

2002 No. 255

COUNTY COURTS

County Court (Amendment) Rules (Northern Ireland) 2002

Made 23rd July 2002

Coming into operation 4th November 2002

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. These Rules may be cited as the County Court (Amendment) Rules (Northern Ireland) 2002.
2. In these Rules –
 - (a) “the principal Rules” means the County Court Rules (Northern Ireland) 1981(b); and
 - (b) a reference to an Order, Rule, Form or Appendix by number is a reference to that Order, Rule, Form or Appendix so numbered in the principal Rules.

Arrangement of Rules

3. The Arrangement of Rules at the beginning of the principal Rules shall be amended as follows –
 - (a) in the entry for Order 26, for the words “Arbitration under Article 30” there shall be substituted the words “Small Claims”; and
 - (b) in the entry for Order 58 for the word “Interpretation” there shall be substituted the words “Overriding objective, interpretation”.

Where proceedings may be commenced

4. In Order 1, Rule 1(1) for the words “Rule 5” there shall be substituted the words “Rule 29”.

Service outside the jurisdiction

5. In Order 6A –
 - (a) in the definition of “originating process” in Rule 1, the words “but excludes an application for arbitration under Article 30 of the Order” shall be omitted; and
 - (b) in Rule 5(1) for the figure of “£3000” there shall be substituted the figure of “£5000”.

(a) S.I. 1980/397 (N.I. 3)
(b) S.R. 1981 No. 225 to which the most recent relevant amendments were effected by S.R.1982 No. 287, S.R. 1983 No. 102, S.R. 1985 No. 31, S.R. 1985 No. 102, S.R. 1989 No. 306, S.R. 1993 No. 322, S.R.1995 No. 151 and S.R. 1997 No. 17

Proceedings to be heard by the district judge

6. Paragraph (1) of Order 25, Rule 15 is hereby revoked.

Small Claims

7. For Order 26 there shall be substituted the new Order set out in Schedule 1 to these Rules.

Stay of execution and removal thereof

8. In Order 33, Rule 10, the following new sub-paragraph shall be added after paragraph (6) –

“(7) In the application of this rule to decrees issued under Order 26, references to “affidavit” shall be construed as references to a “statement of truth” and paragraph (6) shall be read as if the words from “but with” to the end were omitted.”.

Declarations as to Legitimacy or Legitimation

9. In Order 53 –

- (a) Part II and Rule 13(1) are hereby revoked; and
- (b) in Rule 6 the words “Part II” shall be omitted.

Costs

10. For Order 55, Rule 19 there shall be substituted the following new Rule –

“19.—(1) In any proceedings before a Judge, other than an appeal under the 1977 Order, the 1988 Order, the 1978 Act or the 1991 Act, if the award by the Judge does not exceed –

- (a) £5,000, only two-thirds of the amount of the scale costs shall be allowed, unless the Judge otherwise orders; or
- (b) £2,000, no costs, save those which would be awarded under Order 26, Rules 43 to 46, shall be allowed if the Judge is satisfied that the proceedings should have been brought under Article 30(3) of the Order.

(2) In any proceedings before a district judge, if the award by the district judge does not exceed £2,000, no costs, save those which would be awarded under Order 26, Rules 43 to 46 shall be allowed if the district judge is satisfied that the proceedings should have been brought under Article 30(3) of the Order.”.

The overriding objective

11. Order 58 shall be amended as follows –

- (a) in the heading, for the word “Interpretation” there shall be substituted the words “Overriding objective, interpretation”; and
- (b) Rules 1 to 6 shall be re-numbered Rules 2 to 7 and the following new Rule 1 shall be inserted –

“The overriding objective

1.—(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.”.

Forms

12. For Forms 10A, 125, 126A and 126B there shall be substituted the new Forms 10A, 125, 126A and 126B set out in Schedule 2 to these Rules.

13. After Form 126B there shall be inserted the new Forms 127 to 129 set out in Schedule 2 to these Rules.

14. Forms 308 and 312 are hereby revoked.

Saving

15. 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 date shall continue to apply to those proceedings.

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.

A. R. Hart
T. A. Burgess
J. J. Curran
H. Keegan
Barry Valentine
Brian Kennedy

Dated 25th June 2002

After consultation with the Lord Chief Justice, I allow these Rules which shall come into operation on 4th November 2002.

Dated 23rd July 2002.

Irvine of Lairg, C.

SCHEDULE 1

Rule 7

“ORDER 26

SMALL CLAIMS

Definitions

1. In this Order –

“the applicant” means the person who makes the initial claim;

“the respondent” means the person against whom the initial claim is made;

“a counterclaim” means a claim which is made by the respondent against the applicant;

“the judge” means the district judge;

“a small claim” means an action to which Article 30(3) of the Order applies;

“small claims court” means a court which processes small claims;

“the small claims office” means the office of the small claims court which will process the small claim;

“the officer” means the person in the court office who processes the application for a small claim; and

“party” means the applicant or the respondent.

