



STATUTORY INSTRUMENTS.

S.I. No. 490 of 2021



RULES OF THE SUPERIOR COURTS (PROCEDURE ON DEFAULT) 2021

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), the Courts (Supplemental Provisions) Act 1961, the Interpretation Act 2005, section 24 and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 7th day of July 2021.

Frank Clarke (Chairperson)

George Birmingham

Mary Irvine

Elizabeth Dunne

John A. Edwards

Brian R. Murray

Richard Humphreys

Conor Dignam

Liam Kennedy

James Finn

Mary Cummins

I concur in the making of the following Rules of Court.

Dated this 24th day of September 2021.

HEATHER HUMPHREYS

Minister for Justice

S.I. No. 490 of 2021

RULES OF THE SUPERIOR COURTS (PROCEDURE ON DEFAULT) 2021

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Procedure on Default) 2021, shall come into operation on 13th day of November 2021.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2021.

2. (1) Subject to the following provisions of this rule, the Rules of the Superior Courts as amended by these rules shall apply to proceedings whether commenced before or after the commencement date, and whether the time for delivery of any pleading or other document has expired before or after the commencement date.

(2) For the purposes of any step to be taken on or after the commencement date in proceedings commenced prior to the commencement date:

(a) any step taken prior to the commencement date shall be treated as having been taken under the provision of the Rules of the Superior Courts as amended by these rules that most closely corresponds to the relevant provision of the previous rules under which that step was taken;

(b) where the Rules of the Superior Courts as amended by these rules provide a longer period than under the previous rules for a party to deliver a pleading or other document, the party alleging any default shall not proceed against the party alleged to be in default until such longer period has in fact expired, irrespective of whether any warning letter or letter of consent issued prior to the commencement date was expressed in terms of a shorter period.

(3) Where on the commencement date, any application or appeal is pending before a court in relation to an alleged default of appearance or default of pleading, such application or appeal shall be determined by reference to the previous rules applicable as of the date on which the application was initially brought before a court.

(4) In this rule:

“commencement date” means the date on which these rules come into operation;

“previous rules” means the Rules of the Superior Courts in force prior to the commencement date.

3. The Rules of the Superior Courts are amended:

(i) by the substitution for Order 13 of the Order set out in

Schedule 1;

(ii) by the substitution for Orders 20 and 21 of the Orders respectively set out in Schedule 2;

(iii) by the substitution for 6 of Order 23 of the following rule:

“6. As soon as any party has joined issue upon the preceding pleading of the opposite party simply without adding any further or other pleading thereto, or has made default as mentioned in Order 27, rule 12, the pleadings as between such parties shall be deemed to be closed.”

(iv) by the substitution for Order 27 of the Order set out in Schedule 3, and

(v) by the substitution for paragraph (8) of rule 1 of Order 63 of the following paragraph:

“(8) An order to dismiss an action with costs for failure to make an affidavit of discovery or to answer interrogatories.”

Schedule 1
“Order 13
Default of Appearance

1. Where no appearance has been entered to a summons for a defendant who is a child or a person of unsound mind not so found by inquisition, the plaintiff shall, before taking any further step in the proceeding against the defendant, apply to the Master for an order that some proper person be assigned guardian of such defendant by whom he may appear and defend the proceeding. No such order shall be made unless it appears on the hearing of such application that the summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon the person with whom or under whose care such defendant was at the time of serving such summons and also (in the case of such defendant being a child not residing with or under the care of his parent or guardian) served upon the parent or guardian, if any, of such child, unless the Master at the time of hearing such application shall dispense with such last mentioned service.
- 2.(1) Where any defendant fails to appear to a summons, and the plaintiff wishes to proceed on default of appearance under any of the following rules of this Order or Order 27, rule 13, the plaintiff shall first serve a notice in writing on the defendant confirming his intention to proceed on default of appearance and at the same time consenting to the late entry of appearance within 28 days of the date of the letter.
- (2) If no appearance is entered within the said period, the plaintiff shall be at liberty to proceed upon default of appearance under any of the following rules of this Order or Order 27, rule 13 provided that he has filed an affidavit of service of the summons or notice in lieu of service, as the case may be, and of the letter referred to in sub-rule (1).
3. Where any respondent in proceedings commenced by originating notice of motion pursuant to Order 81A, Order 84B or Order 84C fails to enter an appearance to such notice of motion (or, having failed to enter an appearance, has not been heard by leave of the Court in accordance with paragraph (a) of sub-rule (2A) of rule 2 of Order 12), the Court may, on the hearing of the motion, if satisfied as to the service of notice of the motion on that respondent, grant such of the reliefs sought in the notice of motion against such respondent as seem just and proper.
- 4.(1) Where an originating summons (whether plenary or summary) is indorsed with a claim for a liquidated demand, and the defendant fails, or all the defendants, if more than one, fail to appear thereto, the plaintiff may enter final judgment in the Central Office for such sum as is mentioned in the affidavit required by rule 20 not exceeding the sum indorsed on the summons, together with interest (if any) to the date of the judgment and costs.

