

**2011 No. 58**

**COUNTY COURTS**

**The County Court (Amendment) Rules (Northern Ireland) 2011**

*Made* - - - - - *24th February 2011*

*Coming into operation* - - - - - *25th March 2011*

The County Court Rules Committee makes the following Rules in exercise of the powers conferred by Article 47 of the County Courts (Northern Ireland) Order 1980(a).

**Citation, commencement and interpretation**

1. These Rules may be cited as the County Court (Amendment) Rules (Northern Ireland) 2011 and shall come into operation on 25th March 2011.

2. In these Rules, a reference to an Order, rule, Appendix or Form is a reference to that Order, rule, Appendix or Form so numbered in the County Court Rules (Northern Ireland) 1981(b).

**Amendments to the County Court Rules (Northern Ireland) 1981**

3. The County Court Rules (Northern Ireland) 1981 are amended as follows:—

(1) In Order 14—

(a) after the heading, insert—

**“PART 1**

**GENERAL”;**

(b) after rule 11, insert the new rules set out in Schedule 1.

(2) In Order 40, after rule 17, insert the new rules set out in Schedule 2.

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(a) S.I. 1980/397 (N.I.3) to which the most recent relevant amendment was made by the Constitutional Reform Act 2005 (c.4)

(b) S.R. 1981 No. 225 to which the most recent amendments were made by S.R. 2010 No. 115

The undersigned members of the County Court Rules Committee certify these Rules and submit them to the Department of Justice.

*T.A Burgess  
A E Wells  
Barry Valentine  
Dorcas Crawford  
B.J Stewart*

Dated 22nd February 2011

In exercise of the powers conferred by Article 47(4) of the County Courts (Northern Ireland) Order 1980 and after consultation with the Lord Chief Justice, I allow these Rules which shall come into operation on 25th March 2011.

Sealed with the Official Seal of the Department of Justice on 24th February 2011



*David Ford*  
Minister of Justice

“PART II  
MEDIATION

**Interpretation**

**12.** In this Part of this Order—

- (a) “an ADR process” means mediation, conciliation or another dispute resolution process approved by the Judge, but does not include arbitration;
- (b) “Judge” includes District Judge; and
- (c) “party” includes the personal representative of a deceased party.

**Adjournment of proceedings for the purposes of ADR**

**13.—**(1) Without prejudice to rule 4, the Judge, on the application of any of the parties or of his own motion, may, when the Judge considers it appropriate and having regard to all the circumstances of the case, order that proceedings or any issue therein be adjourned for such time as the Judge considers just and convenient and—

- (a) invite the parties to use an ADR process to settle or determine the proceedings or issue; or
- (b) where the parties consent, refer the proceedings or issue to such process,

and may, for the purposes of such invitation or reference, invite the parties to attend such information session on the use of mediation, if any, as the Judge may specify.

(2) Where the parties decide to use an ADR process, the Judge may make an order extending the time for compliance by any party with any provision of these Rules or any order of the Judge in the proceedings, and may make such further or other orders or give such directions as the Judge considers will facilitate the effective use of that process.

**Application for an order under rule 13**

**14.** An application by a party for an order under rule 13 shall be made by notice of motion and shall, unless the Judge otherwise orders, be supported by an affidavit.

**Time limit for an application under rule 13**

**15.** Save where the Judge for special reason to be stated in the Judge’s order allows, an application for an order under rule 13 shall not be made later than 56 days before the date on which the proceedings are first listed for hearing.”

**“PART VI**  
**MEDIATION DIRECTIVE**

**Application and interpretation**

**18.**—(1) This Part of this Order applies to mediated cross-border disputes that are subject to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters<sup>(a)</sup>.

(2) In this Part—

- (a) “Mediation Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters;
- (b) “cross-border dispute” has the meaning given by article 2 of the Mediation Directive;
- (c) “mediation” has the meaning given by article 3(a) of the Mediation Directive;
- (d) “mediation administrator” means a person involved in the administration of the mediation process;
- (e) “mediation evidence” means evidence arising out of or in connection with a mediation process;
- (f) “mediation settlement” means the content of a written agreement resulting from mediation of a relevant dispute;
- (g) “mediation settlement agreement” means a written agreement resulting from mediation of a relevant dispute;
- (h) “mediation settlement enforcement order” means an order made under rule 19(6);
- (i) “mediator” has the meaning given by article 3(b) of the Mediation Directive; and
- (j) “relevant dispute” means a cross-border dispute that is subject to the Mediation Directive.

**Mediation settlement enforcement orders**

**19.**—(1) Where the parties, or one of them with the explicit consent of the others, wish to apply for a mediation settlement to be made enforceable, an application may be made by notice of motion.

(2) An application shall be made ex parte and supported by an affidavit exhibiting the mediation settlement agreement.

(3) The application under paragraph (1) shall be served on the chief clerk of the appropriate county court division.