Excluded claims

2. No small claims application shall be made with regard to any claim which –

(a) is for damages for personal injuries;

(b) is for damages in respect of a road traffic accident;

(c) is for damages for libel or slander;

(d) is made under Article 11 (Recovery of legacies, annuities, etc.) of the Order;

(e) concerns the title to land;

(f) is made under section 17 of the Married Women’s Property Act 1882;

(g) has been remitted by the High Court.

3.—(1) Subject to paragraph (2), where the claim is for a debt or other liquidated amount which does not exceed £2000, the applicant may proceed by ordinary civil bill provided he includes, immediately after the Warning in the civil bill, the statement in Form 10A.

(2) If the respondent’s notice of intention to defend includes a request that the claim and any counterclaim be dealt with as a small claim, his request shall be granted.

Starting Proceedings

4. An application for a small claim must be made in Form 125.

5. The applicant must complete Part A of Form 125, setting out details of his claim, including any claim for interest under Article 45A of the Order or otherwise.

6. After completing Part A of Form 125, the applicant must bring or send the original Form, together with two copies and the appropriate fee, to any court office and that office will then forward the application on to the small claims office.

7. If there is more than one respondent, the applicant must bring or send one extra copy of Form 125 for each additional respondent.

8. When the relevant forms and the appropriate fee are received in the small claims office, the officer will –

(a) complete Part B of the original Form 125 and the copy forms;

(b) file the original Form 125;

(c) return one copy of Form 125, together with Form 127 (application for default decree for liquidated amount) or 128 (application for default decree for unliquidated amount) to the applicant; and

(d) issue one copy of Form 125, together with Forms 126A (notice of dispute) and 126B (acceptance of liability) to the respondent.

9. Each court office shall keep a record of –
- (a) the applications which are received; and
 - (b) the small claims office to which those applications are sent.

Defending the application

10. If the respondent intends to defend the claim or rely on a counterclaim he must, within 21 days of receiving the copy Form 125, lodge with the small claims office a notice of dispute in Form 126A which sets out the details of his defence and of any counterclaim he wishes to make, together with the appropriate fee.

11. On receiving a notice of dispute, the officer must send a copy to any other party and advise all parties of the date of hearing.

Accepting Liability

12. If the respondent accepts liability for the claim, he must, within 21 days of receiving the copy Form 125, lodge with the small claims office a notice of acceptance of liability in Form 126B.

13. On receiving a notice of acceptance of liability, the chief clerk may issue a decree, together with a copy of Form 126B, or may refer the notice to the judge if he considers that would be more appropriate.

Default decrees

14. If a Form 126A or 126B is not lodged with the small claims office within 21 days of the date on which the application is received, the applicant may apply to the chief clerk for a decree.

15. An application under Rule 14 shall –
- (a) if the claim is for a liquidated amount, be in Form 127; and
 - (b) if the claim is for an unliquidated amount, be in Form 128.

16. On receiving an application under rule 14, the chief clerk may –
- (a) if the claim is for a liquidated amount, issue a decree for the amount then due to the applicant; or
 - (b) if the claim is for an unliquidated amount, issue a decree which states that the amount of the claim will be assessed by the judge.

17. The chief clerk may refer any application in Form 127 or 128 to the judge if he considers that it would be more appropriate for the judge to deal with the application.

18. The chief clerk may only issue a decree under rule 16 if he is satisfied that: –
- (a) the application was sent to the respondent;
 - (b) no notice of dispute has been received; and
 - (c) the claim has not been settled.

19. Where a decree has been issued under rule 16, the judge may, either on an application or of his own choosing –

- (a) set aside or vary the decree; or
- (b) make any other order or give any other directions as the circumstances require.

20. If an application under rule 19 is made by one of the parties, it must be made in Form 129 and must set out all of the relevant facts.

21. On receiving the application, the officer shall send a copy to the other party (who may, within 14 days, respond in writing to the application) and inform the parties of the date on which the application will be heard.

22. If a decree is set aside the officer must inform the parties immediately and amend the court records accordingly.

23. An application in Form 127 or 128 may not be made if the claim is brought against a minor or a patient.

24. An application in Form 127 or 128 may only be made with the judge's permission if the claim –
- (a) is brought against the Crown; or

(b) arises from a hire purchase agreement, a credit sale agreement or a regulated agreement as defined by the Consumer Credit Act 1974(a).

25. A request for permission under rule 24 shall be made in writing and the other party shall be informed of the request.

