STATUTORY RULES OF NORTHERN IRELAND

2009 No. 345

COURT OF JUDICATURE, NORTHERN IRELAND

PROCEDURE

The Rules of the Court of Judicature (Northern Ireland) (Amendment No. 4) 2009

Made - - - - 12th October 2009

To be laid before Parliament

Coming into operation in accordance with Rule 1

The Northern Ireland Court of Judicature Rules Committee(**1**) makes the following Rules in exercise of the powers conferred by sections 55 and 55A of the Judicature (Northern Ireland) Act 1978(**2**) and sections 8, 9(1) and 11(5) of the Presumption of Death Act (Northern Ireland) 2009(**3**).

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Court of Judicature (Northern Ireland) (Amendment No. 4) 2009 and subject to paragraph (2), shall come into operation on the 9th November 2009.

(2) Rules 3(4) and 3(7)(a) shall come into operation on the 6th January 2010.

(3) In these Rules, "the principal Rules" means the Rules of the Court of Judicature (Northern Ireland) 1980(**4**), and an Order or Form referred to by a number or an Appendix referred to by a letter means the Order or Form so numbered or the Appendix so lettered in the principal Rules.

Transitional provision

2. Order 18 of the principal Rules as it applied immediately before rule 3(4) and rule 3(7)(a) came into operation shall continue to apply where a statement of claim is served on the defendant before 6th January 2010.

(**1**) The Northern Ireland Supreme Court Rules Committee was renamed the Northern Ireland Court of Judicature Rules Committee in accordance with section 59(3) of the Constitutional Reform Act 2005 (c.4).

(**2**) 1978 c.23; to which the most recent relevant amendments were made by paragraphs 29 and 30 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).

(**3**) 2009 c.6.

(**4**) S.R. 1980 No. 346; the Rules of the Court of Judicature (Northern Ireland) 1980 to which the most recent relevant amendments were made by S.R. 1986 No.203, S.R. 2000 No.393 and S.R. 2008 No.22 were renamed in accordance with paragraph 3 of Schedule 11 to the Constitutional Reform Act 2005 (c.4) .

Amendments to the principal Rules

3. The principal Rules shall be amended as follows—

(1) in the Arrangement of Orders, after the entry relating to Order 93, insert the following new entry—

"**93A.** Presumption of Death Act (Northern Ireland) 2009";

(2) in Order 1—

(a) after rule 10(i), insert—

"(j) proceedings under the Presumption of Death Act (Northern Ireland) 2009.";

(b) after rule 11(l), insert—

"(m) appeals under rule 15 or 17B of the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005(**5**).";

(3) in Order 7—

(a) in rule 2(1), for "or 9", substitute ", 9 or 9A";

(b) in rule 2(2), after "Order 90", insert ", Order 93A";

(4) in Order 18—

(a) in rule 2, in paragraphs (1) and (2) for "21 days" substitute "6 weeks";

(b) after rule 15 insert—

"**Defence**

15A.—(1) In his defence the defendant must state—

(a) which of the allegations in the particulars of the statement of claim he denies;

(b) which of the allegations he is unable to admit or deny but which he requires the plaintiff to prove;

(c) which of the allegations he admits.

(2) Where the defendant denies liability the defence shall be so pleaded that it raises the defendant's case with sufficient clarity that the opposite party is made aware of the true nature of the defendant's case and, where appropriate, the defence shall put forward the defendant's version of relevant facts or events if that version is materially different from the plaintiff's version as pleaded in the statement of claim.

(3) Where the claim includes a money claim, a defendant shall be taken to require that any allegation relating to the amount of money clamed be proved unless he expressly admits the allegation.";

(5) in Order 23, rule 1—

(a) at the end of paragraph (d), insert "or"; and

(b) after paragraph (d), insert—

"(e) that the plaintiff is a company or other body (whether incorporated inside or outside Northern Ireland) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so,";

(6) after Order 93, insert new Order 93A as set out in Schedule 1 to these Rules;

(**5**) S.R. 2005 No. 112; as amended by S.R. 2009 No. 267.

(7) in Appendix A—

(a) in Forms Nos. 2 and 5, for "21 days" substitute "6 weeks";

(b) after Form No. 9, insert new Form No. 9A as set out in Schedule 2 to these Rules;

(c) after Form No. 75, insert new Forms Nos. 76, 77, 78, 79, 80, 81 and 82 as set out in Schedule 2 to these Rules.

