STATUTORY RULES OF NORTHERN IRELAND

2009 No. 230

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

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

Made - - - -	*10th June 2009*
To be laid before Parliament	
Coming into operation	*7th September 2009*

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(**1**).

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(**2**) ("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";

(**1**) 1978 (c.23) to which the most recent relevant amendments were made by the Constitutional Reform Act 2005 (c.4)
(**2**) 1980 No.346 to which the most relevant amendments were made by S.R. 1981 No.128; 1991 No..330; S.R.1992 No.313; 1994 No.286; S.R. 2002 No.202; S.R. 2004 No.108.

(b) in rule 1A(2), omit the word "medical"; and

(c) after rule 3A, insert—

"**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"(**3**); 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

(**3**) 1984 c.51

"Tribunal Procedure Rules" means the rules governing the practice and procedure to be followed in the First-tier Tribunal and Upper Tribunal."(**4**).

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(**5**).".

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.

Brian Kerr
Paul Girvan
Declan Morgan
John Gillen
Patrick Coghlin
Tony Caher

Dated 26th May 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 10th June 2009

(**4**) Tribunal Procedure Rules made S.I 2008/2699; S.I 2008/2698; S.I 2008/2686; S.I 2008/2685; S.I 2009/273
(**5**) 2007 c.15

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.