- (2) Notwithstanding sub-rule (1), in proceedings by a moneylender (as defined by the Consumer Credit Act 1995) , or the personal representative or representatives of a moneylender, or an assignee, for the recovery of money lent by the moneylender, or the enforcement of any agreement or security relating to any such money, judgment shall not be entered in default of appearance unless the leave of the Master or the Court as the case may be, has been obtained in accordance with the provisions of rule 16.
 - (3) Notwithstanding sub-rule (1), in actions to recover a debt or liquidated demand arising under a hire-purchase agreement or credit-sale agreement (as defined by the Consumer Credit Act 1995) or any contract of guarantee relating to such an agreement, judgment shall not be entered in default of appearance unless the leave of the Master or the Court, as the case may be, has been obtained in accordance with the provisions of rule 17.
- 5.(1) In any case in which no appearance has been entered in a proceeding for the recovery of land within the time limited for appearance, or if an appearance be entered but the defence be limited to part of or to an undivided share in the land only, the plaintiff shall, subject to the provisions of rule 6, be at liberty, whether claims in respect of mesne profits, arrears of rent, or double rent, or damages for breach of contract, or wrong or injury to the premises claimed, have or have not been indorsed on the summons, to enter judgment in the Central Office that the person whose title is asserted in the summons shall recover possession of the land, or of the part or undivided share thereof to which the defence does not apply.
- (2) Such judgment shall not contain any award of costs, but same shall be without prejudice to the plaintiff's right to have the costs adjudicated by the proper officer, and to proceed by action for recovery of such mesne profits, arrears of rent or double rent, damages, and costs, or any of them. Provided that if the proceeding be for recovery of land for non-payment of rent, no judgment shall be entered under this rule until an affidavit has been filed made by the landlord, his agent, receiver, or clerk, stating that there was at the commencement of the proceeding at least one year's rent due over and above all just and fair allowances.
6. In any case in which no appearance has been entered in a proceeding for the recovery of land within the time limited for appearance, or if an appearance be entered but the defence be limited to part of or to an undivided share in the land only, the plaintiff, in lieu of proceeding under rule 5, shall, as to the claim for recovery of such land or such part or undivided share thereof, as the case may be, and the claim (if any) in respect of mesne profits, arrears of rent, or double rent, or damages for breach of contract, or wrong or injury to the premises claimed, be at liberty (in the case of a proceeding commenced by plenary summons) to proceed under rule 7 or (in the case of a proceeding commenced by summary summons) to set the summons down for hearing on such day as the Master may fix, and in such latter case, such judgment may be given, on the hearing of the summons, as the Master, in a case within his jurisdiction, or the Court may consider the plaintiff to be entitled to.
- 7.(1) In case of default of appearance by any defendant (other than a defendant mentioned in rule 1) to a plenary summons, the plaintiff shall, except in the

case of a claim otherwise provided for in any of the preceding rules of this Order, deliver a statement of claim by filing the same in the Central Office and thereupon may apply to the Court by motion on notice to the defendant for judgment in the proceeding in default of appearance, and (if necessary) ascertainment of any damages to which the plaintiff may be entitled, with a jury in case any party is entitled to a jury and requires such, but otherwise without a jury, and in the latter case the Court may fix the amount of such damages itself on evidence by affidavit or otherwise, or may refer the matter to the Master to determine.

