1972. No. 332 **[C]**

COUNTY COURTS

County Court (Amendment) (No. 2) Rules

RULES, DATED 5TH DECEMBER 1972, MADE BY THE SECRETARY OF STATE UNDER SECTION 146 OF THE COUNTY COURTS ACT (NORTHERN IRELAND) 1959.

I, THE RIGHT HONOURABLE WILLIAM WHITELAW, M.C., M.P., one of Her Majesty's Principal Secretaries of State, in exercise of the powers conferred on me by Section 146 of the County Courts Act (Northern Ireland) 1959(**a**), Section 5 of the Civil Evidence Act (Northern Ireland) 1971(**b**), Section 1(1) of the Northern Ireland (Temporary Provisions) Act 1972(**c**), and all other powers enabling me in that behalf, do hereby upon the recommendation of the County Court Rules Committee and after consultation with the Lord Chief Justice, make the Rules hereinafter set forth.

Citation and commencement

1. These Rules may be cited as the County Court (Amendment) (No. 2) Rules (Northern Ireland) 1972 and shall come into operation on 29th December 1972.

Amendments to the Rules of 1965

2. The provisions of the County Court Rules (Northern Ireland) 1965(**d**) specified in the first column of the Schedule are amended to the extent specified in the second column thereof.

Dated this 5th day of December 1972.

W. S. I. Whitelaw,
One of Her Majesty's
Principal Secretaries of State.

(a) 1959. c. 25.
(b) 1971. c. 36 (N.I.).
(c) 1972. c. 22.
(d) S.R. & O. (N.I.) 1965, No. 261.

SCHEDULE

Amendment of the County Court Rules (Northern Ireland) 1965

Provision Amended	Amendment
Order 15: Rule 2(2)	In Rule 2(2) of Order 15 the words "that it relates only to his own title, he being defendant in the proceedings, or" and the word "other" shall be omitted.
Order 23: Rule 7A	The following Rule shall be inserted in Order 23 after Rule 7:— *"Notice of conviction, etc.* **7A.**—(1) Any party to proceedings who intends in reliance on section 7 or 8 of the Civil Evidence Act (Northern Ireland) 1971 to adduce evidence of a conviction, finding of adultery or an adjudication of paternity shall serve on every party to the proceedings notice in Form 9 of such intention with particulars of:— (*a*) the conviction, finding or adjudication and the date thereof; (*b*) the court or court-martial which made the conviction, finding or adjudication; and (*c*) the issue in the proceedings to which the conviction finding or adjudication is relevant. (2) Where the plaintiff or any party initiating proceedings serves such notice he shall annex it to the civil bill or other process and to any copy served on any other party. (3) Where a defendant or party other than the plaintiff or a party initiating the proceedings serves such notice, it shall be served within ten days of service of the civil bill or other process upon him. (4) If a party upon whom notice is served under this Rule:— (*a*) denies the conviction, finding or adjudication; or (*b*) alleges that it was erroneous; or (*c*) denies that it is relevant to any issue in the action, he shall, within ten days of service of the notice, serve a counter-notice in Form 10 on the party by whom the notice was served and on any other party to the proceedings. (5) Nothing in this Rule shall apply to evidence intended solely to impeach the credit of a party or witness and which is not otherwise relevant to any issue in the proceedings.".

Provision Amended	Amendment
Order 23: Part II	Order 23 shall be amended by inserting immediately before Rule 1 the words "PART I—GENERALLY" and by adding at the end the following Part:—

"PART II

EVIDENCE ADMISSIBLE UNDER PART I OF THE CIVIL EVIDENCE ACT (NORTHERN IRELAND) 1971

Interpretation and application of this Part

22.—(1) In this Part "the Act" means the Civil Evidence Act (Northern Ireland) 1971.

(2) This part shall apply to proceedings referred to arbitration under section 60 of the County Courts Act (Northern Ireland) 1959 and to proceedings referred for inquiry and report under section 61 of the said Act of 1959 as it does to the hearing of any proceedings before the court.

