

1983 No. 114

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 1983

Made 9th May 1983

Coming into operation 1st June 1983

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, interpretation and commencement

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 1983 and shall come into operation on 1st June 1983.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court (Northern Ireland) 1980(b).

Writ of summons: general provisions

2. Order 6 shall be amended by the insertion of the following rules after rule 2: “*Claim for interest on a debt or liquidated demand under s. 33A of the Act*

2A. Where a plaintiff claims interest on a debt or liquidated demand under section 33A of the Act the indorsement on the writ must state:

- (a) that the plaintiff claims interest under section 33A of the Act;
- (b) the rate of interest claimed and the amount of interest claimed from the date from which interest is claimed to a date not later than the date of issue of the writ; and
- (c) any claim for further interest at the said rate from the date to which interest is already claimed to judgment or sooner payment.

Claim for contractual interest

2B. Where a plaintiff claims interest under a contract, the indorsement on the writ must give particulars of the contract relied on and, in particular, must show:

- (a) the date from which interest is payable;
- (b) the rate or rates of interest fixed by the contract;
- (c) the amount of interest due at a date not later than the date of issue of the writ; and
- (d) any claim for further interest at the contract rate from the date to which interest is already claimed to judgment or sooner payment.

(a) 1978 c. 23

(b) S.R. 1980 No. 346; the relevant amending instruments are S.R. 1981 No. 166, 1982 No. 217 and 1983 No. 5

Claim for interest under the Bills of Exchange Act 1882

2C. Where a plaintiff claims interest under section 57 of the Bills of Exchange Act 1882, the indorsement on the writ must state the date of dishonour of the bill of exchange, the rate of interest claimed and the amount of interest due at a date not later than the date of issue of the writ and must claim this interest and any further interest until judgment or sooner payment."

Interest – default of appearance to writ

3. Order 13, rule 1(2), shall be amended by substituting, for the words from "the claim is for interest accruing" to the end, the words "the claim is for interest under section 33A of the Act at a rate which is not higher than that payable on judgment debts at the date of issue of the writ. A claim for interest at a higher rate shall be treated as a claim for interest to be assessed."

Matters to be specifically pleaded

4. Order 18, rule 8, shall be amended by adding, after paragraph (3), the following new paragraph:—

"(4) A party must plead specifically any claim for interest under section 33A of the Act or otherwise."

Amendment of pleadings

5. Order 20 shall be amended by adding, after rule 11, the following new rule:—

"Amendment of pleadings by agreement

12.—(1) Notwithstanding the foregoing provisions of this Order, any party may amend any pleading in a cause or matter with the consent in writing of the other party or parties at any stage of the proceedings.

(2) This rule shall not have effect in relation to an amendment to a counterclaim which consists of the addition, omission or substitution of a party."

Withdrawal and discontinuance

6. Order 21, rule 2, shall be amended as follows:—

(1) There shall be inserted in paragraph (2), after the words "a defendant", the words "to an action begun by writ".

(2) There shall be inserted in paragraph (3), after the words "to an action", the words "begun by writ".

(3) There shall be inserted after paragraph (3) the following new paragraphs:—

"(3A) The plaintiff in an action begun by originating summons may, without the leave of the Court, discontinue the action or withdraw any particular question or claim in the originating summons, as against any or all of the defendants at any time not later than 14 days after service on him of the defendant's affidavit evidence filed pursuant to Order 28, rule 1A(4) or, if there are two or more defendants, of such evidence last served, by serving a notice to that effect on the defendant concerned.

(3B) When there are two or more defendants to an action begun by originating summons not all of whom serve affidavit evidence on the plaintiff, and the period fixed by or under these rules for service by any of those defendants of his affidavit evidence expires after the latest date on which any other defendant serves his affidavit evidence, paragraph (3A) shall have effect as if the reference therein to the service of the affidavit evidence last served were a reference to the expiration of that period."

Interest – payment into court

7. Order 22, rule 1, shall be amended by adding, after paragraph (6), the following new paragraph:—

“(7) For the purpose of this rule, the plaintiff’s cause of action in respect of a debt or damages shall be construed as a cause of action in respect, also, of such interest as might be included in the judgment, whether under section 33A of the Act or otherwise, if judgment were given at the date of the payment into court.”

Originating summons procedure

8. Order 28 shall be amended as follows:—

(1) In rule 1 the figure “7” shall be substituted for the figure “5”

(2) After rule 1 the following new rule shall be inserted:—

“Affidavit evidence

1A.—(1) In any cause or matter begun by originating summons (not being an ex parte summons) the plaintiff must, before the expiration of 14 days after the defendant has entered an appearance, or, if there are two or more defendants, at least one of them has entered an appearance, file in the appropriate office affidavit evidence on which he intends to rely.

(2) In the case of an ex parte originating summons the applicant must file his affidavit evidence not less than 4 clear days before the day fixed for the hearing.

