STATUTORY RULES OF NORTHERN IRELAND

2006 No. 486

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment No.3) 2006

Made - - - - 28th November 2006

To be laid before Parliament

Coming into operation 8th January 2007

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**) and sections 2(8) and 2A of the Damages Act 1996(**2**).

Citation and commencement

1. These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 3) 2006 and shall come into operation on the 8th January 2007.

Amendments to the Rules of the Supreme Court (Northern Ireland) 1980(**3**)

2. In the Arrangement of Orders—

(a) for the entry relating to Order 37, substitute—

"**37.** Damages: assessment after judgment, orders for provisional damages and periodical payments"; and

(b) for the entry relating to Order 100, substitute—

"**100.** The Trade Marks Act 1994 and The Olympic Symbol Etc (Protection) Act 1995".

3. In Order 29, after rule 10 (*Allowance of income of property pendente lite*), insert—

(**1**) 1978 c.23 to which the most recent relevant amendments were made by the Constitutional Reform Act 2005 (c.4)
(**2**) 1996 c.48 to which the most recent relevant amendments were made by sections 100 and 101 of the Courts Act 2003 (c.39)
(**3**) **S.R. 1980 No.346**

"**The European Intellectual Property Directive**

10A.—(1) When an application is made to which Directive 2004/48/EC(**4**) applies, the Court may grant an interim order making the continuation of an alleged infringement subject to guarantees.

(2) Where the Court grants an order *ex parte* to which Directive 2004/48/EC applies, such order shall be granted only on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.".

4. In Order 37, after Part II, insert the new Part set out in Schedule 1 to these Rules.

5. In Order 72, in rule 3 *(Commencement of proceedings in a commercial action),* in paragraph (1), for "may" substitute "shall".

6. In Order 80, after rule 14 (*Appointment of guardian of child's estate or fortune*), insert the new rules 15 and 16 set out in Schedule 2 to these Rules.

7. In Order 90—

(a) in rule 10 *(Interpretation),* after paragraph (b) insert—

"(c) "the Council Regulation" means the Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.";

(b) in rule 13 (*Contents of originating summons: particular provisions)*, after paragraph (2) insert—

"(3) Where the application is one to which the Council Regulation also applies the originating summons shall identify—

(a) any details of measures taken by courts or authorities to ensure the protection of the child after its return to the Member State of habitual residence of which the applicant is aware; and

(b) details of any person with parental responsibility who is not already listed in accordance with rule 12.";

(c) in rule 20 *(Stay of Proceedings)*—

(i) in paragraph (2), after "section 20(2) of the Act" insert ", Article 21(2) of the Child Abduction and Custody (Jersey) Law 2005";

(ii) in paragraph (4), after "the High Court in England and Wales", in each place those words appear insert ", the Royal Court of Jersey";

(iii) in paragraph (5), after "High Court in England and Wales" insert ", the Royal Court of Jersey";

(iv) in paragraph (6), after "a court of summary jurisdiction in Northern Ireland" insert ", the Royal Court of Jersey, a court of summary jurisdiction in Jersey,";

(d) in rule 21 *(Transfer of Proceedings)*, after "the High Court in England and Wales", in each place those words appear, insert ", the Royal Court of Jersey"; and

(e) after rule 25 (*Orders for disclosure of information)*, insert—

(**4**) Directive on the Enforcement of Intellectual Property Rights (2004/48/EC)(OJ L157, 30.4.2004)

"**Registration of registered decisions**

25A. There shall be kept in the Office by the proper officer a register of decisions registered under section 16 of the Act together with any variation of those decisions as made under section 17 of the Act.".

8. In Order 93, rule 6 (Applications under section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988)—

(a) in paragraph (1) omit the words "or under section 58C of the Trademarks Act 1938"; and

(b) after paragraph (2), insert—

"(3) Order 100, rule 7 shall apply to applications under this rule.".

