

1990 No. 269

COUNTY COURTS

**County Court (Amendment No. 2) Rules
(Northern Ireland) 1990**

Made 18th July 1990

Coming into operation 3rd September 1990

We, the County Court Rules Committee, appointed by the Lord Chancellor under Article 46 of the County Courts (Northern Ireland) Order 1980(a), in exercise of the powers conferred on us by Article 47 of that Order and all other powers enabling us in that behalf, hereby make the following rules:—

Citation and interpretation

1.—(1) These rules may be cited as the County Court (Amendment No. 2) Rules (Northern Ireland) 1990.

(2) In these rules a reference to an Order, Rule or Appendix is a reference to that Order, Rule or Appendix as numbered in the County Court Rules (Northern Ireland) 1981(b).

Discovery of documents

2. Order 15 shall be amended as follows—

(a) by substituting for Rule 1 the following new rule:

“Discovery of documents

1.—(1) Any party to any proceedings may give notice in writing to any other party requiring him to make discovery by serving on the party giving such notice a list, in Form 68, of the documents which are or have been in his possession, custody or power relating to any matter in question in the proceedings.

(2) The written notice given in accordance with paragraph (1) shall be in Form 68A.

(3) If the party to whom the notice has been given does not comply with it within fourteen days from its receipt the party who has given the notice may apply to the chief clerk for an order directing the other party to make discovery.

(4) An application under paragraph (3) may be made *ex parte* without notice by lodging with the chief clerk a certificate of application in Form 68B.

(a) S.I. 1980/397 (N.I. 3)

(b) S.R. 1981 No. 225

(5) On the receipt of an application in Form 68B the chief clerk may:

- (a) make an order directing the other party to make discovery; or
- (b) refer the application to the judge in chambers.

(6) The chief clerk, or where the application has been referred to the judge in chambers, the judge may order discovery in Form 68 to be verified by affidavit in Form 68C and make either generally or limited to certain classes of documents as he thinks fit, but discovery shall not be ordered if and so far as it appears that it is not necessary either for disposing fairly of the proceedings or for saving costs.

(7) The chief clerk shall notify the applicant of the outcome of his application.

(8) If an order for discovery is made it shall be drawn up by the chief clerk in Form 69, and served by the applicant on the party against whom it is made.

(9) Any party to the proceedings may on giving at least five days' notice in writing to the other party, appeal to the judge against a decision of the chief clerk to make an order directing discovery, and pending the outcome of the appeal the order made by the chief clerk shall be stayed.

(10) The judge may at any time make an order for discovery on the application of a party notwithstanding that notice in Form 68A has not been given, where the judge is satisfied that there were reasonable grounds for not giving it.

(11) Any order made under this Order (including an order made on appeal) may on sufficient cause being shown be revoked or varied by a subsequent order or direction of the judge made or given at or before the trial of the cause or matter in connection with which the original order was made.

(12) A party who has provided a list of documents in compliance with this rule must allow the other party to inspect the documents included in Part I of Schedule 1 to such list and to take copies thereof.

(13) Without prejudice to Rule 9, a party who has provided a list of documents in compliance with this rule shall not afterwards be at liberty to put in evidence any document not included in Part I of Schedule 1 to such list unless he satisfies the judge that he had some cause or excuse which the judge deems sufficient for not including such document, in which case the judge may allow the document to be put in evidence on such terms as to costs or otherwise, as he thinks fit.”;

(b) in Rule 2—

- (i) in paragraph (1), after the word “possession”, there shall be inserted the word “, custody” and after the words “to the issues,” there shall be inserted the words “and which has not been discovered under Rule 1”;
- (ii) in paragraph (3) the words from “within two days” to “such affidavit, then” shall be deleted,

(iii) in paragraph (6) the words "except such as are referred to in the affidavits of the party against whom the application is made" shall be deleted;

(c) in Rule 5(1) for the words "an affidavit of" there shall be substituted the words "a list of".

Amendment of Appendix 1

3. Appendix 1 shall be amended by substituting for Forms 68 and 69 the new forms set out in the Schedule.

Amendment of Appendix 2

4. Appendix 2 shall be amended by substituting in Part IX for the table of "Solicitor's Costs" under "INTERLOCUTORY APPLICATIONS (other than equity)" the following table—

"Solicitor's Costs"

Instructions and drawing notice of motion or certificate of application for discovery, filing and serving copy	...	£ 6.24
Attending before Judge or Circuit Registrar on notice or ex parte	...	£13.65
Drawing up list of documents under Order 15	...	£25.00 (or such other amount as the Judge or Circuit Registrar may allow)

These items are not to be allowed against the other party unless certified by the Judge, Circuit Registrar or chief clerk."

We, the undersigned members of the County Court Rules Committee, having by virtue of the powers vested in us in this behalf made the foregoing rules, do hereby certify the same under our hand and submit them to the Lord Chancellor accordingly.

*John K. Pringle
John J. Curran
J. F. B. Russell
K. G. Nixon
Raymond T. Kerr
Brian F. Walker
S. D. Massey
Barry Valentine*

Dated 30th May 1990.

After consultation with the Lord Chief Justice, I allow these rules which shall come into operation on 3rd September 1990.

Dated 18th July 1990

Mackay of Clashfern, C.