- (2) Where, in a case to which sub-rule (1) applies, the provisions of any order for substituted service of the summons, or any order under Order 11 granting leave to serve the summons or notice of the summons out of the jurisdiction shall be deemed to apply to service of the notice of motion.
8. In case of default of appearance by any defendant to a personal injuries summons as defined in Order 1A, the plaintiff (without delivering a statement of claim) may apply to the Court by motion for judgment in the action in default of appearance upon filing in the Central Office an affidavit or affidavits of service of the personal injuries summons and an affidavit verifying the contents of the said personal injuries summons.
9. Where a summons is indorsed with a claim for the delivery of specific goods, either alone or with any other claim, and the defendant fails to appear, the plaintiff may, if he requires the specific delivery of such goods, apply to the Court for an order for judgment for the return of the goods detained without giving the defendant the option of retaining such goods upon paying the value thereof and for the ascertainment, in such manner as the Court may direct, of the goods in respect of the non-delivery of which the plaintiff is entitled to recover and which remain undelivered, and, upon the same being so ascertained an order of delivery may issue for the same.
10. Where an originating summons (whether plenary or summary) is indorsed with a claim for a liquidated demand and there are several defendants, of whom one or more appear to the summons, and another or others of them fail to appear, the plaintiff may enter final judgment in accordance with rule 4 against such defendants as have not appeared, and may issue execution upon such judgment, without prejudice to his right to proceed against such of the defendants as have appeared.
11. Where there are several defendants to a plenary summons mentioned in rule 7 and one or more of such defendants appear to such summons, and another or others of them fail to appear, the plaintiff may proceed under rule 7 against the defendant or defendants so failing to appear and the application for judgment thereunder shall be heard and the damages (if any) to which the plaintiff may be entitled ascertained, as against such defendant or defendants, at the same time as the trial of the proceeding or issue therein against the other defendant or defendants, unless the Court shall otherwise direct.
12. Where a plenary summons is indorsed with a claim for a liquidated demand together with another claim or other claims and any defendant fails to appear thereto, the plaintiff may enter final judgment for the liquidated

demand, together with interest (if any) and costs as provided in the preceding rules of this Order, against the defendant or defendants failing to appear and may proceed, as to the other claim or claims, as provided in such of the said rules as may be applicable.

13. Where final judgment is entered pursuant to any of the preceding rules of this Order:
 - (a) the Court shall, where it is satisfied on an application made for that purpose by motion on notice to the plaintiff that there is some irregularity in the proceedings or the process by which such judgment was obtained, set aside such judgment upon such terms, if any, as may be just;
 - (b) the Court may set aside such judgment notwithstanding that it was obtained in a regular manner and give leave to defend upon such terms as may be just, where it is satisfied by evidence on affidavit by or on behalf of the defendant in an application by motion on notice to the plaintiff that the defendant has a good defence to the plaintiff's claim and that the interests of justice require that leave to defend should be given;
 - (c) the Court may, on an application made for that purpose, vary such judgment upon such terms, if any, as may be just.
14. Where an originating summons is indorsed with a claim on any bond, covenant, or agreement within the Common Law Procedure Amendment Act (Ireland) 1853, section 145, and the defendant fails to appear thereto, no statement of claim shall be delivered and the plaintiff may, without any suggestion of breaches, apply by motion to the Court for leave to enter judgment for such sum as may seem just, and on such application the Court may order judgment to be entered accordingly or may direct such inquiry, or trial of issues, as may appear to be necessary for the ascertainment of the plaintiff's demand, and if the sum ascertained to be due does not amount to the sum mentioned in such bond, covenant, or agreement, the plaintiff, his executors or administrators, may in the event of any subsequent breach, from time to time, apply to the Court, and the Court may thereupon so far as the sum mentioned in such bond, covenant, or agreement, or the remainder thereof, will reach, make such further order or direct such further inquiry or trial to the effect aforesaid, as may be just.
15. In any case in which the plaintiff is not entitled to enter final judgment in the Central Office under any of the preceding rules of this Order, and in which the defendant fails, or all the defendants if more than one, fail to appear, but in which, by reason of payment, satisfaction, abatement of nuisance, or for any other reason, it is unnecessary for the plaintiff to proceed, he may by leave of the Master, to be obtained by motion on notice, enter judgment for costs. Provided that such notice shall be filed and shall be served in the manner in which service of the summons has been effected, or in such other manner as the Master may direct.
- 16.(1) In proceedings brought by a moneylender or the personal representative or representatives of a moneylender or an assignee for the recovery of money lent by the moneylender or the enforcement of any agreement or security

relating to any such money, an application for leave to enter judgment in default of appearance shall be made by motion returnable before the Master not less than four clear days after service of the notice.

