

2006 No. 486

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

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

Made - - - - - *28th November 2006*

Coming into operation - - - - - *8th January 2007*

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

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(c)

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—

“The European Intellectual Property Directive

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

(a) 1978 c.23 to which the most recent relevant amendments were made by the Constitutional Reform Act 2005 (c.4)
(b) 1996 c.48 to which the most recent relevant amendments were made by sections 100 and 101 of the Courts Act 2003 (c.39)
(c) S.R. 1980 No.346
(d) Directive on the Enforcement of Intellectual Property Rights (2004/48/EC)(OJ L157, 30.4.2004)

(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”;

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

“*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
Caroline McGonagle*

Dated 8th November 2006

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
Department for Constitutional Affairs

Dated 28th November 2006

“III. DAMAGES ACT 1996 – PERIODICAL PAYMENTS*Interpretation***11.** In this Part—

“the 1996 Act” means the Damages Act 1996(a);

“damages” means damages for future pecuniary loss; and

“periodical payments” means periodical payments under section 2(1) of the 1996 Act(b).

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).

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

- (2) The factors referred to in paragraph (1) are:
- (a) the scale of the annual payments taking into account any deduction for contributory negligence;
 - (b) the form of award preferred by the plaintiff including:—
 - (i) the reasons for his preference; and
 - (ii) the nature of any financial advice he received when considering the form of the award;
 - (c) the form of award preferred by the defendant including the reasons for the defendant's preference.

The award

15.—(1) Where the court awards damages in the form of periodical payments, the order must specify:—

- (a) the annual amount awarded, how each payment is to be made during the year and at what intervals;
- (b) the amount awarded for the future—
 - (i) loss of earnings and other income; and
 - (ii) care and medical costs and other recurring or capital costs;
- (c) that the plaintiff's annual future pecuniary losses, as assessed by the court, are to be paid for the duration of the plaintiff's life, or for such other period as the court orders; and
- (d) that the amount of the payments shall vary annually by reference to the retail prices index, unless the court orders otherwise under section 2(9) of the 1996 Act.

(2) Where the court orders that any part of the award shall continue after the plaintiff's death, for the benefit of the plaintiff's dependants, the order must also specify the relevant amount and duration of the payments and how each payment is to be made during the year and at what intervals.

(3) Where the court makes an order under paragraph (2), the order must also specify the relevant amount and duration of the payments and how each payment is to be made during the year and at what intervals.

(4) Where an amount awarded under paragraph (1)(b) is to increase or decrease on a certain date, the order must also specify—

- (a) the date on which the increase or decrease will take effect; and
- (b) the amount of the increase or decrease at current value.

(5) Where the damages for substantial capital purchases are awarded under paragraph (1)(b)(ii), the order must also specify—

- (a) the amount of the payments at current value;
- (b) when the payments are to be made; and
- (c) that the amount of the payments shall be adjusted by reference to the retail prices index, unless the court orders otherwise under section 2(9) of the 1996 Act.

Continuity of payment

16.—(1) An order for periodical payments shall specify that the payments must be funded in accordance with section 2(4) of the 1996 Act, unless the court orders an alternative method of funding.

(2) Before ordering an alternative method of funding, the court must satisfy itself that:—

- (a) the continuity of payment under the order is reasonably secure;

- (b) a method of funding provided for under section 2(4) of the 1996 Act is not possible or there are good reasons to justify an alternative method of funding;
 - (c) that the proposed method of funding can be maintained for the duration of the award or for the proposed duration of the method of funding; and
 - (d) that the proposed method of funding will meet the level of payment ordered by the court.
- (3) An order under paragraph (2) must specify the alternative method of funding.

Assignment or charge

17. Where the court under section 2(6)(a) of the 1996 Act is satisfied that special circumstances makes an assignment or charge of periodical payments necessary, it shall in deciding whether or not to approve the assignment or charge, also have regard to;

- (a) whether the capitalised value of the assignment or charge represents value for money;
- (b) whether the assignment or charge is in the claimant's best interests, taking into account whether these interests can be met in some other way; and
- (c) how the claimant will be financially supported following the assignment of the charge."

SCHEDULE 2

Rule 6

“Investment of money recovered by person under disability

15.—(1) Moneys paid into Court may be invested in the following securities—

- (a) securities issued by Her Majesty’s Government in the United Kingdom, the Government of Northern Ireland or the Government of the Isle of Man, being fixed-interest securities registered in the United Kingdom or the Isle of Man, Treasury Bills or Tax Reserve Certificates or any variable interest securities issued by Her Majesty’s Government in the United Kingdom and registered in the United Kingdom;
- (b) any securities the payment of interest on which is guaranteed by Her Majesty’s Government in the United Kingdom or the Government of Northern Ireland;
- (c) fixed-interest or variable interest securities issued in the United Kingdom by any public authority or by any nationalised industry or nationalised undertaking in the United Kingdom;
- (d) debentures issued in the United Kingdom by a company incorporated in the United Kingdom, being debentures registered in the United Kingdom;
- (e) equity shares in a public limited liability company whose shares are listed in the Official List of the Stock Exchange;
- (f) equity shares in an investment trust company;
- (g) any units of a gilt unit trust scheme;
- (h) any units of an authorised unit trust scheme;
- (i) any shares in an open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations (Northern Ireland) 2004^(a) or the Open-Ended Investment Companies Regulations 2001^(b).