Notice of intention to give in evidence statement under section 1 or 2 of Act

23.—(1) Subject to the provisions of this Rule, a party to proceedings who intends to give in evidence at the hearing any statement which is admissible in evidence by virtue of section 1 or 2 of the Act shall, within ten days of service of the civil bill or other process initiating the proceedings, give notice of his intention to the clerk of the Crown and peace and to every other party.

(2) Where, under these Rules or any order or direction of the court, the evidence in any proceedings is to be given by affidavit, then paragraph (1) shall not apply in relation to any statement which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings.

Statement admissible under section 1 of the Act: contents of notice

24.—(1) If the statement is admissible under section 1 of the Act, the notice shall be in Form 11 and there shall be annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and the notice must contain:—

Provision Amended	Amendment
Order 23: Part II (contd.)	(*a*) particulars of:— (i) the person by whom the record containing the statement was compiled; (ii) the person who originally supplied the information from which the record was compiled; and (iii) any other person through whom that information was supplied to the compiler of that record; and, in the case of any such person as is referred to in sub-paragraph (i) or (iii) above, a description of the duty under which that person was acting when compiling that record or supplying information from which that record was compiled, as the case may be; (*b*) if not apparent on the face of the document annexed to the notice, a description of the nature of the record which, or part of which, contains the statement; and (*c*) particulars of the time, place and circumstances at or in which that record or part was compiled. (2) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the hearing for any of the reasons specified in Rule 26, the notice must contain a statement to that effect specifying the reason relied on. *Statement admissible by virtue of section 2 of the Act: contents of notice* **25.**—(1) If the statement is contained in a document produced by a computer and is admissible by virtue of section 2 of the Act, the notice shall be in Form 12 and there shall be annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain particulars of:— (*a*) a person who occupied a responsible position in relation to the management of the relevant activities for the purposes of which the computer was used regularly during the material period to store or process information; (*b*) a person who at the material time occupied such a position in relation to the supply of information to the computer, being information which is reproduced in the statement or information from which the information contained in the statement is derived; (*c*) a person who occupied such a position in relation to the operation of the computer during the material period;

Provision Amended	Amendment
Order 23: Part II (contd.)	(3) Where a statement to which a notice under Rule 23 relates is one to which Rule 29 applies, no party on whom the notice is served shall be entitled to serve a counter-notice under this Rule in relation to that statement, but the foregoing provision is without prejudice to the right of any party to apply to the court under Rule 29 for directions with respect to the admissibility of that statement. (4) If any party by whom a notice under Rule 23 is served fails to comply with a counter-notice duly served on him under this Rule, then, unless any of the reasons referred to in Rule 26 applies in relation to the person named in the counter-notice, and without prejudice to the powers of the court under Rule 30, the statement to which the notice under Rule 23 relates shall not be admissible at the hearing as evidence of any fact stated therein by virtue of section 1 or 2 of the Act, as the case may be. *Determination of question whether person can or should be called as a witness* **28.**—(1) Where a question arises whether any of the reasons specified in Rule 26 applies in relation to a person, particulars of whom are contained in a notice under Rule 23, the court may, on the application of any party to the proceedings, determine that question before the hearing in accordance with Order 14 or give directions for it to be determined before the hearing and for the manner in which it is to be determined. (2) Unless the court otherwise directs, notice in Form 14 of any application under paragraph (1) shall be served on every other party to the proceedings. (3) Where any such question as is referred to in paragraph (1) has been determined thereunder, no application to have it determined afresh at the hearing of the proceedings may be made unless the evidence which it is sought to adduce in support of the application could not with reasonable diligence have been adduced at the time of the disposal of the application under paragraph (1). *Directions with respect to statement made in previous proceedings* **29.** Where a party has given notice in accordance with Rule 23 that he desires to give in evidence at the hearing a statement falling within section 1(1) of the Act which is contained in a record of direct oral