- (2) Such notice of motion shall not be issued until the time limited for entering an appearance has expired and an affidavit of service of the summons has been filed. The notice of motion may be served personally or by registered post, addressed to the defendant at his last known address.
- (3) At the hearing of the application, whether the defendant appears or not, the Master or the Court, as the case may be:
 - (a) may exercise the powers of the Court under the Consumer Credit Act 1995, and
 - (b) if satisfied by affidavit or otherwise that the notice of motion has been duly served, may give leave to enter final judgment for the whole or part of the claim, and
 - (c) as regards any part of the claim as to which leave to enter final judgment is refused, may give any such directions or make any such order as might have been given or made upon the hearing of the summons or of a motion for judgment, as the case might be, if the defendant had entered an appearance, upon such terms as to notice to the defendant and otherwise as may be thought just.
17. In actions to recover a debt or liquidated demand arising under a hire-purchase agreement or credit-sale agreement or any contract of guarantee relating to such an agreement, an application for leave to enter judgment in default of appearance shall be made in the same manner as is prescribed in sub-rules (1) and (2) of rule 16, and judgment shall not be entered until an affidavit shall have been filed stating that the requirements specified in section 32 or (as the case may be) section 58 of the Consumer Credit Act 1995, have been complied with.
18. In any case coming before him under any of the preceding rules of this Order, the Master may, in lieu of giving or refusing leave to enter judgment, place the summons in the Court list for hearing.
19. In all proceedings not by the rules of this Order otherwise specially provided for, in case the party served with the summons does not appear within the time limited for appearance, upon the filing by the plaintiff of an affidavit of service and, where appropriate, of a statement of claim, the proceeding may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Order 37.
20. Before judgment by default shall be entered for any liquidated demand under this Order an affidavit shall be filed specifying the sum then actually due.
21. If, in any case in which a plaintiff is entitled to enter final judgment in the Central Office under any of the preceding rules of this Order, the plaintiff claims interest on the whole or any part of the sum of money for which he is entitled to enter such judgment between the date on which the cause of action accrued and the date of judgment under section 22 of the Courts Act 1981, the plaintiff may apply to the Court ex parte for an order for judgment

inclusive of such interest. The said application shall be supported by an affidavit sworn by the plaintiff or some other person who can positively swear to the facts specifying the sum then actually due and the facts relied on in support of the claim for interest.

- 22.(1) The plaintiff shall notify the defendant in writing within 28 days from the date any judgment is entered in the Central Office in accordance with this Order.
- (2) The plaintiff shall serve on the defendant a copy of any order of the Court granting judgment in default of appearance made in accordance with any provision of this Order within 28 days from the passing and perfection of such order.”

Schedule 2
“Order 20
Statement of Claim

1. When the procedure is by summary summons or special summons, no statement of claim or other pleading shall be delivered except by order of the Court, which order may be made in any case in which the delivery of such statement of claim or other pleading appears to be requisite.
2. Where the procedure is by plenary summons, the plaintiff may, subject to the terms of any order of the Court made in the proceedings, including any order made in accordance with Order 122, rule 7, deliver a statement of claim with the plenary summons or notice in lieu thereof, or at any time within eight weeks from the service thereof.
3. Where the defendant enters an appearance to a plenary summons and, at the time of entering such appearance or within eight days thereafter, gives notice in writing to the plaintiff or his solicitor, that he requires a statement of claim to be delivered, the plaintiff, if he has not already done so, shall, subject to the terms of any order of the Court made in the proceedings, including any order made in accordance with Order 122, rule 7, deliver a statement of claim within eight weeks from the receipt of such notice.
4. Subject to the provisions of Order 13, rule 19, as to filing a statement of claim when there is no appearance, no statement of claim need be delivered when the defendant fails to appear or fails to serve such notice as is mentioned in rule 3. Where the plaintiff delivers a statement of claim without being required to do so, or the defendant unnecessarily requires such statement, the Court may make such order as to the costs occasioned thereby as shall be just, if it appears that the delivery of a statement of claim was improper or unnecessary.
5. Where the defendant in a probate action has appeared, the plaintiff shall not be bound to deliver a statement of claim until the expiration of eight days after the defendant has filed his affidavit as to scripts.
6. Whenever a statement of claim is delivered the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement on the summons.
7. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court may think just, to the same extent as if it had been asked for. The same rule shall apply to any counterclaim made or relief claimed by the defendant in his defence.
8. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. The same rule shall apply where the defendant relies upon several distinct grounds of

defence, set-off, or counterclaim, founded upon separate and distinct facts.

9. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded the same shall not be alleged in the pleadings.
10. In probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest, and in such cases both parties may with and subject to the permission of the Court adduce proof on one and the same trial of their interests respectively, and, after delivery of the statement of claim, the interest of the party to whom it has been delivered shall not be disputed by the plaintiff unless by leave of the Court.
11. In interest causes the pleading of each party must show, on the face of it, that no other person exists having a prior interest to that of the claimant.
12. (1) Where a plaintiff intends or proposes to offer expert evidence on any matter at the trial, the statement of claim shall disclose that intention or proposal and state succinctly the field of expertise concerned and the matters on which expert evidence is intended or proposed to be offered.
 - (2) This rule shall not apply to personal injuries actions.
- 13.(1) The statement of claim of a plaintiff which is a body, organisation or association to which section 117(7) of the Data Protection Act 2018 applies shall
 - (i) include a statement to that effect, and
 - (ii) confirm that the plaintiff satisfies each relevant requirement of Article 80 of the Data Protection Regulation.
- (2) The statement of claim of a plaintiff which is a body, organisation or association to which section 120(2) of the Data Protection Act 2018 applies shall confirm that each paragraph of section 120(2) of the Data Protection Act 2018 applies to that plaintiff.
- (3) The Court may, of its own motion or on the application of another party to a data protection action to which section 117 or 120 of the Data Protection Act 2018 relates, direct the provision to it of such additional information as is necessary in order to confirm that the plaintiff is such a body, organisation or association by way of further particulars or an affidavit.

Order 21

Defence and Counterclaim

1. Where a defendant enters an appearance to a plenary summons he shall, subject to the terms of any order of the Court made in the proceedings, including any order made in accordance with Order 122, rule 7, deliver his defence and counterclaim (if any):

- (a) in case he does not by notice require a statement of claim, within eight weeks from the entry of appearance; or
 - (b) in any other case within eight weeks from the date of delivery of the statement of claim or from the time limited for appearance, whichever shall be later.
2. Where leave has been given to a defendant to defend under Order 37, he shall deliver his defence (if any) within such time as shall be limited by the order giving leave to defend or, if no time is thereby limited, within fourteen days from the order.
3. In actions for a debt or liquidated demand in money a mere denial of the debt shall be inadmissible.
4. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact, e.g., the drawing, making, indorsing, accepting, presenting, or notice of dishonour of the bill or note.
5. In actions comprised in Order 2, rule 1(1) classes (a) and (b), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; e.g., in actions for goods bargained and sold, or sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it must deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff.
6. No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted.
7. If either party wishes to deny the right of any other party to claim as executor, or as trustee, whether in bankruptcy or otherwise, or as assignee in bankruptcy, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.
8. Where the Court shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court may make such order as shall be just with respect to any extra cost occasioned by their having been denied or not admitted.
9. Where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he shall in his defence, state specifically that he does so by way of counterclaim.
10. Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim setting forth the names of all the persons who, if such counterclaim were to be enforced by cross-action, would be defendants to such cross-action, and shall deliver his defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