Forms to be inserted in Appendix 1

FORM 68

List of documents

ORDER 15, RULE 1(1)

[Title as in Form 1]

The following is a list of the documents relating to the matters in question in these proceedings which are or have been in the possession, custody or power of the above-named plaintiff [or defendant] A.B. [and which is served in compliance with the order herein dated the day of 19]

1. The plaintiff [or defendant] has in his possession, custody or power the documents relating to the matters in question in these proceedings enumerated in Schedule 1.
2. The plaintiff [or defendant] objects to produce the documents enumerated in Part II of Schedule 1 on the ground that [stating the ground of objection].
3. The plaintiff [or defendant] has had, but has not now, in his possession, custody or power the documents relating to the matters in question in these proceedings enumerated in Schedule 2.
4. Of the documents in Schedule 2, those numbered in that Schedule were last in the plaintiff's [or defendant's] possession, custody or power on [stating when] and the remainder on [stating when].

[Here state what has become of the documents and in whose possession they now are].

5. Neither the plaintiff [or defendant], nor his solicitor nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description whatever relating to any matter in question in these proceedings, other than the documents enumerated in Schedules 1 and 2.

Schedule 1

PART I

[Here enumerate in a convenient order the documents (or bundles of documents, if of the same nature, such as invoices) in the possession, custody or power of the party in question which he does not object to produce, with a short description of each document or bundle sufficient to identify it.]

PART II

[Here enumerate as aforesaid the documents in the possession, custody or power of the party in question which he objects to produce.]

Schedule 2

[Here enumerate as aforesaid the documents which have been, but at the date of service of the list are not, in the possession, custody or power of the party in question.]

Dated the day of 19 .

Notice to inspect

Take notice that the documents in the above list, other than those listed in Part II of Schedule 1 [and Schedule 2], may be inspected at [the office of the solicitor of the above-named [plaintiff] [defendant] (insert address) or as may be] on the day of 19 , between the hours of and , when copies may be taken.

The defendant [or plaintiff] C.D. and his solicitor.

Served the day of 19 , by of solicitor for the [plaintiff] [defendant].

FORM 68A

Notice requiring discovery

ORDER 15, RULE 1(2)

[Title as in Form 1]

TAKE NOTICE that you are hereby required to make discovery in Form 68 of any documents which are, or have been, in your possession, custody or power relating to any matter in question in these proceedings.

AND FURTHER take note that if you fail to comply with this requirement within fourteen days an application may be made to the chief clerk for an order directing you to make discovery (which may be required to be verified by affidavit) and such application may be made ex parte without further notice to you.

Dated this day of 19 .

Plaintiff/Defendant
Solicitor for Plaintiff/Defendant

Certificate of application for discovery

ORDER 15. RULE 1(4)

[Title as in Form 1]

I, _____
solicitor, of _____
follows:

(name of applicant's solicitor).
(address) hereby certify as

1. I am the solicitor personally in charge of these proceedings on behalf of the plaintiff/defendant ("this party").
2. I beg to refer to true copies of the Civil Bill, Notice for further and better particulars and replies thereto (and copies of correspondence between the parties) annexed hereto.
3. [On the _____ day of _____ 19____, this party applied by notice in writing to the plaintiff/defendant for discovery in these proceedings. I beg to refer to a true copy of the said notice annexed hereto.]*
4. [Notice for discovery has not been given to the plaintiff/defendant because _____].*
5. [To date discovery of the documents so requested has not been made by the plaintiff/defendant.]*
6. This case (has been fixed for hearing at _____ on the _____ day of _____ 19____) (has not been fixed for hearing).
7. I believe that discovery of the said documents is necessary for disposing fairly of the proceedings (and/or for saving costs).
8. I therefore respectfully request an order compelling the plaintiff/defendant to make discovery or such other order as may be directed.

Dated

Signed

Solicitor

Address

*Delete as appropriate

FORM 69

Order for discovery of documents

ORDER 15, RULE 1(8)

[Title as in Form 1]

IT IS ORDERED that on payment by the of the sum of £ into Court as security [or without security given by the] the do within days from the service of this order [*and a copy of the receipt for payment into Court] upon him make discovery by serving on a list of the documents in Form 68 which are or have been in the possession, custody or power of relating to the matters in question in these proceedings, and return such list, to me for filing, and deliver a copy thereof to the

AND IT IS ORDERED that the do at the same time file an affidavit in Form 68C verifying the list of documents and deliver a copy thereof to

AND IT IS ORDERED that the costs of this application be

Dated this day of 19

Signed Chief Clerk

(Seal)

*Add when payment as security ordered.

FORM 68C

Affidavit verifying list of documents

ORDER 15, RULE 1(6)

[Title as in Form 1]

I, the above-named [plaintiff] [defendant] make oath and say as follows:—

1. The Statements made by me in paragraphs 1, 3 and 4 of the list of documents now produced and shown to me marked are true.
2. The Statements of Fact made by me in paragraph 2 of the said list are true.
3. The Statements made by me in paragraph 5 of the said list are true to the best of my knowledge, information and belief.

[conclude as in Form 2]

(This note is not part of the rules.)

These rules amend Rules 1 and 2 of Order 15 and Appendix 1 of the County Court Rules (Northern Ireland) 1981 to revise the procedures relating to discovery of documents.

The rules also amend Appendix 2 of the 1981 Rules to specify the solicitor's costs payable in relation to the revised procedure.