Provision Amended	Amendment
Order 23: Part II (contd.)	evidence given in some other legal proceedings, (whether civil or criminal) any party to the proceedings may apply to the court in accordance with Order 14 for directions as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those proceedings is to be proved. *Power of the Court to allow statement to be given in evidence* **30.**—(1) Without prejudice to section 1(2)(*a*) of the Act and Rule 29, the court may, if it thinks it just to do so, allow a statement falling within section 1(1) or 2(1) of the Act to be given in evidence at the hearing of the proceedings notwithstanding that:— (*a*) the statement is one to which Rule 23(1) applies and that the party desiring to give the statement in evidence has failed to comply with that Rule; or (*b*) that party has failed to comply with any requirement of a counter-notice relating to that statement which was served on him in accordance with Rule 27. (2) Without prejudice to the generality of paragraph (1), the court may exercise its power under that paragraph to allow a statement to be given in evidence at the hearing if a refusal to exercise that power might oblige the party desiring to give the statement in evidence to call, as a witness at the hearing, an opposite party or a person who is or was at the material time the servant or agent of an opposite party. *Restriction on adducing evidence as to credibility of supplier of information, etc.* **31.** Where:— (*a*) a notice given under Rule 23 relates to a statement which is admissible by virtue of section 1 of the Act; and (*b*) the person who originally supplied the information from which the record containing the statement was compiled, is not called as a witness at the hearing of the proceedings; and (*c*) none of the reasons mentioned in Rule 26 applies so as to prevent the party who gave the notice from calling that person as a witness,

Provision Amended	Amendment
Order 23: Part II (contd.)	no other party to the proceedings shall be entitled, except with the leave of the court, to adduce in relation to that person any evidence which could otherwise be adduced by him by virtue of section 4 of the Act unless he gave a counter-notice under Rule 27 in respect of that person or applied under Rule 29 for a direction that that person be called as a witness at the hearing of the proceedings. *Notice required of intention to give evidence of certain inconsistent statements* **32.**—(1) Where a person, particulars of whom were contained in a notice given under Rule 23, is not to be called as a witness at the hearing, any party who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in section 4(1)(*b*) of the Act shall within ten days after service of that notice upon him give notice of his intention to do so in Form 15 to the clerk of the Crown and peace and to the party who gave the notice under Rule 23. (2) If the statement was made otherwise than in a document, the notice must contain particulars of:— (*a*) the time, place and circumstances at or in which the statement was made; (*b*) the person by whom, and the person to whom the statement was made; and (*c*) the substance of the statement or, if material, the words used. (3) If the statement was made in a document, a copy of the document, or of the relevant part thereof, must be annexed to the notice and the notice must contain such (if any) of the particulars mentioned in paragraph 2(*a*) and (*b*) as are not apparent on the face of the document or part. (4) The court may, if it thinks it just to do so, allow a party to give in evidence at the hearing of proceedings any evidence which is admissible for the purpose mentioned in the said section 4(1)(*b*) notwithstanding that that party has failed to comply with paragraph (1).

Provision Amended	Amendment
Order 23: Part II (contd.)	*Counter-notice* **33.** Where:— (*a*) a party to proceedings serves a counter-notice under Rule 27 in respect of any person who is called as a witness at the hearing of the proceedings in compliance with a requirement of the counter-notice; and (*b*) it appears to the court that it was unreasonable to require that person to be called as a witness, then the court may determine the amount of any costs occasioned by reason of the service of the counter-notice on any other party, or direct that they shall be determined, and order that such amount be paid to that other party by the party who served the counter-notice."
Appendix S: Form 9	After Form 8 in Appendix S there shall be inserted the following Forms:— "FORM 9 **Notice of intention in reliance on section 7 [or 8] of the Civil Evidence Act (Northern Ireland) 1971 to adduce evidence of conviction [or finding of adultery or adjudication of paternity]** ORDER 23, RULE 7A [*Title as in Form* 1] TAKE NOTICE that the plaintiff [*or* applicant *or* (*state description of other party initiating proceedings*)] in this action [*or* (*state nature of other proceedings*)] [*or* defendant] [*or* (*state other party serving notice*)] intends in reliance on section 7 [*or* 8] of the Civil Evidence Act (Northern Ireland) 1971 to adduce evidence that the defendant [*or* (*state description of other party*)] was [convicted on the day of , 19 , by (*name of court*) of (*state particulars of conviction, etc.*)] The said conviction (*or as the case may be*) is relevant to the plaintiff's (*or state description of other party*) claim for (*give particulars of the relevant issue*).

