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STATUTORY RULES OF NORTHERN IRELAND

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**2001 No. 254**

**SUPREME COURT, NORTHERN IRELAND  
PROCEDURE**

The Rules of the Supreme Court  
(Northern Ireland) (Amendment) 2001

Made - - - - 23rd June 2001

To be laid before Parliament.

Coming into operation 5th September 2001

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<sup>(1)</sup> 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) 2001 and shall come into operation on 5th September 2001.

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

**Arrangement of Orders**

2. In the entry for Order 1 in the Arrangement of Orders at the beginning of the principal Rules after the word “Citation” there shall be inserted the words “overriding objective,”.

**The overriding objective**

3. After Order 1, rule 1, there shall be inserted the following new rule—

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(1) 1978 c. 23

(2) S.R. 1980 No. 346; to which the most recent relevant amendments were made by S.R. 1991 No. 334, S.R. 1992 No. 399, S.R. 1995 No. 2, S.R. 1996 No. 283, S.R. 1997 No. 265 and S.R. 1999 No. 333

**“The overriding objective**

**1A.**—(1) The overriding objective of these Rules is to enable the Court to deal with cases justly.

- (2) Dealing with a case justly includes, so far as is practicable—
  - (a) ensuring that the parties are on an equal footing;
  - (b) saving expense;
  - (c) dealing with the case in ways which are proportionate to—
    - (i) the amount of money involved;
    - (ii) the importance of the case;
    - (iii) the complexity of the issues; and
    - (iv) the financial position of each party;
  - (d) ensuring that it is dealt with expeditiously and fairly; and
  - (e) allotting to it an appropriate share of the Court’s resources, while taking into account the need to allot resources to other cases.
- (3) The Court must seek to give effect to the overriding objective when it—
  - (a) exercises any power given to it by the Rules; or
  - (b) interprets any rule.”.

**Contents of affidavit**

- 4.** For Order 41, rule 5 there shall be substituted the following new rule—
  - “**5.** An affidavit may contain statements of information or belief with the sources and grounds thereof.”.
- 5.** In Order 86, rule 2(1) the words from “Unless the Court” to the end shall be omitted.
- 6.** In Order 113, rule 3 the words from “and unless the Court” to the end shall be omitted.
- 7.** The following rules shall be omitted and the principal Rules shall be renumbered, as appropriate—
  - (a) Order 14, rule 2(3) and rule 4(2);
  - (b) Order 116, rule 3(4), rule 10(2), rule 20(4), rule 21(3), rule 30(7) and rule 34(2); and
  - (c) Order 118, rule 9(1).

**Service of notice of judgment on person not a party**

- 8.** Order 44, rule 2(1) shall be amended as follows –
  - (i) in sub-paragraphs (a) and (b) the word “or” shall be omitted;
  - (ii) in sub-paragraph (c) there shall be added at the end the word “or”; and
  - (iii) after sub-paragraph (c) there shall be added the following new sub-paragraph—
    - “(d) the possession of land.”.

**Short Form Taxation**

- 9.** Order 62, rule 32A shall be amended by substituting for paragraph (1) the following new paragraph—

“(1) Where one or more items of disbursement are in dispute between the parties the Taxing Master may conduct a taxation in accordance with this rule (hereinafter referred to as “short form taxation”).”.

### **Mortgage actions**

**10.** Order 88 shall be amended as follows—

- (a) after rule 1(1)(g) there shall be added the following new sub-paragraph—
  - “(h) an enforcement order or a time order where a regulated agreement is secured by a mortgage.”;
- (b) for paragraph (2) of rule 1 there shall be substituted the following new paragraph—
  - “(2) In this Order—
    - “the Act of 1974” means the Consumer Credit Act 1974(3);
    - “enforcement order”, “time order” and “regulated agreement” have the same meaning as in section 189(1) of the Act of 1974; and
    - “mortgage” includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.”;
- (c) in rule 2—
  - (i) in sub-paragraph (a) the word “or” where it appears for the second time shall be omitted;
  - (ii) in sub-paragraph (b) there shall be added at the end the word “or”; and
  - (iii) after sub-paragraph (b) there shall be added the following new sub-paragraph—
    - “(c) an enforcement order or a time order where a regulated agreement is secured by a mortgage of any such property”;
- (d) paragraph (5) of rule 4 shall be omitted and the principal Rules shall be renumbered accordingly;
- (e) for rule 4A there shall be substituted the following new rule—

#### **“Claim for possession: notice to be sent to defendant in default of payment**

**4A.—**(1) Where the plaintiff—

- (a) claims in a mortgage action delivery of possession of land 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,

he shall, when serving a copy of the notice of appointment or when serving any summons (not being an originating summons) for such a claim or application, also serve on the defendant—

- (i) where the mortgaged property comprises or includes a dwelling house and the secured monies comprise or include indebtedness other than as described in (ii), a notice in Form No.10A in Appendix A;

(ii) where the secured monies comprise or include a debt under either a regulated agreement or a security provided for such an agreement, a notice in Form No.10B in Appendix A.