Declan Morgan
John Gillen
Paul Girvan
Bernard McCloskey
Patrick Coghlin
Paul Maguire
Tony Caher

Dated 8th October 2009

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.

Bridget Prentice
Parliamentary Under-Secretary of State
Ministry of Justice

Dated 12th October 2009

SCHEDULE 1 Rule 3(6)

"ORDER 93A

PRESUMPTION OF DEATH ACT (NORTHERN IRELAND) 2009

Interpretation

1. In this Order—

"the 2009 Act" means the Presumption of Death Act (Northern Ireland) 2009 and a section referred to by a number means the section so numbered in the 2009 Act, and expressions used have the same meaning in this Order as in the 2009 Act;

an "application for a declaration of presumed death" means an application for a declaration under section 1;

a "declaration of presumed death" means a declaration under section 1.

Application for a declaration of presumed death

2.—(1) An application for a declaration of presumed death shall be made by originating summons in Form No. 9A, and any further application under this Order, other than an application under rule 7(2), shall be made by summons in Form No. 28, unless the Court otherwise directs.

(2) The applicant, and any other person as the Court may direct, shall be a party to an application for a declaration of presumed death.

(3) An application for a declaration of presumed death shall be supported by an affidavit which shall contain details of the following, where known—

(a) the name and address of the applicant;

(b) the relationship of the applicant to the missing person;

(c) the name of the missing person to whom the application relates, and any other names by which the missing person is known;

(d) the address or the last known residence of the missing person;

(e) the date of birth of the missing person;

(f) the national insurance number of the missing person;

(g) the date on which the missing person is—

(i) thought to have died; or

(ii) last known to have been alive;

(h) a statement as to which of sections 1(2)(a), (b) or (c) is relied upon to give the Court jurisdiction to entertain the proceedings;

(i) where the missing person is married, or is party to a civil partnership and the applicant is neither the spouse nor the civil partner of the missing person, the name and address of the spouse or, as the case may be, the civil partner of the missing person;

(j) where the application is made by a person other than the spouse, civil partner, or a close relative of the missing person, details of the applicant's interest in the determination of the application;

(k) an estimate of the total value of the assets of the missing person;

(l) details of any property owned by the missing person; and

(m) details of the interest of any person in the property of the missing person sought to be determined by the Court.

Service of notice of application for a declaration of presumed death on Attorney General

3. The applicant shall give notice to the Attorney General of an application for a declaration of presumed death by serving on the Crown Solicitor on behalf of the Attorney General a copy of the application and of the supporting affidavit at least 30 days before the application is issued.

Notice of application

4.—(1) The applicant shall give notice of an application for a declaration of presumed death by serving a copy of the application and of the supporting affidavit, unless the Court otherwise directs, on—

(a) the Registrar General;

(b) where the missing person is married, or is party to a civil partnership and the applicant is neither the spouse nor the civil partner of the missing person, the spouse or, as the case may be, the civil partner of the missing person;

(c) any other person, including any insurance company, who, so far as is known to the applicant, has any interest in the application; and

(d) any other person, as the Court may direct.

(2) Notice under paragraph (1)(a)-(c) shall be served by the applicant upon issue of the application, or as soon thereafter as is reasonably practicable.

(3) Notice under paragraph (1)(d) shall be served by the applicant not more than 7 days after such direction is given.

(4) The applicant shall cause notice of an application for a declaration of presumed death to be published, in Form No. 76, at least 21 days before the hearing, in at least one edition of one newspaper circulating in the vicinity of the last known residence of the missing person, unless the Court otherwise directs.

(5) A copy of the page of the newspaper bearing the advertisement of the notice of the application required by paragraph (4), and the date on which it was published, shall be lodged with the Court at least 2 clear days before the hearing of the application.

Declaration of presumed death

5. A declaration of presumed death shall be in Form No. 77, and shall include such finding as is required under section 2(1) and such further direction, determination or order as the Court may make under sections 4, 7(1) or 12.

Application for variation or revocation of a declaration of presumed death

6.—(1) An application for a variation order under section 5(1) shall be supported by an affidavit setting out the grounds for the application, and shall include—

(a) the name and address of the person applying for the variation order;

(b) the relationship of the person applying for the variation order to the missing person;

(c) details of the interest of the person applying for the variation order in the determination of the application;