

EXPLANATORY MEMORANDUM TO
THE RULES OF THE SUPREME COURT (NORTHERN IRELAND)
(AMENDMENT No. 2) 2009

2009 No. 230

1. 1.1 This explanatory memorandum has been prepared by Ministry of Justice (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**
 - 2.1 The Rules of the Supreme Court (Northern Ireland) 1980 (S.R. 1980 No.346) (“the principal Rules”) govern practice and procedure in the Supreme Court of Judicature in Northern Ireland.
 - 2.2 This instrument amends the principal Rules so as to-
 - correct a reference to the senior Lord Chief Justice;
 - make provision for the disclosure of evidence in actions relating to clinical negligence;
 - make provision relating to applications to the High Court under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European Order for Payment Procedure (“the Regulation”);
 - provide that a judge hearing a commercial type action in the Chancery Division shall have the same powers as the Commercial Judge in the Queen’s Bench Division would have if the action had been entered in the Commercial list in that Division;
 - take account of amendments to the Consumer Credit Act 1974 made by the Consumer Credit Act 2006 in relation to applications for time orders in connection with credit agreements;
 - remove references to the VAT and duties tribunal as a result of the transfer of functions of tax tribunals to the First-tier Tribunal and Upper Tribunal established under the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”) and the Transfer of Tribunal Functions and Revenue and Customs Appeal Order 2009 (S.I. 2009/56) (“the 2009 Order”) and provide for a right of appeal from the Upper Tribunal to the Court of Appeal under section 13 of the 2007 Act;
 - make consequential amendments, update legislative references and reflect minor changes to procedure for appeals in revenue proceedings as a result of the 2009 Order; and
 - make savings provisions in relation to the application of those rules amended as a result of the 2007 Act and the 2009 Order.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Reference to the senior Lord Chief Justice

Order 1, rule 6 of the principal Rules is amended to omit an erroneous reference to “Chief” in the term “senior Lord Chief Justice of Appeal”. The intended reference is to the senior Lord Justice of Appeal.

4.2 Disclosure of evidence in actions relating to Clinical negligence

Orders 25 and 38 of the principal Rules are amended to make provision for the exchange, in clinical negligence cases, of expert medical and non-medical evidence respectively.

4.3 The 2007 Act and the 2009 Order

The amendments to Orders 61, 91 and 94 of the principal Rules are consequential upon the 2007 Act and the 2009 Order. The 2007 Act created a new framework for appeal tribunals by creating a new two-tier national tribunal system, the First-tier Tribunal and the Upper Tribunal. Section 13 of the 2007 Act prescribes a new right of appeal from decisions of the Upper Tribunal, in respect of Northern Ireland business, to the Court of Appeal in Northern Ireland on a point of law. The 2009 Order abolished the VAT and duties Tribunal and the Special Commissioners for Income Tax and transferred their functions to the new tribunal system established under the 2007 Act.

4.4 The Regulation

The amendments to Order 71 of the principal Rules are consequent upon the Regulation, which creates a European order for payment procedure, enabling the recovery of outstanding uncontested money claims in cross-border cases.

4.5 Case Management Direction in Chancery Division

Order 72 of the principal Rules is amended to confer on a judge in the Chancery Division dealing with a commercial type case, the powers the Commercial Judge of the Queen’s Bench Division would have had if the case had been entered in the commercial list of that Division.

4.6 Amendments to the 1974 Act made by the 2006 Act

The amendments to Order 83 of the principal Rules are consequential upon the 2006 Act, which amends the 1974 Act to require creditors/owners to send a notice of arrears when the debtor/hirer has missed instalment payments, and allows a debtor/hirer served with such a notice to apply to the court for a time order setting out alternative terms for repayment.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland.

- 5.2 Some amendments will reflect similar amendments already in place in England and Wales in respect of the Regulation and the 2006 Act, and some will follow similar amendments which will be introduced in England and Wales as a consequence of the 2007 Act and 2009 Order.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 Section 54 of the Judicature (Northern Ireland) Act 1978 established the Supreme Court Rules Committee ('the Committee') which is empowered by sections 55 and 55A of the Act to make rules prescribing practice and procedure before the High Court and the Court of Appeal.