(2) Paragraph (4) of rule 4 shall apply to service of a notice under this rule as it applies to service under paragraph (2) or (3) of that rule save that a copy of the notice in Form 10A or 10B, as the case may be, shall be attached to the certificate proving service.”;

(f) After rule 4A there shall be inserted the following new rule—

**“Claim for possession of land: notice to occupiers**

**4B.—**(1) This rule applies where the plaintiff –

- (a) claims in a mortgage action delivery of possession of land, or
- (b) applies for the removal or variation of a stay or suspension contained in an order for delivery of possession as a result of such a claim made in a mortgage action.

(2) Where the plaintiff believes that someone other than the defendant is in occupation of the property he shall not less than four clear days before the day fixed for the first hearing of the summons or application serve on the person believed to be in occupation of the property a notice in Form No.10C in Appendix A.

(3) Where the plaintiff is not aware that any person other than the defendant is in occupation of the property, he shall, not less than four clear days before the date fixed for the first hearing of the summons or application and unless the Court otherwise directs, affix to the main door or other conspicuous part of the property a notice in Form No.10C or (if practicable) post to, or insert through the letter-box at, the property a sealed envelope containing such a notice addressed to the occupiers (not being the defendant) of the property without naming them.

(4) Paragraph (4) of rule 4 shall apply to service of a notice under this rule as it applies to service under paragraph (2) or (3) of that rule save that a copy of the notice in Form No.10C shall be attached to the certificate proving service.”;

(g) for paragraph (2) of rule 5 there shall be substituted the following new paragraph—

“(2) The affidavit must exhibit—

- (a) the original mortgage or a true copy thereof, and
- (b) where the mortgage secures a regulated agreement, the original agreement or a true copy thereof

and the original mortgage (or, in the case of a registered charge, the certificate of charge) and the original agreement must be produced at the hearing of the summons.”;

(h) for paragraph (2A) of rule 5 there shall be substituted the following new paragraph—

“(2A) The affidavit must state whether the debt which is secured by the mortgage arose under a regulated agreement and, if so, specify—

- (a) the date on which any notice required by section 76 or section 87 of the Act of 1974 was given,
- (b) where the plaintiff has obtained or is now applying for an enforcement order, particulars of any enforcement order obtained or, as the case may be, the circumstances which render such an order necessary, and
- (c) the amount of a day’s interest.”;

- (i) for sub-paragraph (b) of rule 5(3) there shall be substituted the following—
  - “(b) the amount of the periodic repayments and payments of interest required to be made;
  - (bb) the rate of interest payable—
    - (i) at the commencement of the mortgage;
    - (ii) at the commencement of the proceedings; and
    - (iii) at the date of the affidavit.”;
- (j) for sub-paragraph (a) of rule 5(4) there shall be substituted the following new sub-paragraph—
  - “(a) give particulars of the inquiries made as to the occupation of the mortgaged property and of the plaintiff’s knowledge, information and belief as to—
    - (i) whether or not the property is occupied; and
    - (ii) if it is believed to be occupied, the identity of every person believed to be in occupation.”.
- (k) in rules 5(4)(b) and 5A(2)(f)(ii) after the words “Order 1984” there shall be inserted the words “or Article 6 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998(4)”.

### **Forms**

**11.** For Form No.1 in Appendix 4 to Order 62 there shall be substituted the new Form No.1, and after Form No. 10A in Appendix A there shall be inserted the new Forms No. 10B and No. 10C, set out in the Schedule to these Rules.

### **Savings**

**12.** Nothing in these Rules shall affect any proceedings which are pending immediately before these Rules come into operation and the rules in operation before that day shall continue to apply to those proceedings.

*R. D. Carswell  
Anthony Campbell  
Brian Kerr  
Hugh P. Kennedy  
Caroline A. McGonigle  
Tony Caher*

Dated 6th June 2001.

