



STATUTORY INSTRUMENTS.

S.I. No. 430 of 2018



RULES OF THE SUPERIOR COURTS (PERSONAL INJURIES:
PERIODIC PAYMENTS ORDERS) 2018

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), the Courts (Supplemental Provisions) Act 1961, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 1st day of October, 2018.

Frank Clarke
Elizabeth Dunne
Anthony Barr
Stuart Gilhooly
Liam Kennedy
Mary Cummins
Noel Rubotham
John Mahon

I concur in the making of the following Rules of Court.

Dated this 3rd day of October, 2018.

CHARLES FLANAGAN,
Minister for Justice and Equality.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 16th October, 2018.*

S.I. No. 430 of 2018

RULES OF THE SUPERIOR COURTS (PERSONAL INJURIES:
PERIODIC PAYMENTS ORDERS) 2018

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Personal Injuries: Periodic Payments Orders) 2018, shall come into operation on the 31st day of October 2018.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2018.

2. The Rules of the Superior Courts are amended:

(i) by the substitution for rule 1 of Order 1A of the following rule:

“Definitions

1. In this Order unless the context or subject matter otherwise requires—

“the Act” means the Civil Liability and Courts Act 2004;

“the 1961 Act” means the Civil Liability Act 1961 (as amended by the Civil Liability (Amendment) Act 2017);

“catastrophic injury” has the meaning assigned to it by section 51H of the 1961 Act;

the “index” means the Harmonised Index of Consumer Prices as published by the Central Statistics Office or such other index as is for the time being specified by the Minister for Justice and Equality under section 51L of the 1961 Act;

“periodic payments order” has the meaning assigned to it by section 51I of the 1961 Act;

“paying party” has the meaning assigned to it by section 51H of the 1961 Act;

“personal injuries action” has the same meaning as in section 2 of the Act and “action” shall be interpreted accordingly;

“personal injury” includes any disease and any impairment of a person's physical or mental condition;

“personal injuries summons” means a summons by which a personal injuries action is instituted in accordance with rule 3;

“plaintiff” includes a deceased person, where a personal injuries action is instituted for the benefit of dependants of a deceased person;

“pleading” has the same meaning as in section 2 of the Act;

“Personal Public Service Number” means the Personal Public Service Number allocated and issued to a person under section 262 of the Social Welfare (Consolidation) Act 2005;

“stepped payment” has the meaning assigned to it by section 51I of the 1961 Act.”;

- (ii) by the insertion in Order 1A, immediately following rule 8 of the following rule:

“Pleading as to periodic payments order

8A. (1) A personal injuries summons may include a statement that the plaintiff’s claim is one in respect of the whole or part of which it is appropriate that a periodic payments order be made and where such statement is made, the personal injuries summons shall—

- (a) state whether a periodic payments order is sought in respect of one or more of the following:

(i) the future medical treatment of the plaintiff,

(ii) the future care of the plaintiff,

(iii) the provision of assistive technology or other aids and appliances associated with the medical treatment and care of the plaintiff, and

(iv) damages in respect of future loss of earnings,

- (b) state whether the periodic payments order should include provision for a stepped payment,

- (c) provide particulars of the circumstances relied on in seeking a periodic payments order, including any matters referred to in section 51I(2) and section 51J of the 1961 Act as may be relevant, and (where sought) provision for a stepped payment.

(2) A personal injuries defence may—

- (a) accept or join issue with a statement referred to in sub-rule (1), without prejudice to the defendant’s plea as to liability,

- (b) where a statement referred to in sub-rule (1) is not included in the personal injuries summons, include a statement that the plaintiff’s claim is one in respect of the whole or part of which it is appropriate that a periodic payments order be

made and where such statement is made, the defence shall contain the information set out at paragraphs (a) to (c) of sub-rule (1).

(3) Where—

(a) the personal injuries summons does not include a statement that the plaintiff's claim is one in respect of the whole or part of which it is appropriate that a periodic payments order be made and the plaintiff intends to apply for such an order, notice in writing of such intention shall be sent by the plaintiff to the defendant not later than 14 days before the date on which the action is listed for hearing,

(b) neither the personal injuries summons nor the defence includes a statement that the plaintiff's claim is one in respect of the whole or part of which it is appropriate that a periodic payments order be made and the defendant intends to apply for such an order, notice in writing of such intention shall be sent by the defendant to the plaintiff not later than 14 days before the date on which the action is listed for hearing.”, and

