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STATUTORY RULES OF NORTHERN IRELAND

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**2002 No. 202**

**SUPREME COURT, NORTHERN IRELAND  
PROCEDURE**

The Rules of the Supreme Court (Northern  
Ireland) (Amendment No. 2) 2002

*Made* - - - - *17th April 2002*

*To be laid before Parliament*

*Coming into operation* *21st June 2002*

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 No. 2) 2002 and shall come into operation on 21st June 2002.

(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 Arrangement of Orders at the beginning of the principal Rules—

- (a) in the entry for Order 83 for the words “Reopening of agreements under The Consumer Credit Act 1974” there shall be substituted the words “The Consumer Credit Act 1974”; and
- (b) in the entry for Order 112 for the words “blood tests” substitute the words “scientific tests”.

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<sup>(1)</sup> 1978 c. 23

<sup>(2)</sup> S.R. 1980 No. 346 to which the most recent relevant amendments were made by S.R. 1989 No. 287, S.R. 1992 No. 399, S.R. 1996 No. 321, S.R. 2001 No. 254

### **Consumer Credit Act 1974**

3. For Order 83 there shall be substituted the new Order set out in Schedule 1 to these Rules.

### **Mortgage Actions**

4. Order 88 shall be amended as follows—

- (a) by substituting for rule 4B the following new rule—

“**4B.**—(1) Where the plaintiff—

- (a) claims in a mortgage action delivery of possession of land which comprises or includes a dwelling house, 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,

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, post to or insert through the letter box at the property a sealed envelope addressed to “The Occupier” and containing a notice in Form 10C of 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 10C shall be attached to the certificate proving service”;

- (b) by adding at the end of rule 5A the following new paragraph—

“(3) In an action to which this rule applies the court may direct an account to be taken of all incumbrances subsequent as well as prior to or contemporaneous with the plaintiff’s demand and an inquiry as to their respective priorities and the court may make an order for delivery of possession conditional on the result of such an account and inquiry.”

### **Tests for Determining Parentage**

5. In Order 112—

- (a) for the heading, substitute “APPLICATIONS FOR USE OF SCIENTIFIC TESTS IN DETERMINING PARENTAGE”;
- (b) for the words “blood samples”, wherever they appear, substitute the words “bodily samples”; and
- (c) for the words “blood tests”, wherever they appear, substitute the words “scientific tests”.

### **Declaration as to Parentage, Legitimacy or Legitimation**

6. Rules 2 to 3A, 6(a) and 18(1) of Order 98 are hereby revoked.

### **Forms**

7. Appendix A shall be amended as follows—

- (a) for Form No. 10C there shall be substituted the new Form 10C in Schedule 2 to these Rules;
- (b) in the heading to Form No. 48 the words “[PARENTAGE] [LEGITIMACY OR LEGITIMATION]” shall be deleted; and
- (c) Forms No. 48B and 48D are revoked.

**Saving**

8. The amendments to the principal Rules made by these rules shall not apply in respect of proceedings commenced before 21st June 2002.

*R. D. Carswell  
Anthony Campbell  
Brian Kerr  
M. P. Girvan  
Hugh P. Kennedy  
Caroline McGonagle  
Tony Caher*

Dated 17th April 2002

I concur

Dated 23rd May 2002.

*Irvine of Lairg, C.*

SCHEDULE 1

Rule 3

“Order 83

**The Consumer Credit Act 1974**

**Interpretation**

1. In this Order—

“the Act” means The Consumer Credit Act 1974(3) and a section referred to by number means the section so numbered in the Act and expressions which are defined in the Act have the same meaning in this Order as they have in the Act; and

a reference to proceedings or claims which relate to a regulated agreement shall be deemed to include a reference to proceedings or claims which relate to a security for a regulated agreement or to a debt or other liability arising under a regulated agreement.

**Assignment of business**

2. Proceedings under the Act shall be assigned to the Queen’s Bench Division, with the exception of proceedings relating to an agreement secured by a mortgage which shall be assigned to the Chancery Division.