I concur

Dated 23rd June 2001.

*Irvine of Lairg, C.*

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SCHEDULE

rule 11

Form No. 1 Application for Short Form Taxation (Order 62, Rule 32A)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND 20 No

TAXING OFFICE

BETWEEN:

Plaintiff

AND

Defendant

PART A: BACKGROUND

[There give brief particulars of the nature of the case in which the Order for Taxation was obtained]

PART B: DISPUTED ITEMS

AMOUNT	VAI	TAXED OFF
£	£	[for completion by Master if appropriate]

ITEMS IN DISPUTE

(each item of disbursement in dispute should be listed separately and individually numbered)

1.	£	£
2.	£	£

Costs of Taxation

(i) Preparation of Bill and ancillary papers; attending taxation, vouching and completing taxation,

(i) hours @ £ <sup>(1)</sup> per hour	£
(ii) Uplift for care and conduct @ 50%	£ _____ £

Dated this day of 20 .

Signed

Solicitors for the Plaintiffs/Defendants<sup>(2)</sup>

(1) Insert as appropriate  
(2) Delete as appropriate

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Address .....  
.....  
.....  
Telephone No. ....

**PART C: FOR OFFICE USE ONLY**

**SUMMARY OF TAXATION OF DISPUTED ITEMS**

	CLAIMED	VAT	TAXED OFF
Less taxed off			
Add VAT on items allowed			
Add costs of Taxation			
Add VAT thereon			
Add STAMP DUTY on taxed item			
			<hr/>
TOTAL COSTS TAXED AND ALLOWED			<hr/>

No. 10B Notice to Defendant in lender's action for possession on default of payment in respect of regulated agreement secured by mortgage

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(O.88 r.4A)

[Teading as in summons]

To: [name of defendant] of [address]

Take Notice that:—

1. The Court has statutory power to make a time order in respect of a debt secured by mortgage where that debt arises under a regulated agreement within the meaning of the Consumer Credit Act 1974 (“the Act”). A time order may provide 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. The Court must in its consideration of whether to make a time order, and if so upon what terms, have regard to the means of the debtor and any surety and the interests of the creditor. When making a time order (or any other order relating to a regulated agreement) the Court also has power to vary the regulated agreement or the mortgage or other security in consequence of a term of the order and to suspend (either until such time as the Court subsequently directs or until a specified act or omission occurs) or make conditional (on the doing of specified acts by a party to the proceedings) the operation of any terms of the order.

2. Those powers are set out in Part IX of the Act and in particular sections 129, 130, 135 and 136. A time order may be made if it appears to the Court just to do so:

- (i) on an application by the creditor for an enforcement order (an order as defined in section 189(1) of the Act and giving leave to enforce notwithstanding a failure by the creditor to comply with certain procedural requirements as specified in the Act); or
- (ii) on an application made by the debtor after service of a default notice in accordance with sections 87 and 88 of the Act in respect of a breach of the regulated agreement (or service of a notice in non-default cases under section 76(1) or 98(1) of the Act); or
- (iii) in an action brought by the creditor to enforce a regulated agreement or any security or recover possession of goods or land to which a regulated agreement relates.

3. There are a number of steps you should immediately consider taking if you want the Court in these proceedings to exercise its discretion under those powers in your favour, namely—

- (a) consulting a solicitor or taking other advice (for example, from the Housing Rights Service or a branch of the Citizen’s 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 arrears of payments due in respect of the regulated agreement if necessary by regular payments over a period of time in addition to the normal regular payments you are required to make, or to address the entire



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debt arising in respect of the regulated agreement by payments over a period of time involving a variation in the payment terms and obligations under the regulated agreement or (so far as provided to secure the regulated agreement) the mortgage or other security;

- (c) **working out carefully what you consider to be your best realistic proposal** to discharge the arrears which have arisen on the entire regulated agreement debt: if you (with help of your advisers, if any) cannot realistically propose that you discharge the relevant sums out of resources other than the mortgaged property itself, you should consider whether you should try to sell the mortgaged property (or, if practical, a part of it) in order to discharge the entire debt, with a view to seeking the exercise of the Court's discretion so as to give you an adequate opportunity to sell the property;
- (d) **attending the hearing** as detailed in the notice of appointment or summons that has been served on you, where you should be in a position to provide:-
  - (i) an explanation for the default in meeting your obligations under the regulated agreement or the mortgage;
  - (ii) details of your financial and other relevant circumstances;
  - (iii) your best realistic proposal to discharge the outstanding debt or the arrears of instalments together with any normal instalments that become due;
  - (iv) any proposal for change to the payment terms and obligations under the regulated agreement, mortgage or other security for the regulated agreement debt that you consider might be necessary to facilitate your proposal;
- (e) **bringing to the hearing documents** to vouch details of your financial and other relevant circumstances (for example, your current or prospective salary, employment prospects and/or state benefits) and, where appropriate, documents relating to your endeavours to sell the premises or to obtain a new loan on the security of the mortgaged property.