(2) Pending or in lieu of such investment, moneys so paid in may be lodged on deposit receipt in accounts held with the National Debt Commissioners or in accounts held with such bank as the Lord Chancellor may, with the concurrence of the Treasury, designate under section 79 of the 1978 Act.

Interpretation

16.—(1) In rule 15, the expression—

“authorised unit trust scheme” has the meaning assigned by section 237(3) of the Financial Services and Markets Act 2000^(c);

“debenture” includes debenture stock and bonds, whether constituting a charge on assets or not, and loan stock or notes;

“fixed-interest securities” means securities which under the terms of issue bear a fixed rate of interest;

“gilt unit trust scheme” means an authorised unit trust scheme, or a recognised scheme, the objective of which is—

- (a) to invest at least 90% of the property of the scheme in loan stock, bonds or other instruments creating indebtedness which—

(a) S.R. 2004 No. 335
(b) S.I. 2001 No. 1228
(c) 2000 c.8

- (i) are transferable; and
 - (ii) are issued or guaranteed by the government of the United Kingdom or of any other country or territory, by a local authority in the United Kingdom or in a relevant state, or by an international organisation the members of which include the United Kingdom or a relevant state;
- (b) to invest the remainder of the property of the scheme in shares, debentures or other instruments creating or acknowledging indebtedness, certificates representing securities or units in a collective investment scheme.

Sub-paragraphs (a) and (b) must be read with—

- (i) section 22 of the Financial Services and Markets Act 2000;
- (ii) any relevant Order under that section; and
- (iii) Schedule 2 to that Act;

“investment trust company” has the meaning assigned by section 842 of the Income and Corporation Taxes Act 1988(a);

“securities” includes shares, debentures, Treasury Bills and Tax Reserve Certificates;

“share” includes stock;

“Treasury Bills” includes bills issued by Her Majesty’s Government in the United Kingdom and Northern Ireland Treasury Bills;

“variable-interest securities” means securities which under the terms of issue bear variable rate of interest.

(2) In this rule, the expression “relevant state” means Austria, Finland, Iceland, Liechtenstein, Norway, Sweden or a state other than the United Kingdom State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992 as it has effect for the time being.”

(a) 1988 c.1

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 (“the principal Rules”), in consequence of

- the European Directive on the Enforcement of Intellectual Property Rights (Directive 2004/48/EC);
- Council Regulation (EC) No. 2201/2003 of 27th November 2003 (Brussels IIa Regulation);
- the Child Abduction and Custody Act 1985 (Jersey) Order 2006 (S.I. 2006/1917);
- the Damages Act 1996 (c.48) (as amended by section 100 of the Courts Act 2003 (c.39)).

These Rules also amend the list of securities in which the Accountant General may invest money by direction of the Court, and make a minor amendment to procedure in commercial cases.

Rule 2 amends the Arrangement of Orders at the beginning of the principal Rules by revising the entry to Order 37 and omitting references to the repealed Trade Marks Act 1938 and the Trade Marks (Amendment) Act 1984.

Rule 3 amends Order 29 of the principal Rules by inserting a new rule 10A which provides that the Court may make an order making the continuation of an alleged infringement of an intellectual property right subject to guarantees and that where the Court grants a remedy before the issue of a writ or summons, the remedy shall only be granted on terms providing for the issue of the writ or summons.

Rule 4 amends Order 37 of the principal Rules by inserting a new Part III, which makes provision about the exercise of the Court’s powers under section 2(1) of the Damages Act 1996 (as substituted by section 100 of the Courts Act 2003) to order that all or part of an award of damages for future pecuniary loss in relation to personal injury may take the form of periodical payments.

Rule 5 amends Order 72 of the principal Rules to provide that on commencement of proceedings in a commercial action the plaintiff’s solicitor shall request the Registrar in charge of the Commercial List to enter that action in the Commercial List.

Rule 6 amends Order 80 of the principal Rules by designating a list of securities in which the Accountant General may invest money paid into the High Court by direction of that Court under Order 80, rule 10 of the principal Rules. The Accountant General has the power to invest in such securities under section 81(a)(iii) of the Judicature (Northern Ireland) Act 1978.

Rule 7 amends Order 90 of the principal rules in consequence of Council Regulation (EC) No. 2201/2003 of 27th November 2003 (“Brussels IIa Regulation”) and the Child Abduction and Custody Act 1985 (Jersey) Order 2006 (S.I. 2006/1917). The principal Rules are amended to make provision for relevant information to be included in an originating summons in cases where the Brussels IIa Regulation applies. Provision is also made for the registration of decisions made under section 16 of the Child Abduction and Custody Act 1985, and for the transmission of documents and the stay and transfer of proceedings between courts in Northern Ireland and Jersey.

Rules 8 and 9 amend Order 93 and 100 respectively of the principal Rules to omit references to the Trade Marks Act 1938 and to provide that a defendant is to bear the cost of orders for forfeiture and destruction. The Court is given power to order the dissemination of judgments at the expense of the defendant.

Rule 10 amends Order 104 to omit reference to a repealed provision of the Patents Act 1977, and to make provision for the dissemination of judgments at the expense of a defendant.

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