**Commencement of proceedings**

3.—(1) Save as otherwise provided in these Rules, proceedings under the Act may be commenced by writ or originating summons.

(2) Where proceedings brought by the creditor relate to a regulated agreement the originating process shall contain a statement clarifying which claim or claims relate to a regulated agreement.

**Default of appearance or defence**

4.—(1) Notwithstanding Order 13 or Order 19, no judgment in default of appearance or in default of defence in respect of claims which relate to a regulated agreement may be entered without the leave of the court unless the writ of summons contains a statement as required by rule 3(2) and there is produced a certificate by the plaintiff’s solicitors or (if he sues in person) an affidavit stating that—

- (a) the regulated agreement is not secured by a mortgage;
- (b) a default notice in proper form as required by sections 87 and 88 was duly served in sufficient time before the commencement of proceedings and has not been complied with by the debtor or surety;
- (c) it is not necessary to apply for an enforcement order granting leave to enforce (the creditor having complied with the relevant requirements of the Act and regulations made thereunder);
- (d) there has been no breach of the requirement in section 141(5) as to the joinder of parties to the proceedings; and
- (e) no notice of intention to apply for a time order or notice of intention to have a credit agreement reopened as extortionate has been filed in the Central Office or the Chancery Office (as the case may be) or received by the plaintiff.

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(3) 1974 c. 39

(2) Notwithstanding Order 65 rule 9, where the leave of the Court is required for judgment in default of appearance or defence, the summons and a copy of the affidavit must be served on every other party to the proceedings.

### **Joinder of parties**

5.—(1) Where the debtor or any surety has not been served with a writ or originating summons commencing proceedings relating to a regulated agreement, the Court may, on an application which may be made ex parte and shall be grounded upon an affidavit, dispense with the requirement in section 141(5) (all parties to a regulated agreement and any surety to be parties to any proceedings).

(2) In proceedings relating to a regulated agreement where—

- (a) the plaintiff was not one of the original parties to the agreement, and
- (b) the former creditor's rights and duties under the agreement have passed to the plaintiff by operation of law or assignment,

the requirement in section 141(5) shall not apply to the former creditor, unless the Court shall otherwise direct.

(3) Notice of an application under paragraph (1) shall be served on such person as the Court may direct.

(4) This rule shall apply without prejudice to Order 15.

### **Action to recover possession of goods under a regulated hire-purchase agreement**

6. In an action to recover possession of goods under a regulated hire-purchase agreement the statement of claim or (as the case may be) the affidavit filed in support of the originating summons shall include the following particulars—

- (a) the date of the agreement and the parties thereto, with sufficient particulars to enable the debtor to identify the agreement, and details of any sureties;
- (b) where the plaintiff was not one of the original parties to the agreement, the means by which the rights and duties of the creditor under the agreement passed to him;
- (c) a statement that the agreement is a regulated agreement;
- (d) the place where the agreement was signed by the debtor (if known);
- (e) whether a default notice or a notice under section 76(1) has been served on the debtor, and the date and method of service;
- (f) the goods claimed;
- (g) the total price;
- (h) the amount paid by or on behalf of the debtor;
- (i) the date when the right to demand recovery of the goods accrued;
- (j) the amount of arrears accrued at the date when the right to demand recovery of the goods accrued;
- (k) the amount of any further balance under the agreement being the total price less—
  - (a) the amount paid; and
  - (b) any arrears; and
- (l) the amount (if any) claimed in addition to the delivery of the goods, stating the cause of action in respect of which each such claim is made.

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### **Particulars to be given in other claims arising out of a regulated hire-purchase agreement**

7. Where a plaintiff's claim arises out of a regulated hire-purchase agreement but is not brought to recover possession of goods, the statement of claim or (as the case may be) the affidavit filed in support of the originating summons shall include the following particulars—

- (a) the date of agreement and the parties thereto, with sufficient particulars to enable the debtor to identify the agreement, and details of any sureties;
- (b) where the plaintiff was not one of the original parties to the agreement, the means by which the rights and duties of the creditor under the agreement passed to him;
- (c) a statement that the agreement is a regulated agreement;
- (d) the place where the agreement was signed by the debtor (if known);
- (e) whether a default notice or a notice under section 76(1) has been served on the debtor, and the date and method of service;
- (f) the goods let under the agreement;
- (g) the total price;
- (h) the amount paid by or on behalf of the debtor;
- (i) the amount (if any) claimed as being due and unpaid in respect of any instalment or instalments of the total price; and
- (j) particulars of any other claim and the circumstances in which it arises.