11. Where any such person as in rule 10 mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same rules as are herein before contained with respect to the service of a summons, and every defence so served shall be indorsed in the Form No 3 in Appendix C.
12. Any person not a defendant to the action, who is served with a defence and counterclaim as aforesaid, shall appear thereto as if he had been served with a summons to appear in an action.
13. Any person named in a defence as a party to a counterclaim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.
14. Where a defendant sets up a counterclaim, if the plaintiff or any other person named in manner aforesaid as party to such counterclaim contends that the claim thereby raised ought not to be disposed of by way of counterclaim, but in an independent action, he may at any time before reply apply to the Court for an order that such counterclaim may be excluded, and the Court may, on the hearing of such application, make such order as shall be just.
15. If, in any case in which the defendant sets up a counterclaim, the action of the plaintiff is stayed, discontinued, or dismissed, the counterclaim may nevertheless be proceeded with.
16. Where in any action a set-off or counterclaim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.
17. In probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall not, in any event, be liable to pay the costs of the other side unless the Court shall be of opinion that there was no reasonable ground for opposing the will.
18. In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of any statute, he shall insert in the margin of his pleading the words "**by statute**" together with the year in which the statute on which he relies was passed, and also the section of such statute,; otherwise such defence shall be taken not to have been pleaded by virtue of any statute.
19. No plea or defence shall be pleaded in abatement.
20. No defendant in an action for the recovery of land upon the title, who is in possession by himself or his tenant, need plead his title, unless his defence depends on an equitable estate or right or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. Except in the cases herein before mentioned, it shall be sufficient to state

by way of defence that he is so in possession and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim. He may, nevertheless, rely upon any ground of defence which he can prove except as herein before mentioned.

21. In case of such an action being brought by some or one of several persons entitled as joint tenants, tenants in common, or coparceners, any joint tenant, tenant in common, or coparcener in possession may set forth in his defence that he is such joint tenant, tenant in common, or coparcener, and defends as such, and that he admits the right of the plaintiff to an undivided share of the property, stating what share, but denies any actual ouster of him from the property, and upon the trial of such issue the additional question of whether an actual ouster has taken place shall be tried.
22. A person who has appeared in an action for the recovery of a holding, agricultural or pastoral, or partly agricultural and partly pastoral, in its character, for non-payment of rent, and has limited his appearance in accordance with Order 12, rule 22 shall deliver his defence (if any) within eight weeks after his appearance.
- 23.(1) Where a defendant intends or proposes to offer expert evidence on any matter (including on any matter arising only in connection with a counterclaim) at the trial, the defence (or, as the case may be, the counterclaim) shall disclose that intention or proposal and state succinctly the field of expertise concerned and the matters on which expert evidence is intended or proposed to be offered.
- (2) This rule shall not apply to personal injuries actions.”

Schedule 3
“Order 27
Default of Pleading

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, subject to the provisions of rule 2, at the expiration of that time, apply to the Court to dismiss the action, with costs, for want of prosecution; and on the hearing of such application, the Court shall, where it is satisfied that the plaintiff has been served with notice of the application order the action to be dismissed accordingly, unless the Court is satisfied, for reasons to be recited in the order, that it is necessary in the interests of justice that the time for delivery of the statement of claim should be extended and, where it is so satisfied, the Court shall make an order:
 - (a) extending the time for delivery of a statement of claim for such period as the Court considers necessary in all of the circumstances, and
 - (b) providing that, unless the statement of claim is delivered and a copy of such statement of claim is filed in the Central Office within that extended period, the action shall stand dismissed without any further application to the Court and the proper officer may on request at any time thereafter certify such dismissal in writing.
- 2.(1) No notice of motion to dismiss the action for want of prosecution in actions claiming unliquidated damages in tort or contract may be served, unless the defendant has at least 28 days prior to the service of such notice, written to the plaintiff giving him notice of his intention to serve a notice of motion to dismiss the plaintiff's claim and at the same time consenting to the late delivery of statement of claim within 28 days of the date of the letter.
- (2) If no statement of claim is delivered within the said period the defendant shall be at liberty to serve a notice of motion to dismiss the action, with costs, for want of prosecution.
- (3) The notice of motion shall be served on the plaintiff not later than ten days from the date on which it was issued, together with a letter specifically drawing the defendant's attention to the provisions of sub-rule (4).
- (4) If the plaintiff:
 - (a) delivers a statement of claim to the defendant not later than 21 days after the service of such notice of motion to dismiss for want of prosecution, and
 - (b) lodges a copy of the statement of claim in the Central Office with a certified copy of the notice of motion attached thereto not later than ten days before the return date,

the said motion to dismiss shall not be put in the judges' list but shall stand struck out and the plaintiff shall pay to the defendant the sum of €750 for his costs of the said motion to dismiss.

