

2009 No.

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

**The Rules of the Supreme Court (Northern Ireland)
(Amendment No. 2) 2009**

Made - - - - - ***** 2009
Coming into operation - - - - - 7th September 2009
To be laid before Parliament

The Northern Ireland Supreme Court Rules Committee makes the following Rules in exercise of the powers conferred by sections 55 and 55A of the Judicature (Northern Ireland) Act 1978(a).

Citation and commencement

1. These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 2009 and shall come into operation on 7th September 2009.

Amendments to the Rules of the Supreme Court (Northern Ireland) 1980

2. In the Arrangement of Orders in the Rules of the Supreme Court (Northern Ireland) 1980(b) (“the principal Rules”), in the entry for Order 71, for “Reciprocal enforcements of judgments and enforcement of Community judgments”, substitute “Reciprocal enforcement of judgments, enforcement of European Community judgments and European Order for Payment Procedure”.

3. In Order 1, rule 6 of the principal Rules, for “senior Lord Chief Justice of Appeal”, substitute “senior Lord Justice of Appeal”.

4. For Order 25 of the principal Rules, substitute the new Order set out in Schedule 1.

5. In Order 38 of the principal Rules—

- (a) in rule 1A(1), for the words “any medical report or other accompanying or supplemental document served or disclosed pursuant to the provisions of Order 25”, substitute “any report or other accompanying or supplemental document served or disclosed pursuant to the provisions of Order 25 or of rule 3B of this Order”;
- (b) in rule 1A(2), omit the word “medical”; and
- (c) after rule 3A, insert—

(a) 1978 (c.23) to which the most recent relevant amendments were made by the Constitutional Reform Act 2005 (c.4)
(b) S.R. 1980 No.346 to which the most relevant amendments were made by S.R. 1981 No. 128; S.R. 1991 No. 330; S.R.1992 No. 313; S.R. 1994 No. 286; S.R.2002 No. 202; S.R. 2004 No.108.

“Disclosure of evidence in clinical negligence actions

- 3B.**—(1) For the purposes of this rule—
- (a) “clinical negligence” means negligence in connection with the diagnosis of any illness, or the care or treatment of any patient, in consequence of any act or omission to act by a person employed or engaged for such purposes; and
 - (b) “medical evidence” means—
 - (i) the evidence contained in any medical report or other accompanying or supplemental document emanating from the maker of the report which is intended by him to accompany or supplement such report and includes surgical and radiological evidence and any ancillary expert or technical evidence; and
 - (ii) any other evidence of a medical, surgical or radiological nature which a party proposes to adduce at the trial by means of oral testimony.
- (2) In actions grounded on an allegation of clinical negligence—
- (a) where the plaintiff proposes to adduce at the trial evidence (other than medical evidence) obtained from any expert for the purpose of assisting the Court in assessing damages, he shall—
 - (i) insofar as he then has in his possession or power that evidence, disclose it to the other party or parties not later than 10 weeks from the close of the pleadings or such other period as the Court may direct; and
 - (ii) insofar as he thereafter obtains any such evidence before the date of the trial, disclose it to the other party or parties within 21 days of receiving it and in any case before the first day of the trial; and
 - (b) where the defendant or any other party proposes to adduce at the trial evidence (other than medical evidence) obtained from any expert for the purpose of assisting the Court in assessing damages, he shall—
 - (i) insofar as he then has in his possession or power that evidence, disclose it to the plaintiff and any other party or parties not later than 20 weeks from the close of the pleadings or such other period as the Court may direct; and
 - (ii) insofar as he thereafter obtains any such evidence before the date of trial, disclose it to the plaintiff and any other party or parties within 21 days of receiving it and in any case before the first day of the trial.”.

6. In Order 61 of the principal Rules, omit rule 9 and rule 10.

7. In Order 71 of the principal Rules—

- (a) for the heading, substitute “**RECIPROCAL ENFORCEMENT OF JUDGMENTS, ENFORCEMENT OF EUROPEAN COMMUNITY JUDGMENTS AND EUROPEAN ORDER FOR PAYMENT PROCEDURE**”; and
- (b) after rule 35, insert the new rules set out in Schedule 2.

8. In Order 72 of the principal Rules—

- (a) in rule 1(1), for “This Order” substitute “Subject to rule 10, this Order”; and
- (b) after rule 9, insert—

“Proceedings in the Chancery Division

10. A judge dealing with any aspect of an action pending in the Chancery Division, who deems the action similar in character to an action which might have been entered in the Commercial List of the Queen’s Bench Division, shall have all the powers of the Commercial Judge in respect of that action.”.