### **Conditional sale agreements**

8. The provisions of rules 6 and 7 shall apply to conditional sale agreements as they apply to hire-purchase agreements subject to the following modifications—

- (a) for any reference to the debtor there shall be substituted a reference to the buyer; and
- (b) for any reference to a hire-purchase agreement or to goods let under the agreement, there shall be substituted a reference to the conditional sale agreement, or to goods to be sold under the agreement, as the case may be.

### **Enforcement Orders**

9.—(1) Subject to paragraph (2), an application for an enforcement order shall be made by originating summons.

(2) If, apart from the need to obtain an enforcement order, a creditor is entitled to payment of the money or to possession of the goods or land to which the regulated agreement relates, an application for an enforcement order shall be made in the course of an action to enforce the agreement.

(3) The writ or originating summons commencing proceedings in which an enforcement order is sought shall be endorsed with or contain a statement of the circumstances rendering such an order necessary.

### **Orders under section 86(2), 92(1) or 92(2)**

10. Rule 9 shall apply to an application for an order under section 86(2) (enforcement of a partly secured or unsecured regulated agreement on the death of the debtor or hirer), 92(1) (entry into premises to take possession of goods), or 92(2) (recovery of possession of land where debtor is in breach of a regulated conditional sale agreement) as it applies to an enforcement order.

## **Time Orders**

11.—(1) An application under section 129(1)(b) for a time order shall be made by originating summons supported by an affidavit which shall include the following particulars—

- (a) the date of the agreement and the parties to it, with sufficient particulars to enable the creditor to identify the agreement, and details of any sureties;
- (b) if the creditor was not one of the original parties to the agreement, the name of the original party to the agreement;
- (c) the place where the agreement was signed by the debtor;
- (d) details of the notice served by the creditor giving rise to the application;
- (e) the total unpaid balance admitted to be due under the agreement and the amount of any arrears (if known) together with the amount and frequency of the payments specified by the agreement;
- (f) the debtor's proposals as to payment of any arrears and of future instalments together with the reasons for the relevant breach of the agreement and details of his means; and
- (g) where the application relates to a breach of the agreement other than the non-payment of money, the reasons for that breach and the debtor's proposals for remedying the breach.

(2) Where in proceedings (other than mortgage actions to which Order 88 rule 4A applies) commenced by a creditor, a debtor or surety wishes to apply for a time order under section 129(1)(a) or section 129(1)(c), he shall forthwith file and serve on the other party or parties to the proceedings a notice of his intention so to apply.

(3) If at the time of serving a notice under paragraph (2) the debtor or surety has not entered an appearance in the proceedings the notice must specify an address for service as if it were a memorandum of appearance.

(4) After a notice under paragraph (2) has been served in an action begun by writ, judgment in default of appearance or in default of defence shall not be entered without the leave of the Court.

(5) An application for leave under paragraph (4) must be made by summons supported by affidavit and, notwithstanding anything in Order 65 rule 9, the summons and a copy of the affidavit must be served on every other party to the proceedings.

## **Powers of Court: regulated agreements**

12.—(1) On the hearing of any application in proceedings which relate to a regulated agreement and, without prejudice to any of the Court's other powers under the Act or otherwise, the Court may, whether or not the debtor or surety has entered an appearance, served any pleading or filed or served a notice under rule 11 or appears at the hearing, exercise the powers of the Court under sections 129 to 136.

(2) Where, on an application for leave to enter judgment in default of appearance or defence the Court refuses such leave in respect of a claim or any part of a claim, it may make or give any such order or direction as it might have made or given if the application had been an application under Order 14 rule 1 or Order 86 rule 1 (as the case may be).

