

1991 No. 330

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

**The Rules of the Supreme Court
(Northern Ireland) (Amendment No. 3) 1991**

Made 25th July 1991
Coming into operation 2nd September 1991
To be laid before Parliament

We, the Northern Ireland Supreme Court Rules Committee being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers and all other powers enabling us in that behalf as follows:

Citation and commencement

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 3) 1991 and shall come into operation on 2nd September 1991.

(2) In these Rules an Order referred to by number or an Appendix referred to by letter means the Order so numbered and the Appendix so lettered in the Rules of the Supreme Court (Northern Ireland) 1980(b).

Pleadings—Matters which must be specifically pleaded

2. Order 18, rule 8(3), shall be amended by inserting after the words “claim for exemplary damages” the words “or for provisional damages”.

Discovery and inspection of documents

3.—(1) For Order 24 there shall be substituted the Order set out in Schedule 1 hereto.

(2) In Form 28A in Appendix A, for the reference in the heading to “(0.24 r. 6(2))” there shall be substituted a reference to “(0.24 r. 8(2))”.

Medical Evidence

4. For Order 25 there shall be substituted the Order set out in Schedule 2 hereto.

(a) 1978 c. 23

(b) S.R. 1980 No. 346; the relevant amending instruments are S.R. 1983 No. 5, S.R. 1986 No. 128 and S.R. 1988 No. 70

Interrogatories

5. Order 26 shall be amended by substituting for rules 1 to 6 the rules set out in Schedule 3 hereto.

Provisional damages for personal injuries

6. Order 37 shall be amended as set out in Schedule 4 hereto.

Evidence

7. Order 38 shall be amended as set out in Schedule 5 hereto.

Costs

8. Order 62 shall be amended as follows—

(1) In rule 6(9) for the reference to rule 6 there shall be substituted a reference to rule 8, and

(2) The following rule shall be inserted after rule 10—

“Penalty in costs where oral evidence not reasonably necessary

10A. Without prejudice to rule 10, where it appears to the Court in any proceedings that—

(a) any witness has been called to give oral evidence where his evidence could have been put before the Court in some other manner, and

(b) his giving oral evidence was not reasonably necessary,

the Court may order that the costs occasioned by calling the witness to give oral evidence shall fall upon the party who caused him so to be called, and for this purpose may make such provision in respect of taxation against other parties or the legal aid fund as it thinks fit.”

Dated 27th June 1991.

Brian Hutton
John MacDermott
J. P. Higgins
R. D. Carswell
Anthony Campbell
H. P. Kennedy
Brian Kerr
Owen Catchpole
Aidan A. Canavan

I concur, MacKay of Clashfern, C.

Dated 25th July 1991

SCHEDULE 1

Rule 3

ORDER 24

DISCOVERY AND INSPECTION OF DOCUMENTS

Mutual discovery of documents

1.—(1) After the close of pleadings in an action begun by writ there shall, subject to and in accordance with the provisions of this Order, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the action.

(2) Nothing in this Order shall be taken as preventing the parties to an action agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

Discovery by parties without order

2.—(1) Subject to the provisions of this rule and of rule 4, the parties to an action between whom pleadings are closed must make discovery by exchanging lists of documents and, accordingly, each party must, within 14 days after the pleadings in the action are deemed to be closed as between him and any other party, make and serve on that other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action.

Without prejudice to any directions given by the Court under Order 16, rule 4, this paragraph shall not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

(2) Unless the Court otherwise orders, in any action where liability is admitted or where the action arises out of an accident on land due to a collision or apprehended collision involving a vehicle discovery shall be limited to disclosure of any documents relating to special damage.

(3) Paragraph (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any enactment to make discovery of any documents.

(4) Paragraphs (2) and (3) shall apply in relation to a counterclaim as they apply in relation to an action.

(5) On the application of any party required by this rule to make discovery of documents, the Court may—

(a) order that the parties to the action or any of them shall make discovery under paragraph (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order, or

(b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage;

and the Court shall make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

(6) An application for an order under paragraph (5) must be by summons, and the summons must be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.