Assessment hearing

26. The officer shall notify the parties of the date on which the amount of the claim will be assessed by the judge.

27. Where a decree has been issued under Rule 16(b) and the party against whom the decree has been made wishes to attend the assessment hearing, he must notify the small claims office and the other parties in writing.

28. The judge shall issue a decree for the amount of the claim, as assessed.

Venue for a small claims hearing

29. A small claims hearing may take place: –

- (a) in a court in the county court division in which the applicant or one of the applicants lives or carries on business; or
- (b) in a court in the county court division in which the respondent or one of the respondents lives or carries on business.

Procedure on a small claims hearing

30. A small claims hearing –

- (a) shall be informal; and
- (b) shall not be subject to the strict rules of evidence.

31. The judge may adopt any procedure which he considers to be fair.

Powers of the Judge

32. The judge has the power –

- (a) to administer oaths and take the affirmations of the parties and any witnesses who attend;
- (b) to order specific performance of a contract;
- (c) to make an interim decree;
- (d) to correct any clerical mistake in a decree;
- (e) without prejudice to Rule 19(a) and either on the application of any of the parties or of his own choosing, to set aside, vary or confirm any decree; or
- (f) to direct that an application in Form 125 be transferred to his civil bill list, provided he is satisfied that –
 - (i) a difficult question of fact or law is involved; or
 - (ii) fraud is alleged against a party; or
 - (iii) the parties consent to the application being dealt with in that way; or
 - (iv) it would be unreasonable for the application to be dealt with in a small claims hearing because of its subject matter, the circumstances of the parties or the interests of any other person likely to be affected by the outcome.

33. If an application is transferred to the judge's civil bill list, it shall proceed as if it had been commenced by civil bill and shall be subject to scale costs.

34. An application under Rule 32(e) shall be made in writing and the other party shall be informed of the application.

35. All parties shall, subject to any legal objection, agree to –

- (a) be examined by the judge on oath or affirmation;
- (b) produce any relevant documents or items which are in their possession; and
- (c) otherwise comply with the judge's requests.

(a) 1974 c. 10

Witnesses

36. If a party wishes to summons a person as a witness, he can apply to the small claims court under Order 24, rule 9 for a witness summons and the summons may be served in accordance with paragraph (5) of that rule or may be delivered to the witness personally by the applicant.

Expert Evidence

37. At any time before giving his decision the judge may –

- (a) consult any expert;
- (b) ask for an expert report on any disputed issue; and
- (c) invite an expert to attend the hearing.

38. Unless the judge orders otherwise the evidence of any expert witness retained by a party must be given in a written report and the report, together with one copy, must be lodged with the small claims office not less than 14 days before the date of the small claims hearing.

39. On receiving the report, the officer shall send a copy to the other party and may set a new date for hearing.

Transfer of proceedings

40. If the judge is satisfied that an application could be more conveniently or fairly dealt with in another small claims court, he may order the application to be transferred to that court and the chief clerk of the court in which the application is originally made must –

- (a) inform all the parties of the transfer; and
- (b) send to the chief clerk of the other court any relevant court records and documents.

41. On receiving the relevant records and documents, the chief clerk of the other court shall set a date for the hearing and advise the parties of that date.

Documents

42. Any document which is required to be sent may be sent by ordinary first class post.

Costs

43. Subject to Rules 33, 44 and 45, no costs, except the appropriate court fee, may be awarded in respect of an application for a small claim.

44. No witness expenses may be awarded, except in respect of expert witnesses who have provided written or oral evidence at the request of the judge under Rule 37.

45. If the judge is satisfied that –

- (a) there has been unreasonable conduct by one of the parties he may award costs against that party;
- (b) the proceedings were properly started by ordinary civil bill under Rule 3 he may, subject to Rule 46, award such costs as he considers appropriate.

46. When the judge is awarding costs under Rule 45 the costs must not exceed those specified in Table 3 of Part I of Appendix 2 and must be determined in accordance with the amount of the claim.

SCHEDULE 2

Rules 12 and 13

FORM 10A

**ENDORSEMENT ON CIVIL BILL FOR DEBT OR LIQUIDATED
AMOUNT NOT EXCEEDING £2,000**

If you wish to defend this action you have the right to have it dealt with under the small claims procedure. If you wish to have it dealt with in this way, you must include in your notice of intention to defend the following statement:

“Take notice that I wish this action to be dealt with under the small claims procedure”.

Statement of Truth

I believe that the facts stated in this form are true.

Full Name: _____ Position or Office Held _____
(if signing on behalf of firm or company)

Signed: _____

Date: _____

Part B

TO BE COMPLETED BY THE SMALL CLAIMS COURT OFFICE

This application will be dealt with at _____ Court Office.

If you wish to dispute this claim or issue a counterclaim please read the enclosed information leaflet and lodge a notice of dispute and/or counterclaim with the above court office.