(3) Copies of the affidavit evidence filed under paragraph (1) must be served by the plaintiff on the defendant, or, if there are two or more defendants, on each defendant, before the expiration of 14 days after appearance has been entered by that defendant.

(4) Where a defendant who has entered an appearance wishes to adduce affidavit evidence he must within 28 days after service on him of copies of the plaintiff’s affidavit evidence under paragraph (3) file his own affidavit evidence in the appropriate office and serve copies thereof on the plaintiff and on any other defendant who is affected thereby.

(5) A plaintiff on whom a copy of a defendant’s affidavit evidence has been served under paragraph (4) may within 14 days of such service file further affidavit evidence in reply and shall in that event serve copies thereof on that defendant.

(6) No other affidavit shall be received in evidence without the leave of the Court.

(7) Where an affidavit is required to be served by one party on another party it shall be served without prior charge.

(8) The provisions of this rule apply subject to any direction by the Court to the contrary.

(9) In this rule references to affidavits and copies of affidavits include references to exhibits to affidavits and copies of such exhibits.”

(3) Rule 2 shall be amended

(a) by substituting in paragraph (1) for the words from “Where, in the case” to “the plaintiff may”, the words “In the case of an originating summons which is in Form No. 6 in Appendix A the plaintiff must, within one month of the expiry of the time within which copies of affidavit evidence may be served under rule 1A,”, and

(b) by substituting in paragraph (2) a comma for the stop at the end and inserting the words “and the time limits for lodging affidavits under rule 1A(2) and (3) shall, where appropriate, be abridged so as to expire, respectively, on the fifth day before, and the next day but one before, the day so fixed.”

(b) by substituting in paragraphs (2) and (3) the words "to which appearance is not required" the words "which is in Form No. 7 in Appendix A".

(4) Rule 3 shall be amended by substituting for the title, the title "Notice of hearing" and by omitting paragraphs (3) and (4).

(5) Rule 3(1) shall be amended by substituting for the words "to which appearance is required to be entered" the words "which is in Form No. 6 in Appendix A".

(6) Rule 3(2) shall be amended by substituting for the words "to which appearance is not required" the words "which is in Form No. 7 in Appendix A".

(7) Rule 4 shall be amended by substituting, for the existing paragraph (2) the following paragraph:—

"(2) In any case where the Court does not dispose of any originating summons altogether at a hearing or orders the cause or matter begun by it to be remitted to a county court, or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof."

Summary order for account

9. Order 43, rule 1, shall be amended as follows:—

(1) After paragraph (1) there shall be inserted the following new paragraph:—

"(1A) A defendant to an action begun by writ who has served a counterclaim, which includes a claim for an account or a claim which necessarily involves taking an account, on—

(a) the plaintiff, or

(b) any other party, or

(c) any person who becomes a party by virtue of such service

may apply for an order under this rule."

(2) In paragraph (3) the words "by the defendant by affidavit or otherwise" shall be omitted.

Judgment for costs without an order

10. Order 62, rule 10(1), shall be amended by inserting, after the words "particular claim made", the words "or question raised" and by inserting, after the words "by him therein", the word "as".

Payments out of Chancery funds

11. Order 92, rule 5(3), shall be amended by substituting for the figure "£500" the figure "£5,000".

Pensions Appeal Tribunals Act 1943

12. Order 101, rule 3(1), shall be amended by substituting for the word "judge" the word 'Court'.

Proceedings relating to solicitors

13. Order 106 shall be amended as follows:

(1) In the definition in rule 1 of "Law Society", the word "Incorporated" shall be deleted.

(2) In rule 10(3) there shall be substituted for the words "14 days" the words "6 weeks".

Dated 3rd May 1983.

(Signed) *Lowry*
Donald Murray
J. B. E. Hutton
J. J. Sheil

I concur,

Hailsham of St. Marylebone, C.

Dated 9th May 1983.

EXPLANATORY NOTE

(This note is not part of the Rules.)

These rules amend the Rules of the Supreme Court (Northern Ireland) 1980 so as to—

- (a) give effect to section 33A of the Judicature (N.I.) Act 1978 (as inserted by Schedule 7 to the Administration of Justice Act 1982), which relates to the power of the Court to award interest on debts and damages (rules 2, 3 and 4);
- (b) to amend the provisions relating to amendment of pleadings (rule 5);
- (c) to make new provisions for originating summons procedure (rules 6, 8 and 10);
- (d) to provide for interest to be included in a payment into court on satisfaction of a claim (rule 7);
- (e) to provide for a summary order for account on a counterclaim (rule 9);
- (f) to make minor amendments to the rules relating to the payment out of funds in court in the Chancery Division and appeals to the Court of Appeal from a Pensions Appeal Tribunal (rules 11 and 12);
- (g) to extend the time for an appeal by a solicitor to a judge of the High Court against an order made by the Disciplinary Committee of the Law Society of Northern Ireland (rule 13).