(7) Any party to whom discovery of documents is required to be made under this rule may, at any time within one month after the pleadings in the action are deemed to be closed, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list which he has made under paragraph (1),

and the party on whom such a notice is served must, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

Order for discovery

3.—(1) Subject to the provisions of this rule and of rules 4 and 8, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

(2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the Court, on the application of any party to whom the discovery was required to be made, may make an order against the first-mentioned party under paragraph (1) of this rule or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2 and to serve a copy thereof on the applicant.

(3) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

Order for determination of issue, etc., before discovery

4. Where on an application for an order under rule 2 or 3 it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

Form of list and affidavit

5.—(1) A list of documents made in compliance with rule 2, or with an order under rule 3, must be in Form No. 22 in Appendix A, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

(2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 23 in Appendix A.

Defendant entitled to copy of co-defendant's list

6.—(1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the

plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule "list of documents" includes an affidavit verifying a list of documents.

Order for discovery of particular documents

7.—(1) Subject to rule 9, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavits under rule 2 or rule 3.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

Application under sections 31 or 32(1) of the Administration of Justice Act 1970

8.—(1) An application for an order under section 31 of the Administration of Justice Act 1970 for the disclosure of documents before the commencement of proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under 32(1) of the said Act for the disclosure of documents by a person who is not a party to the proceedings shall be made by summons in Form No. 28A in Appendix A, which must be served on that person and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by an affidavit which must—

(a) in the case of a summons under paragraph (1), state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in the High Court in which a claim for personal injuries is likely to be made;

(b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of a claim for personal injuries made or likely to be made in the proceedings and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order under the said section 31 or 32(1) for the disclosure of documents may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his

possession, custody or power, when he parted with them and what has become to them.

(6) No person shall be compelled by virtue of such an order to produce any documents which he could not be compelled to produce—

- (a) in the case of a summons under paragraph (1), if the subsequent proceedings had already been begun, or
- (b) in the case of a summons under paragraph (2), if he had been served with a writ of subpoena duces tecum to produce the documents at the trial.

(7) In this rule “a claim for personal injuries” means a claim in respect of personal injuries to a person or in respect of a person’s death.

(8) For the purposes of rules 11 and 12 an application for an order under the said section 31 or 32(1) shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

Discovery to be ordered only if necessary

9. On the hearing of an application for an order under rule 3, 7 or 8 the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

Inspection of documents referred to in list

10. A party who has served a list of documents on any other party, whether in compliance with rule 2 or 6 or with an order under rule 3, must allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof and, accordingly, he must when he serves the list on the other party also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at a place specified in the notice.

Inspection of documents referred to in pleadings and affidavits

11.—(1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof.

(2) The party on whom a notice is served under paragraph (1) must, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

Order for production for inspection

12.—(1) If a party who is required by rule 10 to serve such a notice as is therein mentioned or who is served with a notice under rule 11(1)—

- (a) fails to serve a notice under rule 10 or, as the case may be, rule 11(2), or
- (b) objects to produce any document for inspection, or
- (c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there, then, subject to rule 15(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to paragraph (1), but subject to rule 15(1), the Court may,

on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power to the other party and that they relate to a matter in question in the cause or matter.

Provision of copies of documents

13.—(1) Any party who is entitled to inspect any documents under any provision of this Order or any order made thereunder may at or before the time when inspection takes place serve on the party who is required to produce such documents for inspection a notice (which shall contain an undertaking to pay the reasonable charges) requiring him to supply a true copy of any such document as is capable of being copied by photographic or similar process.

(2) The party on whom such a notice is served must within 7 days after receipt thereof supply the copy requested together with an account of the reasonable charges.

(3) Where a party fails to supply to another party a copy of any document under paragraph (2), the court may, on the application of either party, make such order as to the supply of that document as it thinks fit.

Order for production to Court

14. At any stage of the proceedings in any cause or matter the Court may, subject to rule 15(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.

Production to be ordered only if necessary, etc.

15.—(1) No order for the production of any documents for inspection or to the court or for the supply of a copy of any document shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where on an application under this Order for production of any document for inspection or to the Court or for the supply of a copy of any document privilege from such production or supply is claimed or objection is made to such production or supply on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

Production of business books

16.—(1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection, order a copy of any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

Use of documents

17. Any undertaking, whether express or implied, not to use a document for any purposes other than those of the proceedings in which it is disclosed shall cease to apply to such document after it has been read to or by the Court, or referred to, in open Court, unless the Court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs.