7.2 *Disclosure of evidence in actions related to clinical negligence*

These amendments are useful procedural reforms intended to improve the disposal of cases involving a claim for damages based on an allegation of clinical negligence by a health care professional. The new rules (which were proposed by a judge of the High Court dealing with such claims) will facilitate the simultaneous exchange of expert medical evidence dealing with issues of negligent liability and the sequential exchange of such evidence dealing with the appropriate compensation. This will help reduce delay and unnecessary expense in such cases. Similarly, non-medical evidence in clinical negligence actions will be exchanged sequentially according to the new rules.

- 7.3 As well as being approved by the Supreme Court Rules Committee the rules were also considered by a group convened by the Lord Chief Justice including representatives of the legal profession.

7.4 *The 2007 Act and the 2009 Order*

The amendments to the principal Rules are required to take account of the new right of appeal from the newly created Upper Tribunal to the Court of Appeal under the 2007 Act and the transfer of certain tribunal functions to the First-tier Tribunal and Upper Tribunal under the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009.

7.5 *The Regulation*

The Regulation allows the recovery of uncontested money claims where there is no dispute that the money is owed, but where the debtor is unwilling or unable to pay. While the Regulation is directly applicable and quite prescriptive in relation to the procedure to be followed in bringing an application, this instrument prescribes a number of additional measures to assist litigants bringing applications under the Regulation in the High Court in Northern Ireland.

7.6 *Amendments to the 1974 Act made by the 2006 Act*

The 1974 Act allows a court to make an order for, for example, the payment of the debt by timed instalments (a time order). Such applications however had been made infrequently and had not provided an effective mechanism for alleviating the difficulties that some borrowers have in making repayments. The 2006 Act therefore inserts a new section 129(1)(ba) in the 1974 Act to allow the court to make a time order on any applications brought by a debtor/hirer who has been served with an arrears notice. The amendments to Order 83 extend the existing procedural requirement to the new time order application provisions.

8. Consultation outcome

- 8.1 Due to the representative nature of the Supreme Court Rules Committee (which makes the rules with the agreement of the Lord Chancellor) and the fact that the rules are procedural in nature (and are therefore of limited public interest) no formal consultation was considered necessary on this occasion.
- 8.2 A focused consultation exercise with key stakeholders was previously undertaken by the Department for Constitutional Affairs (now Ministry of Justice) on the European Commission's original proposals for creating the European order for payment procedure.
- 8.3 The 2006 Act dealt with a number of areas of reform highlighted in consultation papers published as a result of the Governments review of the 1974 Act, which was initiated in July 2001.
- 8.4 The 2007 Act implemented the main recommendations of a Government White Paper "Transforming Public Services: Complaints, Redress and Tribunals" in July 2004 while the 2009 Order followed a consultation document published by Her Majesty's Revenue and Customs (HMRC) in October 2007 entitled "HM Revenue and Customs and the Taxpayer: Tax Appeals against decisions made by HMRC".
- 8.5 The proposals for the Regulation were also the subject of the UK Parliamentary scrutiny process, as were the 2006 Act, the 2007 Act and the 2009 Order.

9. Guidance

- 9.1 This instrument will be issued to the legal professions in Northern Ireland and published on the Northern Ireland Court Service website. Guidance on the Regulation in the form of information leaflets to assist court users in using the procedure will also be issued in due course.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies in part to small business.

11.2 No special measures have been introduced to minimise the impact of the requirements on firms employing up to 20 people.

11.3 As the Regulation prescribes an optional procedure, no special measures are foreseen for small businesses.

12. Monitoring and review

12.1 These rules will form part of the principal Rules which are kept under review by the Committee. The Committee (with the agreement of the Lord Chancellor) will make any subsequent amendment to these rules that may be necessary.

13. Contact

13.1 Michael Kelly at the Northern Ireland Court Service (Civil Policy Division) (PH: (028) 90412394 or email michaelkelly@courtsni.gov.uk) can answer any queries regarding this instrument.