

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

# **IRELAND**

**Responses submitted by:**

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**1. Would your jurisdiction be described as a common law or civil code jurisdiction?**

The Republic of Ireland (“Ireland”) is a common law jurisdiction – “the first experiment of the common law” in fact.

**2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?**

Adversarial

**3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?**

Judges are appointed by the government, with secure tenure until age 70 in most courts. Persons appointed judges in the higher courts are usually senior trial lawyers (barristers), in their late 40s or early to mid 50s.

In serious criminal cases, trial by jury presided over by a judge is usual. A judge and jury also hear most defamation cases. In most other cases, the judge sits without a jury.

**4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?**

For substantial commercial cases, there is the Commercial Court. There is an employment tribunal, also.

**5. Is arbitration an option and when? If so, what rules are typically used?**

Parties may contract for arbitration. The only curtailment in this right is that there must be recourse to the courts for appeals in arbitration involving consumers. In other arbitrations, domestic and international, there is no right of appeal to the courts from an arbitrator’s decisions.

**6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?**

Yes.

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**7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?**

No, though mediation is quite common and is encouraged by the courts.

**8. What is the process for pre-hearing fact discovery (if any)?**

(a) *Are there provisions for mandatory document disclosures?*

Yes, in most civil litigation – it is not provided for in small cases.

(b) *Is there provision for oral examinations of the parties or others?*

No

(c) *Are there limits on the length of oral examinations?*

N/A

(d) *Are witness statements or summaries to be provided before the hearing?*

In the Commercial Court only, though in some other courts the judge may encourage the parties to exchange witness statements

**9. What is the process for pre-hearing expert disclosure (if any)?**

(a) *Are expert reports or written summaries required to be exchanged?*

In personal injuries cases and in the Commercial Court only.

(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

No

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*

No, though in the rules governing the Commercial Court and in personal injuries litigation, a judge may make directions requiring the experts to meet before the trial.

**10. Are there other notable discovery rules?**

No.

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**11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?**

Only in the Commercial Court. The judge conducts it and its timing is a matter for his or her judgment.

**12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?**

Yes but it is very difficult to get judgment in a contested case unless it is a debt case where the debtor advances an implausible defence.

**13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?**

No.

**14. What is the standard for admissibility of expert evidence?**

There is no set standard but an expert has to be credible and able to withstand vigorous cross-examination.

**15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?**

In admiralty matters yes – otherwise generally no. This is a very rare occurrence.

**16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?**

For all practical purposes privilege is protected in Ireland in a similar way to other common law countries. Irish courts recognise the importance of privilege as a means for persons to get skilled professional legal advice in managing their affairs and in the conduct of litigation and arbitration.

**17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?**

N/A

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**18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?**

Ultimately the courts.

**19. Briefly describe the trial process?**

(a) *Are there opening submissions, in what form and of what length?*

Submissions are usually oral and, subject to the judge's patience, may be as long as the trial lawyer thinks necessary. In most significant cases, the parties also file written submissions.

(b) *What is the order of presentation of witnesses?*

Plaintiff's witnesses then defendant's witnesses.

(c) *Who conducts examination and in what order?*

The trial lawyers for the plaintiff and then the trial lawyers for the defendant. Each side has right to cross-examine the other side's witnesses.

(d) *What is the process for closing submissions?*

Similar to the oral submissions described in (a) above.

**20. Please identify any other notable trial procedures.**

N/A

**21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?**

Plaintiff on balance of probability.

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**22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?**

All of these, though punitive damages are limited to bad cases of wrongdoing and, with very rare exceptions, are only for a fraction of other damages, and not for multiples of such damages.

**23. If punitive damages are available, what is the threshold for recovery, and range of awards?**

See above at 22.

**24. Are there time limits for bringing claims? Responding to claims? Please describe.**

For most actions, the statute of limitations is six years, though it is two years in most personal injuries cases, and there are some one year limitations, in carriage of goods cases for example.

Irish law is quite permissive about deadlines to respond to claims. Other than in debt cases, judgment in default of appearance can only be awarded in most significant civil cases by a judge at a hearing. In such cases, if no appearance is entered, the plaintiff must bring a motion before the judge to obtain judgment in default of appearance. In practice this gives a laggardly defendant more time to enter an appearance to contest a matter than the rules would initially suggest.

**25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?**

Irish law in this area is largely regulated by EU Regulation 44/2001 of European law, where the domicile of the defendant is the principal ground of jurisdiction. There are exceptions – for example, in breach of contract cases, suit may be brought in the jurisdiction where the alleged undischarged contractual obligation was due to be performed. In tort cases, suit may be brought where the damage occurred.

Subject to some important exceptions, including jurisdiction clauses in favour of EU Member State courts, the local law of the EU Member State court seized with a claim may determine whether that court has jurisdiction over a defendant domiciled outside of the EU.

In proceedings issued in an EU state on or after 10 January 2015 the EU Member State court will have discretion to stay proceedings brought before it where the same or related matters are already before the courts of a non-EU state. This discretion does not apply to proceedings issued before that date.

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**26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.**

Yes, there are third party procedures where a party can ask the court to join a third party into the proceedings.

**27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).**

Usually the loser is liable to pay about 60% of the winner's costs.

**28. Are contingency fees allowed?**

No but lawyers in personal injuries actions may act on a "no foal no fee" basis (i.e. they will be paid only if they win the case).

**29. Is third party funding of claims permitted? Under what circumstances?**

Laws of champerty and maintenance apply (with exception described in the previous paragraph) and there is no law that permits third party funding.

**30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?**

No rules provide for these, though often a group of plaintiffs will sue and if the "lead case" wins, this may persuade the defendant to settle other cases.

**31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?**

There are no rules which provide for these types of actions.

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**32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?**

Commercial Court is between six months and a year from commencement of the litigation, and faster if necessary. Other courts range from between one to two years from commencement, though there can be much greater delay if the plaintiff is desultory and if the defendant tolerates the delay. The Irish courts, other than the Commercial Court, do not, in general, case manage litigation so there is a good deal of scope for delay if neither party presses the matter along.

**33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?**

A court of appeal, staffed by professional judges, hears appeals. Usually there is only one level of appeal in a case.

**34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?**

In general, yes.

**35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?**

Most civil cases are tried without juries so these practices are most unusual.

**36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?**

Most trial lawyers conducting advocacy in the senior courts are independent referral barristers. Solicitors organise discovery, find witnesses, conduct correspondence, instruct the barristers and manage the case from start to finish.

**37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?**

Similar to other common law countries. The law about contributory negligence is based on fault principles. In cases where there is more than one wrongdoer defendant, the law sets out rules for an equitable distribution among the defendants of the burden of compensation to a successful plaintiff.

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- 38. Is service of a complaint issued outside your country permitted in your country by “informal” means, or must the Hague Convention be followed?**

Informal means are permitted.

- 39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)**

EU derived data protection laws apply but these do not block export of relevant documents required for litigation.

- 40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.**

N/A

- 41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?**

No.

- 42. Are there legislative efforts under way that address any of the litigation practices in your country?**

No, other than proposed reforms to reduce legal costs.