(4) Except to the extent that paragraph (8) applies, the parties shall lodge any evidence of explicit consent to the application under paragraph (1) when the parties lodge the application.

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(a) OJ No. L136, 24.05.2008

(5) A copy of the application, mediation settlement agreement and, if applicable, evidence of explicit consent shall be served on all parties to the mediation settlement agreement who are not also parties to the application.

(6) Subject to paragraph (7), where an application is made under paragraph (1), the court will make an order making the mediation settlement enforceable.

(7) The court will not make an order under paragraph (6) unless the court has evidence that each of the parties to the mediation settlement agreement has given explicit consent to the application for the order.

(8) Where a party to the mediation settlement agreement—

- (a) has agreed in the mediation settlement agreement that a mediation settlement enforcement order should be made in respect of that mediation settlement;
- (b) is a party to the application under paragraph (1); or
- (c) has written to the court consenting to the application for the mediation settlement enforcement order,

that party is deemed to have given explicit consent to the application for the mediation settlement enforcement order.

(9) An application under paragraph (1) will be dealt with without a hearing, unless the court otherwise directs.

(10) No document relating to an application for a mediation settlement enforcement order may be inspected by a person under Order 43, rule 4 or rule 43 who is not a party to the proceedings without the leave of the court.

(11) Where the application is supported by evidence of explicit consent to the application by a party to the mediation settlement agreement, the evidence shall be in English or accompanied by a translation into English.

(12) Where a party to the mediation settlement agreement writes to the court consenting to the making of the mediation settlement enforcement order, the correspondence shall be in English or accompanied by a translation into English.

(13) Where the parties to pending proceedings agree to apply for a mediation settlement enforcement order, they shall inform the court immediately.

#### **Mediation settlement enforcement orders: foreign currency**

**20.** Where a person applies to enforce a mediation settlement enforcement order which is expressed in a foreign currency, the application shall contain a certificate of the sterling equivalent of the sum remaining due under the order at the close of business on the day before the date of the application.

#### **Mediation evidence: disclosure or inspection**

**21.—**(1) Where a person seeks disclosure or inspection of mediation evidence that is in the control of a mediator or mediation administrator, an application shall be made by notice of motion.

(2) The application under paragraph (1) shall be served on the chief clerk of the appropriate county court division.

(3) Where an application is made under paragraph (1), the mediator or mediation administrator who has control of the mediation evidence shall be named as a respondent to the application and shall be served with a copy of the summons.

(4) Evidence in support of the application under paragraph (1) shall include evidence that—

- (a) all parties to the mediation agree to the disclosure or inspection of the mediation evidence;

- (b) disclosure or inspection of the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or
- (c) disclosure or inspection of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.

(5) Where this rule applies, Orders 15 and 24 shall apply to the extent they are consistent with this rule.

**Mediation evidence: witnesses and depositions**

**22.**—(1) This rule applies where a party wishes to obtain mediation evidence from a mediator or mediation administrator by—

- (a) a witness summons;
- (b) cross-examination with permission of the court under Order 24, rule 21(7) or rule 24;
- (c) an order under Order 24, rule 20(1);
- (d) an order under Order 24, rule 20(12); or
- (e) an order under Order 24, rule 20(13).

(2) When applying for a witness summons, permission under Order 24, rule 21(7), or an order under Order 24, rule 20(1), 20(12) or 20(13), the party shall provide the court with evidence that—

- (a) all parties to the mediation agree to the obtaining of the mediation evidence;
- (b) obtaining the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or
- (c) the disclosure or inspection of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.

(3) When considering a request for a witness summons, permission under Order 24, rule 21(7), or an order under Order 24, rule 20(1), 20(12) or 20(13), the court may invite any person, whether or not a party, to make representations.

(4) Where this rule applies, Orders 15 and 24 shall apply to the extent they are consistent with this rule.”

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the County Court Rules (Northern Ireland) 1981 (S.R. 1981 No. 225) (“the principal Rules”) to—

- enable the transposition of article 5 (recourse to mediation), article 6 (enforceability of agreements resulting from mediation) and article 7 (confidentiality of mediation) of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (“the Directive”); and
- provide for a general power for the Judge to adjourn proceedings or extend the time for compliance with a court order or a provision in the principal Rules in order to facilitate the parties using a mediation process.

In particular, Schedule 1 to the Rules sets out a new Part II of Order 14, which makes provision for a general power to adjourn for mediation (rule 13) and provides that any application to the Judge for such an order is to be made by notice of motion (rule 14) and made not later than 56 days before the date on which the proceedings are first listed for hearing (rule 15).

Schedule 2 to the Rules sets out the new Part VI of Order 40, which pertains to the Directive and includes provision on the scope of the part and interpretation (rule 18), rules in relation to article 6 of the Directive (rules 19 and 20) and rules in relation to article 7 of the Directive (rules 21 and 22).

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