Consumer Credit Act 1974 (Commencement No. 2) Order 1977, S.I. 1977/325).

A new Order 28A has been added to the Rules of 1976 to provide for the procedure upon an application under section 139(1)(a) of the 1974 Act for the re-opening of a credit agreement on the ground that it is extortionate.