9. In Order 83 of the principal Rules—

- (a) in rule 11(1), for “section 129(1)(b)”, substitute “section 129(1)(b) or (ba)”; and
- (b) after rule 11(5), insert—

“(6) An applicant who is a debtor or hirer making an application for an order under section 129(1)(ba) must attach to the supporting affidavit a copy of the notice served on the creditor or owner under section 129A(1)(a).”.

10. In Order 91 of the principal Rules—

- (a) in rule 1(b)—
 - (i) omit “53 or”;
 - (ii) for “paragraph 7(3), 32(3) or 35(2) of Schedule 4 to the Finance Act 1975” substitute “section 222 or 249 of the Inheritance Tax Act 1984”(a); and
 - (iii) for “paragraph 7(3)” substitute “section 222”;

(b) for the heading to rule 2, substitute “*Appeal under section 222 of the Inheritance Tax Act 1984*”;

(c) in rule 2(1), for “paragraph 7(3) of Schedule 4 to the Finance Act 1975”, substitute “section 222 of the Inheritance Tax Act 1984”;

(d) in rule 2(2)(a), for “paragraph 6 of the said Schedule”, substitute “section 221 of the Inheritance Tax Act 1984”;

(e) for rule 2(2)(b), substitute—

“(b) state the date on which the appellant gave to the Board notice of appeal under section 222 and, if the notice was not given within the time permitted, whether Her Majesty’s Revenue and Customs (“HMRC”) have given consent or the tribunal has given permission to the notice being given after the time permitted and where applicable, the date of such consent or permission; and”;

(f) for rule 2(4), substitute—

“(4) The originating summons must be served on the Board within 30 days of the date on which the appellant gave to the Board notice of appeal under section 222 or, if HMRC have given consent or the tribunal has given permission to the notice being given after the time permitted, within 30 days of the date on which such consent or permission was given.”; and

(g) after rule 2(7), insert—

“(8) In this rule—

“the tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

“Tribunal Procedure Rules” means the rules governing the practice and procedure to be followed in the First-tier Tribunal and Upper Tribunal.”(b).

11. In Order 94 of the principal Rules—

(a) in rule 1(i), omit “a VAT and duties tribunal and other”; and

(b) in rule 2—

(i) omit paragraph (1)(x);

(ii) in paragraph (1)(xv), omit the full stop and insert a semi-colon; and

(iii) after paragraph (1)(xv), insert “(xvi) section 13 of the Tribunals, Courts and Enforcement Act 2007(c).”.

(a) 1984 c.51

(b) Tribunal Procedure Rules made S.I 2008/2699; S.I 2008/2698; S.I 2008/2686; S.I 2008/2685; S.I 2009/273

(c) 2007 c.15

Savings

12. Order 61, rule 9 and rule 10, Order 91, rule 2(2)(b) and rule 2(4), and Order 94 rule 1(i) and rule 2(1)(x) of the principal Rules as they applied before these Rules came into operation shall continue to have effect in relation to any appeal lodged with the Court before 1st April 2009.

Dated

Signed by the authority of the Lord Chancellor

In exercise of the powers conferred by section 55A(3) of the Judicature (Northern Ireland) Act 1978, I allow these Rules.

Parliamentary Under-Secretary of State
Ministry of Justice

Dated

SCHEDULE 1

Rule 4

“ORDER 25

MEDICAL EVIDENCE

I. PRELIMINARY

Application and interpretation

- 1.—(1) This Part of this Order applies to all actions in respect of personal injury or death.
- (2) For the purposes of this Order—
 - “medical evidence” means—
 - (a) the evidence contained in any medical report or other accompanying or supplemental document as specified in rule 10 and includes surgical and radiological evidence and any ancillary expert or technical evidence; and
 - (b) any other evidence of a medical, surgical or radiological nature which a party proposes to adduce at the trial by means of oral testimony,and the expressions “medical expert” and “medical examination” shall be construed accordingly; and
 - “clinical negligence” means negligence in connection with the diagnosis of any illness, or the care or treatment of any patient, in consequence of any act or omission to act by a person employed or engaged for such purposes.

Restrictions on medical evidence

2. No party shall, except with the leave of the Court or on consent, adduce medical evidence at the trial the contents of which he has not disclosed to the other parties in accordance with rules 7, 8 or 13.

Failure to comply with rules

3. Where any party fails to comply with any of the provisions of this order, the Court may stay the action or strike out that party’s defence, as the case may be, or make such order as the Court considers appropriate.

II. GENERAL RULES

Application

4. This Part of this Order applies to all actions for damages in respect of personal injury or death except actions grounded on an allegation of clinical negligence.

Medical report to be served with statement of claim

5. The plaintiff shall serve with his statement of claim medical evidence substantiating all the personal injuries alleged in the statement of claim.