Document disclosure of which would be injurious to public interest: saving

18. The foregoing provisions of this Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

Failure to comply with requirement for discovery, etc.

19.—(1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose or to supply copies thereof fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rules 3(2) and 12(1), the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

Revocation and variation of orders

20. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

SCHEDULE 2

Rule 4

ORDER 25

MEDICAL EVIDENCE

Application

1. This Order applies to all actions for damages in respect of personal injury or death except (while liability remains an issue) actions grounded on an allegation of medical or surgical negligence.

Medical report to be served with statement of claim

2. 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

3. Any party who has been afforded medical examination of another party shall disclose to that order party the result of such examination—

- (a) in so far 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) in so far as he thereafter obtains any such report before the date of trial, within 21 days of receiving it and in any case before the first day of the trial.

Disclosure of medical evidence

4. Subject to rule 2, where a party proposes to adduce medical evidence at the trial he shall—

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

Evidence received during trial

5. Where a party obtains on or after the first day of the trial any report or evidence of the kind mentioned in rule 2 or rule 3, he shall disclose that report or evidence to the relevant party or parties immediately.

Restrictions on medical evidence

6. 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 rule 4 or rule 5.

Party to furnish name and address of doctor etc.

7. 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.

Failure to comply with rules

8. Where any party fails to comply with any of the provisions of rules 2, 3, 4, 5 or 7, the Court may stay the action or strike out that party's defence, as the case may be, or make such other order as to the Court may seem meet.

Mode of disclosure

9.—(1) A party serving or disclosing medical evidence under this Order shall do so by furnishing any relevant medical report or reports, together with any documents emanating from the maker thereof which are intended by him to accompany or supplement any such report. All such reports or other document shall be signed and dated by the maker thereof and shall specify his professional qualifications. A photostat copy of any such report or document shall be sufficient for this purpose.

(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

10. 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 to the Court may seem meet.

Definition of "medical evidence"

11. For the purposes of the Order "medical evidence" means the evidence contained in any report or other accompanying or supplemental document as specified in rule 9 and includes surgical and radiological evidence and any ancillary expert or technical evidence, and the expression "medical examination" shall be construed accordingly.

SCHEDULE 3

Rule 5

ORDER 26

INTERROGATORIES

Discovery by interrogatories

1.—(1) A party to any cause or matter may in accordance with the following provisions of this Order serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter which are necessary either—

- (a) for disposing fairly of the cause or matter, or
- (b) for saving costs.

(2) Without prejudice to the provisions of paragraph (1), a party may apply to the Court for an order giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter.

(3) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) may not be administered notwithstanding that it might be admissible in oral cross-examination of a witness.

(4) In this Order,

"interrogatories without order" means interrogatories served under paragraph (1);

"ordered interrogatories" means interrogatories served under paragraph (2) or interrogatories which are required to be answered pursuant to an order made on an application under rule 3(2) and, where such an order is made, the interrogatories shall not, unless the Court orders otherwise, be treated as interrogatories without order for the purposes of rule 3(1).

(5) Unless the context otherwise requires, the provisions of this Order apply to both interrogatories without order and ordered interrogatories.

Form and nature of interrogatories

2.—(1) Where interrogatories are served, a note at the end of the interrogatories shall specify—

- (a) a period of time (not being less than 28 days from the date of service) within which the interrogatories are to be answered;
- (b) where the party to be interrogated is a body corporate or unincorporate which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the officer or member on whom the interrogatories are to be served; and

- (c) where the interrogatories are to be served on two or more parties or are required to be answered by an agent or servant or a party, which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

(2) Subject to rule 5(1), a party on whom interrogatories are served shall, unless the Court orders otherwise on an application under rule 3(2), be required to give within the period specified under rule 2(1)(a) answers, which shall (unless the Court directs otherwise) be on affidavit.

Interrogatories without order

3.—(1) Interrogatories without order may be served on a party not more than twice.