(iii) by the insertion in Order 1A, immediately following rule 14 of the following rules:

“IX. Periodic payments orders

Consideration of periodic payments order

15. (1) Where:

(a) the Court has determined to award damages for personal injuries to a plaintiff who has suffered a catastrophic injury and

(b) the plaintiff or the defendant applies for a periodic payments order under section 51I(1) of the 1961 Act, where there is no agreement that such an order should be made, or

(c) the parties apply for a periodic payments order under section 51I(3) of the 1961 Act in accordance with terms which have been agreed by the parties,

the Court may, and if it thinks fit prior to determining the amount of such damages,

(i) where satisfied that it may do so without the need for a separate hearing and, except in a case to which paragraph (c) of sub-rule (1) applies, having heard the parties on whether or not a periodic payments order should be made, or

(ii) following a hearing referred to in sub-rule (2),

make a periodic payments order.

(2) The Court may fix a date for a separate hearing on whether or not a periodic payments order should be made, and, if so, what form such periodic payments order should take and may for that purpose make orders or give directions:

(a) for the delivery, exchange or filing of further reports or the giving of evidence at any hearing fixed to address one or more of the following matters-

(i) any one or more of the matters mentioned in section 51I(1) or 51I(2) of the 1961 Act,

(ii) any changes anticipated in the plaintiff's circumstances to which section 51I(4) of the 1961 Act applies,

(iii) where a stepped payment is sought, any one or more of the matters referred to in section 51I(6)(h) of the 1961 Act, and

(iv) the requirements of section 51J of the 1961 Act;

(b) for the delivery, exchange or filing by any party of a draft periodic payments order.

(3) The parties at a hearing under sub-rules (1) or (2) shall also be heard as to the form which a periodic payments order, if made, should, in accordance with section 51I of the 1961 Act, take.

(4) An application under section 51I(3) shall be made by motion on notice unless the Court otherwise directs.

Applications by notice of motion following the making of a periodic payments order

16. (1) In any case in which the Court has made a periodic payments order, the following applications to the Court may be made by notice of motion in the personal injuries action or proceedings in which the periodic payments order was made:

(a) an application under section 51K(1) of the 1961 Act by a paying party to alter the method of payment specified in a periodic payments order; in such a case, the application shall be on notice to the plaintiff or, where the plaintiff has with the approval of the Court assigned his or her right to payments under a periodic payments order pursuant to section 51M(1) of the 1961 Act, the person to whom the right is assigned, and grounded upon an affidavit sworn by or on

behalf of the moving party exhibiting a letter of consent to the altered method of payment and setting out:

- (i) how continuity of the payments under the periodic payments order will be secured notwithstanding the alteration to the method of payment and
 - (ii) how the alteration to the method of payment concerned is capable of adjustment in accordance with the index;
- (b) an application under section 51M(1) of the 1961 Act to the Court that made the order by a plaintiff for approval to assign, commute or charge a right to receive payments under a periodic payments order; in such a case the application shall be grounded upon an affidavit which shall provide evidence as to the matters specified in section 51M(4) of the 1961 Act, and the Court may direct service of the motion and a copy of the grounding affidavit on any person who it considers ought to be on notice;
- (c) any other application concerning the operation of the periodic payments order, in which case the application shall be on notice to the paying party or, as the case may be, the plaintiff or, where the plaintiff has with the approval of the Court assigned his or her right to payments under a periodic payments order pursuant to section 51M(1) of the 1961 Act, the person to whom the right is assigned, and grounded upon an affidavit sworn by or on behalf of the moving party.

(2) The notification to the Court for the purposes of section 51I(7) of the 1961 Act shall be made by the plaintiff or, where the plaintiff is legally represented in the proceedings, the plaintiff's solicitor lodging with the proper officer of the Central Office by any method permitted by Order 117A a letter containing such notification addressed to the proper officer of the Central Office headed with the title and record number of the proceedings and signed by the plaintiff or (as the case may be) the plaintiff's solicitor, and at the same time delivering or sending by pre-paid registered post a copy of that letter to the paying party.

(3) A copy of a periodic payments order as amended in accordance with section 51I(8) of the 1961 Act shall be sent to the plaintiff and the paying party by electronic mail or ordinary post, or by such other means as the proper officer considers sufficient."

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These rules amend the Rules of the Superior Courts to facilitate the operation of Part IVB (Periodic Payments Orders) of the Civil Liability Act 1961, as inserted by section 2 of the Civil Liability (Amendment) Act 2017.

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