## **Application for variation, revocation etc of orders**

13. An application for an order under section 130(6) (variation or revocation of time orders), 133(6) (revocation and payment after breach of return orders or transfer orders) or 135(4) (variation of conditional or suspended orders) may be made by summons issued in the same action or proceedings in which the order to be varied or revoked was made.

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### **Re-opening of extortionate agreements**

14.—(1) Where a defendant desires to have a credit agreement reopened in accordance with section 139(1)(b) or (c) he shall forthwith file and serve on the other party or parties to the proceedings a notice to that effect.

(2) If at the time of serving a notice under paragraph (1) the debtor or surety has not entered an appearance in the proceedings, the notice must specify an address for service as if it were a memorandum of appearance.

(3) After a notice under paragraph (1) has been served in an action begun by writ, judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(4) An application for leave under paragraph (3) must be made by summons supported by affidavit, and notwithstanding anything in Order 65 rule 9, the summons and a copy of the affidavit must be served on every other party to the proceedings.

(5) On the hearing of an application for leave under paragraph (3) or of any proceedings in which a notice under paragraph (1) has been filed, the Court may, whether or not the debtor or surety has entered an appearance or appears at the hearing, exercise the powers of the Court under sections 137 to 140.

(6) Where, on an application under paragraph (3), the Court refuses leave to enter judgment on a claim or any part of a claim, it may make or give any such order or direction as it might have made or given if the application had been an application under Order 14 rule 1 or Order 86 rule 1 (as the case may be) for judgment on the claim.

### **References to the Act and regulations**

15. Every process issued under the Act shall be endorsed with a statement identifying the particular provision of the Act and any regulation made thereunder pursuant to which relief is sought.

## SCHEDULE 2

Rule 4

### **No. 10C Notice to occupier in lender's action for possession of land**



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(O.88, r.4B)

[Heading as in summons]

To: The Occupier or occupiers of the property [address 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 are not already a defendant but 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), First Floor, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF at \_\_\_\_\_ am/pm 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)

\* If you are already a defendant in these proceedings you are asked to bring this notice to the attention of every other person who might be regarded as being in occupation of the above-mentioned property.

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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 (the principal Rules) to—

- (a) substitute a new Order 83 which in addition to making provision for existing procedures relating to the re-opening of extortionate agreements:
  - (i) prevents default judgments being obtained in writ actions without the leave of the Court in circumstances where that would appear to be inconsistent with the scheme of protection for consumers under the Consumer Credit Act 1974 (the Act);
  - (ii) prescribes procedures to facilitate debtors or sureties in bringing applications for time orders;

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- (iii) prescribes how an application for an enforcement order granting leave to enforce a regulated agreement or related security should be made;
  - (iv) prescribes for the joinder of parties; and
  - (v) prescribes procedures to be followed with respect to a number of other types of applications under the Act.
- (b) amend Order 88 of the principal Rules to—
- (i) substitute a new rule 4B to simplify the procedure requiring notices of hearing to occupiers of mortgaged property so that a single notice must be addressed to the Occupier(s) and only in dwelling house cases; and
  - (ii) add a new paragraph at the end of rule 5A to confer power on the court in applications affected by rule 5A to direct an account and inquiry as to all mortgages and to make an order for delivery of possession conditional on the result of such an account and inquiry.
- (c) amend Order 112 of the principal Rules to take account of amendments made to Part III of the Family Law Reform (Northern Ireland) Order 1977 by the Family Law Act (Northern Ireland) 2001 (c. 12). The amendments make it possible for samples to be taken of bodily fluid and tissues, rather than simply blood, and for scientific tests to be used to determine whether a person is the mother of the person whose parentage falls to be determined, as well as whether a person is the father.
- (d) Rules 2 to 3A, 6(a) and 18(1) of, and Forms 48B and 48D to, the principal Rules are revoked to take account of the fact that the procedure governing applications for declarations of parentage and legitimacy or legitimation is now provided for in the Family Proceedings Rules (Northern Ireland) 1996.