9. In Order 100—

(a) in the headings, omit references to the "Trademarks Act 1938", the "Trade Marks Act 1938 as amended by the Trade Marks (Amendment) Act 1984" and "the 1938 Act";

(b) in rule 1 *(Interpretation)*, omit the words "the 1938 Act means the Trade Marks Act 1938 as amended by the Trade Marks (Amendment) Act 1984;";

(c) in rule 2 *(Assignment to Chancery Division)*, omit the words "the 1938 Act,";

(d) in rule 3 *(Appeals and applications under the 1994 Act and the Olympic Symbol Act)*—

(i) in paragraph 1 omit the words "the 1938, Act";

(ii) in paragraph 2 omit the words "the 1938 Act or";

(iii) in paragraph 3(a) omit the words "the 1938 Act or";

(iv) in paragraph 3(b) omit the words "the Board of Trade under the 1938 Act or";

(v) omit paragraph 5;

(e) in rule 5 *(Service of documents)*, in paragraph 2 omit the words "the 1938 Act or";

(f) in rule 6 *(Service of orders on the Registrar)*, omit the words "the 1938 Act or"; and

(g) after rule 6 (*Service of orders on the Registrar*), insert—

"**Forfeiture, Destruction etc:**

7. Where the Court makes an order for delivery up, forfeiture or destruction of infringing goods, or articles designed or adapted to make such goods, the defendant shall pay the costs of complying with the order unless the court orders otherwise.

Publication of Judgments

8. Without prejudice to any other provisions of these Rules, the Court may, where it finds that an intellectual property right has been infringed, order appropriate measures for the dissemination and publication of the judgment to be made at the expense of the defendant.".

10. In Order 104—

(a) in rule 15 (*Proceedings for determination of certain disputes*), omit paragraph (1)(b);

(b) after rule 17 *(Counterclaim for rectification of register of designs)*, insert—

"**Publication of Judgments**

18. Order 100, rule 8 shall apply to proceedings under this Order.".

Brian Kerr
Paul Girvan
Patrick Coghlin
Mark Horner
Bernard McCloskey
Tony Caher
Dated 8th November 2006 *Caroline McGonagle*

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
Dated 28th November 2006 Department for Constitutional Affairs

SCHEDULE 1 Rule 4

"III. DAMAGES ACT 1996 – PERIODICAL PAYMENTS

Interpretation

11. In this Part—

"the 1996 Act" means the Damages Act 1996(**5**);

"damages" means damages for future pecuniary loss; and

"periodical payments" means periodical payments under section 2(1) of the 1996 Act(**6**).

Statement of claim

12.—(1) This rule applies to proceedings for damages for personal injury.

(2) The plaintiff in his statement of claim shall state whether he considers periodical payments or a lump sum to be the more appropriate form for all or part of an award of damages.

(3) Where the defendant admits to the whole of any cause, he shall, in his defence, state whether he considers periodical payments or a lump sum to be the more appropriate form for all or part of an award of damages.

(4) Where a statement is given under paragraphs (2) or (3), a party must provide relevant particulars of the circumstances which are relied on in support of the statement.

(5) Where a statement under paragraph (2) or (3) is not given, the court may order a party to make such a statement.

(6) Where the court considers that the statement of claim contains insufficient particulars under paragraph (2) and (3), the court may order a party to provide such further particulars as it considers appropriate.

Court's indication to parties

13. The court shall consider and indicate to the parties as soon as is practicable whether periodical payments or a lump sum is likely to be the more appropriate form for all or part of an award of damages.

Factors to be taken into account

14.—(1) When considering

(a) its indication as to whether periodical payments or a lump sum is likely to be the more appropriate form for all or part of an award of damages under rule 3; or

(b) whether to make an order under section 2(1)(a) of the 1996 Act,

the court shall have regard to all the circumstances of the cases and in particular the form of award which best meets the plaintiff's needs, having regard to the factors set out in paragraph (2).

(2) The factors referred to in paragraph (1) are:

(a) the scale of the annual payments taking into account any deduction for contributory negligence;

(**5**) 1996 c.48 to which the most recent relevant amendments were made by sections 100 and 101 of the Courts Act 2003 (c.39)
(**6**) Section 2 is substituted by section 100 of the Courts Act 2003 (c.39)