3. Subject to the provisions of rules 16 and 17, if the plaintiff's claim be only for a debt or liquidated demand, or for the recovery of land, or for the delivery of specific goods, and the defendant does not within the time allowed for that purpose deliver a defence, the plaintiff may at the expiration of such time enter final judgment in the Central Office for the amount of such debt or liquidated demand, or that the person whose title is asserted in the statement of claim shall recover possession of the land, or for the delivery of the specific goods without giving the defendant the option of retaining such goods upon paying the value thereof, as the case may be, with costs.
4. If the plaintiff's claim be for a debt or liquidated demand, or for the recovery of land, or for the delivery of specific goods, and also for pecuniary damages or any other relief, and the defendant does not within the time allowed for that purpose deliver a defence, the plaintiff may enter final judgment as in rule 3 provided and may also apply as in rule 9 provided in respect of the said claim for pecuniary damages or other relief.
5. When in any such action as in rules 3 and 4 mentioned there are several defendants, if one of them make default as mentioned in the said rules, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants or against the said defendant under rule 4.
6. If the action be for recovery of land for non-payment of rent, no judgment shall be entered under this Order until an affidavit has been filed, made by the landlord, his agent, receiver, or clerk, stating that there was, at the commencement of the action, at least one year's rent due above all just and fair allowances.
7. In an action for the recovery of a holding or of lands including a holding agricultural or pastoral, or partly agricultural and partly pastoral, in its character, for non-payment of rent no judgment shall be entered under this Order until an affidavit has been filed made by the landlord, his agent, receiver, or clerk, verifying the special indorsement on the summons. Such affidavit may be in the Form No 6 in Appendix A, Part 1.
8. In probate actions, if any defendant make default in delivering a defence, the action may proceed, notwithstanding such default.
- 9.(1) In all other actions than those in the preceding rules of this Order mentioned, if a defendant being bound to deliver a defence, does not do so within the time allowed, the plaintiff may, subject to the provisions of rule 10, set down the action on motion for judgment; and on the hearing of such application the Court shall, where it is satisfied that the defendant has been served with notice of the application, give to the plaintiff such judgment as upon the statement of claim it considers the plaintiff to be

entitled to, unless the court is satisfied, for reasons to be recited in the order, that that it is necessary in the interests of justice that the time for delivery of the defence should be extended and, where it is so satisfied, the Court shall make an order:

- (a) extending the time for delivery of a defence for such period as the Court considers necessary in all of the circumstances, and
 - (b) providing that, unless the defence is delivered and a copy of such defence is filed in the Central Office within that extended period, judgment shall be entered for the plaintiff in the Central Office without any further application to the Court.
- (2) Where the Court gives judgment to the plaintiff in accordance with sub-rule (1), it may:
- (a) in any case in which it considers it appropriate to do so, grant such of the relief claimed in the statement of claim as appears to be just and proper on the hearing of the motion and/or
 - (b) set the matter down for:
 - (i) the determination of any relief other than damages, and
 - (ii) the assessment of any damages to which the plaintiff may be entitled, to be ascertained by a Judge with a jury, in case any party requires and is entitled to one, but otherwise without a jury, and, if without a jury, either by a Judge or by the Master or by the Examiner, as the Judge may direct, on evidence by affidavit or otherwise.
- (3) Where judgment is entered for the plaintiff in the Central Office pursuant to an order made in accordance with sub-rule (1), the plaintiff may:
- (a) apply by notice of motion to the Court for any relief other than damages claimed in the statement of claim, and the Court may, on the hearing of the motion, where it considers it appropriate to do so, grant such of the relief claimed in the statement of claim as appears to be just and proper on the hearing of the motion and/or
 - (b) set the matter down for:
 - (i) the determination of any relief other than damages, and
 - (ii) the assessment of any damages to which the plaintiff may be entitled, to be ascertained by a Judge with a jury, in case any party requires and is entitled to one, but otherwise without a jury, and, if without a jury, either by a Judge or by the Master or by the Examiner, as the Judge may direct, on evidence by affidavit or otherwise.
- 10.(1) No notice of motion for judgment in default of defence in actions claiming unliquidated damages in tort or contract may be served, unless the plaintiff has at least 28 days prior to the service of such notice, written to the defendant giving him notice of his intention to serve a notice of motion for judgment and at the same time consenting to the late delivery of defence within 28 days of the date of the letter.