Provision Amended	Amendment
Appendix S: Form 9 (contd.)	Dated this day of , 19 . Signed Plaintiff [*or* Defendant] [*or* other party] Solicitor for the
Form 10	FORM 10 **Counter-notice denying conviction, etc. [or alleging that conviction, etc., was erroneous] [or denying that conviction, etc., is relevant]** ORDER 23, RULE 7A [*Title as in Form* 1] TAKE NOTICE that the defendant [*or* plaintiff] (*or as the case may be*) denies [*or* admits] that he was convicted of the offence [*or* finding *or* adjudication, etc.] as alleged in the notice served on him by on the day of , 19 , [but says that the said conviction (*or as the case may be*) was erroneous] [*or* denies that the said conviction (*or as the case may be*) is relevant to any issue in the proceedings]. Dated this day of , 19 . Signed Defendant [*or* respondent] [*or* other party] Solicitor for the
Form 11	FORM 11 **Notice of intention to give in evidence statement admissible under section 1 of the Civil Evidence Act (Northern Ireland) 1971** ORDER 23, RULE 24 [*Title as in Form* 1] TAKE NOTICE that the plaintiff [*or* defendant] (*or description of other party serving the notice*) intends to give in evidence at the hearing of the action [*or* matter] (*or state nature of other proceeding*) by virtue of section 1 of the Civil Evidence Act (Northern Ireland) 1971 a statement contained in a document which is [*or* forms part of] a record compiled by acting in the course of his duty as (*state office or other capacity in which statement was*

Provision Amended	Amendment
Appendix S Form 11 (contd).	*recorded under a duty*) from information supplied to him by (*state name of person who supplied information directly and add those of any other persons through whom the information was supplied to the compiler of the record and description of duty under which such latter intermediary was acting*) which statement was made on the day of , 19 , at (*add place and circumstances in which statement was made*) and a copy [*or* transcript] whereof is annexed hereto. [AND FURTHER TAKE NOTICE that the said (compiler of the record) cannot [*or* should not] be called as a witness, by reason of the fact that he is dead [*or* that he is living in , i.e. beyond the seas] [*or* that he is suffering from and is unfit to attend as a witness] [*or* that despite the exercise of reasonable diligence it has not been possible to identify him] [*or* to find him] [*or* that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy of the statement].] Dated this day of , 19 . Plaintiff [*or* Defendant] Solicitor for the To the clerk of the Crown and peace for the above-named Division and to the (*other party to the proceedings*).
Form 12	FORM 12 **Notice of intention to give in evidence statement admissible under section 2 of the Civil Evidence Act (Northern Ireland) 1971** ORDER 23, RULE 25 [*Title as in Form* 1] TAKE NOTICE that the plaintiff [*or* defendant] (*or state description of party serving the notice*) intends to give in evidence at the hearing of the action [*or* matter] (*or state other proceedings*) by virtue of section 2 of the Civil Evidence Act (Northern Ireland) 1971 a statement contained in a document which was produced in compliance with the conditions contained in section 2(2) of the said Act by a computer on the day of 19 , from

Provision Amended	Amendment
Appendix S Form 12 (*contd.*)	information supplied to the said computer during the period 19 , to 19 , a copy whereof is annexed hereto. AND FURTHER TAKE NOTICE that— (*a*) (*name of person concerned*) was during the material period and still is the [manager] (*or as the case may be*) of and responsible for the activities for the purpose of which the computer was used regularly to store or process information; (*b*) (*name of person concerned*) was at the material time responsible as (*describe position*) for the supply of information to the computer and in particular of the information which is reproduced in the said statement [*or* from which the information in the said statement was derived]; and (*c*) (*name of person concerned*) was during the material period the chief operator (*or as the case may be*) of the said computer. [AND FURTHER TAKE NOTICE that the said (*name of manager or other person specified in paragraph (a) above*) cannot [*or* should not] be called as a witness, by reason of the fact that he is dead [*or* that he is living in , i.e., beyond the seas] [*or* that he is suffering from and is unfit to attend as a witness] [*or* that despite the exercise of reasonable diligence it has not been possible to identify him] [*or* to find him] [*or* that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy of the statement].] Dated this day of , 19 . Plaintiff [*or* Defendant] Solicitor for the . To the clerk of the Crown and peace for the above-named Division and to the (*other party to the proceedings*).