(2) A party on whom interrogatories without order are served may, within 14 days of the service of the interrogatories, apply to the Court for the interrogatories to be varied or withdrawn and, on any such application, the Court may make such order as it thinks fit (including an order that the party who served the interrogatories shall not serve further interrogatories without order).

(3) Interrogatories without order shall not be served on the Crown.

Ordered interrogatories

4.—(1) Where an application is made for leave to serve interrogatories, a copy of the proposed interrogatories shall be served with the summons by which the application is made.

(2) In deciding whether to give leave to serve interrogatories, the Court shall take into account any offer made by the party to be interrogated to give particulars, make admissions or produce documents relating to any matter in question and whether or not interrogatories without order have been administered.

Objections and insufficient answers

5.—(1) Without prejudice to rule 3(2), where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his answer.

(2) Where any person on whom ordered interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, either by affidavit or an oral examination as the Court may direct.

(3) Where any person on whom interrogatories without order have been served answers any of them insufficiently, the party serving the interrogatories may ask for further and better particulars of the answer given and any such request shall not be treated as service of further interrogatories for the purposes of rule 3(1).

Failure to comply with order

6.—(1) If a party fails to answer interrogatories or to comply with an order made under rule 5(2) or a request made under rule 5(3), the court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) Without prejudice to paragraph (1), where a party fails to answer ordered interrogatories or to comply with an order made under rule 5(2), he shall be liable to committal.

(3) Service on a party's solicitor of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

SCHEDULE 4

Rule 6

Order 37 shall be amended as follows:—

- (1) There shall be substituted for the title the words
“DAMAGES; ASSESSMENT AFTER JUDGMENT AND ORDERS FOR PROVISIONAL DAMAGES”
- (2) Immediately before rule 1 there shall be inserted the words
“I. ASSESSMENT OF DAMAGES AFTER JUDGMENT”
- (3) After rule 6 there shall be added the following
“II. ORDERS FOR PROVISIONAL DAMAGES FOR PERSONAL INJURIES”

Application and interpretation

7.—(1) This Part of this Order applies to actions to which paragraph 10 of Schedule 6 to the Administration of Justice Act 1982 (in this Part of this Order referred to as “paragraph 10”) applies.

(2) In this Part of this Order “award of provisional damages” means an award of damages for personal injuries under which—

- (a) damages are assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in paragraph 10; and
- (b) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

Order for provisional damages

8.—(1) The Court may on such terms as it thinks just and subject to the provisions of this rule make an award of provisional damages if—

- (a) the plaintiff has pleaded a claim for provisional damages, and
- (b) the Court is satisfied that the action is one to which paragraph 10 applies.

(2) An order for an award of provisional damages shall specify the disease or type of deterioration in respect of which an application may be made at a future date, and shall also, unless the Court otherwise determines, specify the period within which such application may be made.

(3) The Court may, on the application of the plaintiff made within the period, if any, specified in paragraph (2), by order extend that period if it thinks it just to do so, and the plaintiff may make more than one such application.

(4) An order for an award of provisional damages may be made in respect of more than one disease or type of deterioration and may in respect of each disease or deterioration specify a different period within which an application may be made at a future date.

(5) Orders 13 and 19 shall not apply in relation to an action in which the plaintiff claims provisional damages.

Offer to submit to an award

9.—(1) Where an application is made for an award of provisional damages, any defendant may at any time (whether or not he makes a payment into court) make a written offer to the plaintiff—

- (a) to tender a sum of money (which may include an amount, to be specified, in respect of interest) in satisfaction of the plaintiff's claim for damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in paragraph 10 and identifying the disease or deterioration in question; and
- (b) to agree to the making of an award of provisional damages.

(2) Any offer made under paragraph (1) shall not be brought to the attention of the Court until after the Court has determined the claim for an award of provisional damages.

(3) Where an offer is made under paragraph (1), the plaintiff may, within 21 days after receipt of the offer, give written notice to the defendant of his acceptance of the offer and shall on such acceptance make an application to the Court for an order in accordance with the provisions of rule 8(2).

Application for award of further damages

10.—(1) This rule applies where the plaintiff, pursuant to an award of provisional damages, claims further damages.