Medical examination of another party: disclosure of report

6. Any party who has been afforded medical examination of another party shall disclose to that other party any medical evidence resulting from such examination—

- (a) insofar as he then has in his possession or power a report or reports of such examination not later than 10 weeks from the close of the pleadings; and
- (b) insofar as he thereafter obtains any such report before the date of the trial, within 21 days of receiving it and in any case before the first day of the trial.

Disclosure of medical evidence

7. Subject to rule 5, where a party proposes to adduce at the trial medical evidence obtained from any medical expert, he shall disclose all relevant medical evidence obtained at any time from that medical expert to the relevant party or parties—

- (a) insofar as he then has in his possession or power that evidence, not later than 10 weeks from the close of the pleadings; and
- (b) insofar as he thereafter obtains any such evidence before the date of the trial, within 21 days of receiving it and in any case before the first day of the trial.

Evidence received during the trial

8. Where a party obtains on or after the first day of the trial any report of evidence of the kind mentioned in rule 5 or 6, he shall disclose that report or evidence to the relevant party or parties immediately.

Party to furnish name and address of doctor, etc.

9. Any party to an action shall furnish to any other party on demand the name and address of any medical practitioner or the name of any hospital from whom or at which he received any medical or surgical treatment material to the action.

Mode of disclosure

10.—(1) A party serving or disclosing medical evidence under this Part of this Order shall do so by furnishing copies of any relevant medical report or reports, together with any documents emanating from the maker of the report which are intended by him to accompany or supplement any such report, or a document or documents containing a sufficient record of any such evidence as is referred to in the definition of medical evidence in rule 1(2). All such reports or other documents shall be signed and dated by the relevant medical expert and shall specify his professional qualifications.

(2) On the ex parte application of any party bound to serve or disclose any medical report under this Order, the Court may give him leave—

- (i) to adduce at the trial the evidence contained in any report without serving or disclosing the report; or
- (ii) to omit or amend any part of any report when serving or disclosing the report.

Variation between evidence disclosed and evidence at trial.

11. Where a party's medical evidence at the trial varies from the evidence which that party has disclosed to another party, the Court may on the application of any party adjourn the trial or make any such order, on such terms as to costs and otherwise, as the Court considers appropriate.

III. CLINICAL NEGLIGENCE ACTIONS

Application

12. This Part of this Order applies to actions for damages in respect of personal injury which are grounded on an allegation of clinical negligence.

Disclosure of medical evidence on the issue of liability

13.—(1) Where more than one party to such an action proposes to adduce at the trial medical evidence obtained from any medical expert on the issue of liability, each party shall—

- (i) insofar as they then have in their possession or power that evidence, disclose it to the other party or parties simultaneously not later than 20 weeks from the close of the pleadings or such other period as the Court may direct; and
- (ii) insofar as any party thereafter obtains any such evidence before the date of the trial, disclose it to the other party or parties within 21 days of receiving it and in any case before the first day of the trial.

(2) Nothing in paragraph (1) shall be interpreted as imposing an obligation on any party to disclose evidence obtained from any medical expert on liability except where the party or parties to whom disclosure is to be made is also relying on such evidence and simultaneous exchange is to take place.

Disclosure of medical evidence on the issue of damages

14.—(1) Where the plaintiff proposes to adduce at the trial medical evidence obtained from any medical expert for the purpose of assisting the Court in assessing damages, he shall—

- (i) insofar as he then has in his possession or power that evidence, disclose it to the other party or parties not later than 10 weeks from the close of the pleadings or such other period as the Court may direct; and
- (ii) insofar as he thereafter obtains any such evidence before the date of the trial, disclose it to the other party or parties within 21 days of receiving it and in any case before the first day of the trial.

(2) Where the defendant or any other party proposes to adduce at the trial medical evidence obtained from any medical expert for the purpose of assisting the Court in assessing damages, he shall—

- (i) insofar as he then has in his possession or power that evidence, disclose it to the plaintiff and any other party or parties not later than 20 weeks from the close of the pleadings or such other period as the Court may direct; and
- (ii) insofar as he thereafter obtains any such evidence before the date of trial, disclose it to the plaintiff and any other party or parties within 21 days of receiving it and in any case before the first day of the trial.”