Provision Amended	Amendment
Appendix S (contd.) Form 13	FORM 13 **Counter-notice requiring person to be called as witness where named in notice of intention to give statement in evidence** ORDER 23, RULE 27 [*Title as in Form* 1] TAKE NOTICE that the defendant [*or* plaintiff] (or *description of other party who received the notice under Rule 23*) requires the plaintiff [*or* defendant] (*or description of party serving notice*) to call (*name of person to be called*) as a witness at the hearing of the above proceedings. [AND FURTHER TAKE NOTICE that the defendant [*or* plaintiff] (*or as the case may be*) contends that the said can [*or* should be] called as a witness and he disputes that the said is dead [*or* is living beyond the seas] [*or* is suffering from and is unfit to attend as a witness] [or cannot by the exercise of reasonable diligence be identified] [*or* found] [*or* that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy of the statement referred to in the notice served under Rule 23 of Order 23 of the County Court Rules (Northern Ireland) 1965].] Dated this day of , 19 . Defendant [*or* Plaintiff] Solicitor for the To the clerk of the Crown and peace for the above-named Division and to the (*other party to the proceedings*).

Provision Amended	Amendment
Appendix S (contd.) Form 14	FORM 14 **Notice of application to determine whether person can or should be called as witness** ORDER 23, RULE 28 [*Title as in Form* 1] TAKE NOTICE that the above-named plaintiff [*or* defendant] (*or as the case may be*) intends to apply to the above-named court sitting at (*courthouse*) on the day of , 19 , at o'clock in the noon to determine that (*name of person desired to be called as witness*) can [*or* should] be called as a witness at the hearing of the above proceedings. Dated this day of , 19 . Plaintiff [*or* Defendant] Solicitor for the . To the clerk of the Crown and peace for the above-named Division and to the (*other party to the proceedings*).

Provision Amended	Amendment
Appendix S (contd.) Form 15	FORM 15 **Notice of intention to give in evidence under section 4(1)(*b*) of the Civil Evidence Act (Northern Ireland) 1971 certain inconsistent statements of person whose documentary statement sought to be put in evidence under section 1** ORDER 23, RULE 32 [*Title as in Form* 1] TAKE NOTICE that the above-named plaintiff (*or* defendant) (*or as the case may be*) intends to adduce in relation to (*name of person concerned*) evidence under section 4(1)(*b*) of the Civil Evidence Act (Northern Ireland) 1971 to prove that the said made on the day of , 19 , another statement inconsistent with the statement referred to in the defendant's [*or* plaintiff's] notice dated the day of , 19 . AND FURTHER TAKE NOTICE that the said statement inconsistent with the statement referred to in the defendant's [plaintiff's] said notice was made by the said on the day of , 19 , at (*state place and add circumstances in which statement was made*) and which said statement was made by the said to (*name of person to whom inconsistent statement made*), the words used [*or* the substance of the statement being (*set out*); [*or if made in a document* was made on the day of , 19 , at (*state place and add circumstances in which the statement was made*) and which said statement was made by the said to (*name of person to whom inconsistent statement was made*) and a copy [*or* transcript] whereof is annexed hereto]. Dated this day of , 19 . Plaintiff [*or* Defendant] Solicitor for the To the clerk of the Crown and peace for the above-named Division and to the (*other party to the proceedings*)."

EXPLANATORY NOTE

(This note is not part of the Rules, but is intended to indicate their general purport.)

These Rules provide for the procedure in the County Court under the Civil Evidence Act (Northern Ireland) 1971.