- (2) If no defence is delivered within the said period the plaintiff shall be at liberty to serve a notice of motion for judgment in default of defence.
- (3) The notice of motion shall be served on the defendant not later than ten days from the date on which it was issued, together with a letter specifically drawing the defendant's attention to the provisions of sub-rule (4).
- (4) If the defendant:
 - (a) delivers a defence to the plaintiff not later than 21 days after the service of such notice of motion for judgment, and
 - (b) lodges a copy of the defence in the Central Office with a certified copy of the notice of motion attached thereto not later than ten days before the return date,

the said motion for judgment shall not be put in the judges' list but shall stand struck out and the defendant shall pay to the plaintiff the sum of €750 for his costs of the said motion for judgment.

11. Where, in any such action as mentioned in rule 9, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.
12. If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue.
13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court for such judgment, if any, as upon the pleadings he may appear to be entitled to, and the Court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.
14. Before judgment by default shall be entered for any debt or liquidated demand under this Order, an affidavit shall be filed specifying the sum then actually due.
- 15.(1) Any order dismissing the plaintiff's action for want of prosecution, whether under this Order or any other Order of these Rules, may be set aside by the Court upon such terms as to costs or otherwise as the Court may think fit, if the Court is satisfied that at the time of the failure special circumstances (to be recited in the order) existed which explain and justify the failure.
- (2) Any judgment by default, whether under this Order or any other Order of these Rules, may be set aside by the Court upon such terms as to costs or

otherwise as the Court may think fit, if the Court is satisfied that at the time of the default special circumstances (to be recited in the order) existed which explain and justify the failure, and where an action has been set down under rule 9, such setting down may be dealt with by the Court in the same way as if a judgment by default had been signed when the case was set down.

16. In proceedings brought by a moneylender or the assignee or legal personal representative of a moneylender for the recovery of money lent by the moneylender or any interest thereon, judgment in default of defence shall not be entered until after the expiration of 12 months from the date of issue of the summons by which the proceedings were instituted unless the leave of the Court shall have been first obtained. An application for such leave may be made by motion on notice served not less than four clear days before the hearing; and the provisions of Order 13, rule 16(2) and (3) shall apply to such application.
17. In actions to recover a debt or liquidated demand arising under a hire-purchase agreement or credit-sale agreement (as defined by the Consumer Credit Act 1995) or any contract of guarantee relating to such an agreement, judgment in default of defence shall not be entered until after the expiration of 12 months from the date of issue of the summons by which the proceedings were instituted unless the leave of the Court shall have been first obtained. An application for such leave may be made by motion on notice served, not less than four clear days before the hearing, personally or by registered post addressed to the defendant at his last known address; and judgment shall not be entered until an affidavit shall have been filed stating that the requirements specified in section 32 or (as the case may be) section 58 of the Consumer Credit Act 1995 have been complied with.
- 18.(1) The plaintiff shall notify the defendant in writing within 28 days from the date any judgment is entered in the Central Office in accordance with this Order.
 - (2) The plaintiff shall serve on the defendant a copy of any order of the Court granting judgment in default of defence within 28 days from the passing and perfection of such order.
 - (3) The defendant shall notify the plaintiff in writing within 28 days from the date on which any action first stands dismissed pursuant to an order made in accordance with rule 1.
 - (4) The defendant shall serve on the plaintiff a copy of any order of the Court dismissing an action for want of prosecution within 28 days from the passing and perfection of such order.”

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These rules amend the Rules of the Superior Courts, by the substitution of Orders 13, 20, 21 and 27, and the amendment of Order 23 rule 6 and Order 63 rule 1, to improve the procedures in applications to the High Court for orders in default of defence, statement of claim and appearance and to standardise time limits for delivery of certain documents.

In particular these rules provide for the following -

- that judgment be entered in a motion for judgment in default of defence or default of statement of claim except where justice requires an extension of time and that where such an extension is granted, the court shall make an "Unless Order", thus requiring one court hearing only;
- 8 weeks for delivery of a statement of claim and delivery of a defence in all cases;
- the requirement of a 28 day warning letter prior to the bringing of an application for judgment in default including judgment in default of appearance and
- that a plaintiff be required to serve the motion on the defendant in all applications for judgment in default of appearance.

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