SCHEDULE 2

Rule 7(b)

“IV. EUROPEAN ORDER FOR PAYMENT PROCEDURE

Application and interpretation

36.—(1) This Part of this Order applies to applications for European orders for payment and other related proceedings under Regulation (EC) No 1896/2006 of the European

Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

(2) In this Part—

- (a) “EOP Regulation” means Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure^(a);
- (b) “court of origin” has the meaning given by Article 5(4) of the EOP Regulation;
- (c) “EOP” means a European order for payment;
- (d) “EOP application” means an application for an EOP;
- (e) “Form A” means the Application for a European Order for Payment Form A, annexed to the EOP Regulation at Annex I;
- (f) “European order for payment” means an order for payment made by a court under Article 12(1) of the EOP Regulation;
- (g) “Member State” has the meaning given by Article 2(3) of the EOP Regulation;
- (h) “Member State of origin” has the meaning given by Article 5(1) of the EOP Regulation;
- (i) “statement of opposition” means a statement of opposition filed in accordance with Article 16 of the EOP Regulation.

Translations

37. Except where the EOP Regulation makes different provision about the certification or verification of translations required by this Part, such translation must be accompanied by a statement by the person making it that it is a correct translation. The statement must include that person’s name, address and qualifications for making the translation.

Assignment of business and exercise of powers

38. Any applications to the High Court under the EOP Regulation shall be assigned to the Queen’s Bench Division and the powers conferred on the Court by that Regulation may be dealt with by a judge in chambers or by a master.

Application for a European Order for Payment

39.—(1) An EOP application in Form A shall be made ex parte.

(2) Form A must be—

- (a) completed in English or accompanied by a translation into English; and
- (b) lodged in person or by post.

(3) Documents other than Form A that are lodged or sent to the Court in EOP proceedings, including statements of opposition, may be lodged, in addition to by post or in person, by—

- (a) fax; or
- (b) other electronic means where the facilities are available.

Withdrawal of EOP application

40.—(1) At any stage before a statement of opposition is lodged, the claimant may notify the Court that the claimant no longer wishes to proceed with the claim.

(2) Where the claimant notifies the Court in accordance with paragraph (1) —

(a) O.J. No. L 399, 30.12.2006, p.1.

- (a) the Court shall notify the defendant that the application has been withdrawn; and
- (b) no order as to costs will be made.

Transfer of proceedings where an EOP application has been opposed

41.—(1) Where the defendant lodges a statement of opposition to an EOP in accordance with Article 16 of the EOP Regulation and the claimant has not opposed the transfer of the matter—

- (a) the proceedings shall continue as if they had begun by way of writ under these Rules;
- (b) the defendant’s statement of opposition shall be treated as a memorandum of appearance under Order 12; and
- (c) these Rules shall apply with necessary modifications and subject to this rule and rule 42.

(2) The Court must notify the claimant in accordance with Article 17(3) of the EOP Regulation within 21 days after the statement of opposition was lodged.

(3) When the Court notifies the claimant under paragraph 2, it must also

- (a) notify the claimant—
 - (i) that the EOP application in Form A is now treated as a writ; and
 - (ii) of the time within which the defendant must issue a defence under rule 42; and
- (b) notify the defendant—
 - (i) that the application has been transferred under Article 17 of the EOP Regulation;
 - (ii) that the EOP application in Form A is now treated as a writ; and
 - (iii) of the time within which a defence is required under rule 42.

Defence

42. The defendant must lodge a defence before the expiration of 30 days after the date of the notice issued by the Court under rule 41(2)(b).

Review in exceptional cases

43.—(1) An application under Article 20 of the EOP Regulation must be made by originating summons and supported by an affidavit verifying the facts on which the application is based.

(2) The originating summons shall be in Form 7 and no appearance need be entered to it.

Register of European Orders for Payment

44. There shall be kept in the Central Office under the direction of the Master (Queen’s Bench and Appeals) a register of EOPs made by the Court.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 (SR 1980 No. 346) to—

- correct an erroneous reference to the senior Lord Chief Justice;
- make provision for the disclosure of evidence in actions relating to clinical negligence;
- make provision for procedures under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure;
- provide that a judge hearing an action in the Chancery Division shall have the same powers as the Commercial Judge if the action has been entered in the Commercial list of the Queen’s Bench;
- take account of amendments to the Consumer Credit Act 1974 made by the Consumer Credit Act 2006 in relation to applications for time orders in connection with credit agreements;
- remove references to the VAT and duties tribunal as a result of the transfer of functions of various tax tribunals to the First-tier Tribunal and Upper Tribunal established under the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”) and the Transfer of Tribunal Functions and Revenue and Customs Appeal Order 2009 (S.I. 2009/56) (“the 2009 Order”);
- make consequential amendments, insert references to the Inheritance Tax Act 1984 and reflect minor changes to procedure for appeals in revenue proceedings to the High Court as a result of the 2009 Order;
- remove references to the VAT and duties tribunal and to provide for a right of appeal from the Upper Tribunal to the Court of Appeal under section 13 of the 2007 Act; and
- make savings provisions in relation to the application of those rules amended as a result of the 2007 Act and the 2009 Order.