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

Dated this     day of                     20     .

(Signed)

Solicitor for the Plaintiff

## NOTES

(1) Details of the matters set out in paragraph 3(b), (c) and (d) should, wherever possible, be provided to the Court in advance of your attendance at the hearing, preferably by way of affidavit or affidavits exhibiting copies of all the relevant documents and sworn by you and any other witnesses whose evidence you wish the Court to take into account. **Affidavits should be filed in the Chancery Office, Room 1-19A, First Floor, Royal Courts of Justice, Chichester Street, BELFAST BT1 3JF.** Where it is not possible to provide the documents and information referred to in advance of the hearing by way of affidavit, the Court may be prepared to consider oral evidence of those matters at the hearing or may adjourn the hearing to ensure that those matters are put on affidavit.

(2) Where the mortgage which secures the regulated agreement affects a dwelling-house and ALSO secures money which did NOT arise under a regulated

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agreement within the meaning of the Consumer Credit Act 1974 (or a security provided for such an agreement) you should refer also to the powers of the Court and the (very similar) procedure described in a form headed "Notice to Defendant in lender's action for possession of dwelling-house on default of mortgage payment" served upon you together with this Notice. It is likely that a single affidavit covering both the regulated agreement debt and the other secured sums would be sufficient.

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

No.10C Notice to non-defendant occupier in lender's action for possession of land (O.88, r.4B)

[Heading as in summons]

To: [Name of occupier, where known] [Person or Persons Unknown (other than the above-named defendant(s)) occupier or occupiers of the property] [address or other sufficient description of the mortgaged property]

Take notice that:—

1. In these proceedings the plaintiff is claiming delivery by the defendant(s) of possession of the above-mentioned property pursuant to a mortgage/charge between the parties. [By an order of this Court on the defendant(s) was/were required to deliver possession of the property to the plaintiff but the order was stayed or suspended and the plaintiff has now issued a summons asking the Court to remove the stay or suspension and give the plaintiff permission to enforce the order against the defendant(s)].

2. If you consider you have a right which should be determined in these proceedings you may apply to be added as a defendant in accordance with the Rules of the Supreme Court (Northern Ireland) 1980 and, in particular, Order 15 of those rules. Any such application should be made as soon as possible.

3. The plaintiff's application is listed for hearing before the Master (Chancery), Room 1-16, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF at            on        day of            20    . If you wish to be added as a defendant but it is not possible for you to comply with the relevant rule or rules by the filing of an application and an affidavit in the Chancery Office, Room 1-19A, First Floor, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF, in advance of the hearing, the Court may be prepared to consider oral evidence as to your claim (if any) at the hearing and, if appropriate, add you as a defendant, or may adjourn the hearing to give you time to file an application to be added as a defendant and your affidavit evidence.

Dated the        day of            20    .

(Signed)

Solicitor for the plaintiff

[address]

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## 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) implement recommendations 1 (overriding objective) and 51 (taxation of single item) of the Final Report of the Civil Justice Reform Group (Rules 2, 3, 9 and 11);
- (b) ensure that all persons in occupation of mortgaged properties are afforded adequate notice of proceedings for possession or made parties to such proceedings (Rules 8, 10 and 11);
- (c) take account of the Civil Evidence (Northern Ireland) Order 1997 (Rules 4 to 7);
- (d) take account of the Consumer Credit Act 1974 insofar as it relates to regulated agreements secured by mortgage (Rules 10 and 11);
- (e) take account of Article 6 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 in the context of applications relating to mortgaged properties (Rule 10);
- (f) ensure that copies of exhibits to the plaintiff's grounding affidavits in mortgage actions for possession are served on defendants who do not enter appearances (Rule 10); and
- (g) ensure that sufficient particulars of mortgage interest are available (Rule 10).