If you wish to accept liability for this claim please read the enclosed information leaflet and lodge a notice of acceptance of liability with the above court office.

If you intend to dispute the claim, issue a counterclaim or accept liability then you must lodge the appropriate form with the above court office no later than _____.

WARNING

If you intend to dispute the case or issue a counterclaim and you fail to reply to this application by the date above a decree may be issued against you without further correspondence.

Signed: _____

Date: _____

FORM 126A
Order 26, rule 10
Notice of Dispute

For Office Use Only

Claim No.
Return Date
Liquidated/Unliquidated

Dispute

Only complete this section if you dispute the claim

Take notice that I intend to dispute the claim made against me for the following reason(s):

Signed: _____ Date: _____
(Respondent)

Counterclaim

Only complete this section if you wish to make a counterclaim

I wish to make a counterclaim for £ .
Please describe in simple terms the details of your claim. Also include the date the claim arose and, if interest is claimed, the amount, rate and period covered.

Signed: _____ Date: _____
(Respondent)

FORM 126B
Order 26, rule 12
Notice of Acceptance of Liability

For Office Use Only

Claim No.
Return Date
Liquidated/Unliquidated

Liability

Only complete and return this form if you admit the claim

I admit the claim made against me in full and agree
to pay the amount stated

Do you wish to apply for time to pay this amount? Yes

No

If you wish to apply for time to pay you must provide full details of your income and outgoings
and state the amount you are able to pay £_____ (per week/month).

Signed: _____
(Respondent)

Date: _____

IMPORTANT

If you wish to make a payment to the applicant you *must* include the amount of the court fee and
any interest claimed. If you do not do so a default decree may still be made against you for this
amount.

FORM 127
Order 26, rule 15
Application for a Default Decree

For Office Use Only

Claim No.

Liquidated

Applicant:

Full name, postal address,
postcode and e-mail address (if
appropriate) in BLOCK CAPITALS

Respondent:

Full name, postal address, postcode
and e-mail address (if appropriate)
in BLOCK CAPITALS

I _____ wish to apply for a default decree against _____ on the grounds
that no notice of dispute and/or counterclaim has been received in respect of my small claim.

Amount of the claim as stated in the application form £ _____

Amount of court fee £ _____

NB. Only complete this section if you have claimed for interest on your small claim application form. You must include the amount, rate and period covered. If full details are not provided, interest may be disallowed.

***Interest**

from _____ (insert date claim arose) at
____% (insert rate of
interest) until date of decree.

from date of decree at
____% (insert rate of interest)

Sub Total £ _____

Less any amount paid by the respondent since the
date of issue £ _____

Total amount sought £ _____

Statement of Truth

I believe that the above information is true and that the claim does not relate to a minor or a patient.

Signature of the Applicant

Position or office held _____
(if signing on behalf of a firm or company)

Date

FORM 128
Order 26, rule 15
Application for a Default Decree

For Office Use Only

Claim No.

Unliquidated

Applicant:

Full name, postal address,
postcode and e-mail address (if
appropriate) in BLOCK CAPITALS

Respondent:

Full name, postal address, postcode
and e-mail address (if appropriate)
in BLOCK CAPITALS

I, _____ wish to apply for a default decree against _____ on the ground that no notice of dispute and/or counterclaim has been received in respect of my small claim.

The amount of the claim to be assessed by the District Judge.

Statement of Truth

I believe that the above information is true and that the claim does not relate to a minor or a patient.

Signature of the Applicant

Position or office held _____
(if signing on behalf of a firm or company)

Date

Application for a Default Decree to be set aside or for directions

For Office Use Only

Claim No.

Liquidated/Unliquidated

Applicant:

Full name, postal address,
postcode and e-mail address (if
appropriate) in BLOCK CAPITALS

Respondent:

Full name, postal address, postcode
and e-mail address (if appropriate)
in BLOCK CAPITALS

I, _____ wish to apply for the decree that issued in the above matter to be set aside [and/or directions]* on the ground that

Please explain in simple terms the background to this application

I certify that the above information is correct.

Signature

Date

* Please delete as appropriate

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the County Court Rules (Northern Ireland) 1981 so as to –

- (a) implement recommendations 1 (overriding objective), 9 (service outside the jurisdiction), 10 (default judgment), 12 (removal of small claims to the county court), 13 (pleadings), 15 (expert evidence), 21 (description and title), 22 (rules of court) and 38 (removal of restrictions on district judges) of the Final Report of the Civil Justice Reform Group;
- (b) take account of the recent increases in the small claims and the district judges' defended civil bill jurisdiction; and
- (c) delete the provisions relating to applications for declarations of legitimacy and legitimation. The relevant procedures are now contained in the Family Proceedings Rules (Northern Ireland) 1996.

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