(2) No application for further damages may be made after the expiration of the period, if any, specified under rule 8(2), or of such period as extended under rule 8(3).

(3) The plaintiff shall give not less than three months' written notice to the defendant of his intention to apply for further damages and, if the defendant is to the plaintiff's knowledge insured in respect of the plaintiff's claim, to the insurers.

(4) The plaintiff must take out a summons for directions as to the future conduct of the action within 21 days after the expiry of the period of notice referred to in paragraph (3).

(5) On the hearing of the summons for directions the Court shall give such directions as may be appropriate for the future conduct of the action, including, but not limited to, the disclosure of medical reports and the place, mode and date of the hearing of the application for further damages.

(6) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the order for the award of provisional damages.

(7) The provisions of Order 29 with regard to the making of interim payments shall, with the necessary modifications, apply where an application is made under this rule.

(8) The Court may include in an award of further damages simple interest at such rate as it thinks fit on all or any part thereof for all or any part of the period between the date of notification of the plaintiff's intention to apply for further damages and the date of the award.

SCHEDULE 5

Rule 7

ORDER 38

EVIDENCE

In Order 38 the following rules shall be inserted after rule 1—

“Medical reports, maps, plans etc may be given in evidence

1A.—(1) Unless the Court otherwise orders, any medical report or other accompanying or supplemental document served or disclosed pursuant to the provisions of Order 25 or any map, plan, drawing, photograph or model

produced pursuant to the provisions of rule 3A of this Order by any party to an action to the other parties may be given in evidence at the trial of the action or an assessment of damages by the party who has disclosed or produced it.

(2) Any other party may, on giving sufficient notice to the party making the disclosure or production specified in paragraph (1), require the maker of any such medical report to give oral evidence or require any such map, plan, drawing, photograph or model to be proved, and in any such case paragraph (1) shall not apply.

(3) Where a medical witness or other expert witness is unable to attend court to give oral evidence at the trial of an action or an assessment of damages the Court may direct that his written report or reports may be given in evidence or that any such map, plan, drawing, photograph or model may be admitted in evidence without further proof thereof, and in such case paragraph (2) shall not apply.

Number of expert witnesses

1B. Unless the Court otherwise orders, the number of expert witnesses who may be called by any part to give oral evidence in any action shall be limited to two medical experts and one expert of any other kind."

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 so as—

- (a) to substitute a new *Order 24* relating to discovery and inspection of documents. It provides for automatic discovery which will follow after the close of pleadings. Lists of documents must be exchanged between the parties within 14 days after the close of pleadings. In an action in which liability is admitted or which arises out of a road accident, the obligation to make discovery is limited to disclosure of documents relating to special damage. The party to whom discovery is made may require a list of documents to be verified by affidavit. On the application of any party, the Court may restrict or exclude discovery (Rule 3 and Schedule 1).
- (b) to provide in *Order 25* (Medical Evidence) that the plaintiff in a personal injury action must serve with his statement of claim medical evidence in the form of medical reports substantiating the personal injuries alleged (Rule 4 and Schedule 2).
- (c) to provide in *Order 26* (Interrogatories) that interrogatories may be administered without a court order (Rule 5 and Schedule 3).
- (d) to add Part II to *Order 37* (Damages) to give effect to paragraph 10 of Schedule 6 to the Administration of Justice Act 1982, which makes provision for the award of provisional damages for personal injuries (Rules 2 and 6 and Schedule 4).
- (e) to provide in *Order 38* (Evidence) that, unless the Court otherwise orders, medical and other reports, maps, plans etc may be given in evidence and the number of experts who may be called to give evidence shall be limited to two medical experts and one other expert. Where a medical or other expert is unable to attend to give oral evidence the judge may direct that his report be given in evidence (Rule 7 and Schedule 5).
- (f) to make consequential amendments to *Order 62* (Costs), in particular, by providing a penalty in costs where a witness has been called whose evidence could have been given in some other manner and his giving oral evidence was not reasonably necessary (Rule 8).

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**Road Races (Serse Hill Climb) Order
(Northern Ireland) 1991**

This Order, being of a temporary character, is not printed at length in this volume.