

2011 No. 62

COURT OF JUDICATURE, NORTHERN IRELAND

PROCEDURE

**The Rules of the Court of Judicature (Northern Ireland)
(Amendment) 2011**

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

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

The Northern Ireland Court of Judicature Rules Committee^(a) makes the following Rules in exercise of the powers conferred by sections 55 and 55A of the Judicature (Northern Ireland) Act 1978^(b).

Citation, commencement and interpretation

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

(2) In these Rules an Order or Form referred to by number or an Appendix referred to by letter means the Order or Form so numbered or the Appendix so lettered in the amended Rules.

Amendments

2. The Rules of the Court of Judicature (Northern Ireland) 1980^(c) are amended as follows—

(1) in the Arrangement of Orders—

- (a) in the entry for Order 1, after “Judicature”, insert “and Mediation”;
- (b) in the entry for Order 71, for “Reciprocal enforcement of judgments, enforcement of European Community judgments and European Order for Payment Procedure”, substitute “Reciprocal enforcement of judgments, enforcement of European Community judgments, European Order for Payment Procedure and Mediation Directive”; and
- (c) after the entry relating to Order 124, insert—

“**125.** Coroners and Justice Act 2009 – Exploitation Proceeds Orders”;

(2) in Order 1—

(a) The Northern Ireland Supreme Court Rules Committee was renamed the Northern Ireland Court of Judicature Rules Committee in accordance with section 59(3) of the Constitutional Reform Act 2005 (c.4).

(b) 1978 c.23; to which the most recent relevant amendments were made by paragraphs 29 and 30 of Schedule 5 to the Constitutional Reform Act 2005 (c.4) and by Article 15 of and Schedule 17 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010 No. 976).

(c) S.R. 1980 No. 346. The Rules of the Supreme Court (Northern Ireland) 1980 were re-named in accordance with paragraph 3 of Schedule 11 to the Constitutional Reform Act 2005 (c.4). The most recent relevant amendments were made by S.R. 2009 No.207, 230 and 345.

- (a) in the heading, after “JUDICATURE”, insert “; MEDIATION”;
 - (b) after rule 11(m), insert—
 - “(n) applications under Part 7 of the Coroners and Justice Act 2009(a) – Exploitation Proceeds Orders.”; and
 - (c) after rule 18, insert the new rules set out in Schedule 1;
- (3) in Order 66, rule 5, after paragraph (4), insert—
- “(5) No document—
 - (a) relating to an application under Order 71, rule 47(1) for a mediation settlement enforcement order;
 - (b) annexed to a mediation settlement enforcement order made under Order 71, rule 47(6);
 - (c) relating to an application under Order 71, rule 49(1) or otherwise for disclosure or inspection of mediation evidence; or
 - (d) annexed to an order for disclosure or inspection made under Order 71, rule 49 or otherwise,may be inspected without the leave of the Court.”;
- (4) in Order 71—
- (a) for the heading, substitute “RECIPROCAL ENFORCEMENT OF JUDGMENTS, ENFORCEMENT OF EUROPEAN COMMUNITY JUDGMENTS, EUROPEAN ORDER FOR PAYMENT PROCEDURE AND MEDIATION DIRECTIVE”; and
 - (b) after rule 44, insert the new rules set out in Schedule 2;
- (5) after Order 124, insert new Order 125 as set out in Schedule 3.

*Declan Morgan
W R B Stephens
John Gillen
F P Girvan
Paul Maguire
Tony Caher*

Dated 21st February 2011

In exercise of the powers conferred by section 55A(3) of the Judicature (Northern Ireland) Act 1978, I allow these Rules.

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



David Ford
Minister of Justice

**“PART III
MEDIATION**

Interpretation

19.—(1) In this Part of this Order—

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

Adjournment of proceedings for the purposes of ADR

20.—(1) The Court, on the application of any of the parties or of its own motion, may, when it 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 Court 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 Court may specify.

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

Application for order under rule 20

21. An application by a party for an order under rule 20 shall be made by notice of motion and shall, unless the Court otherwise orders, be supported by an affidavit.

Time limit for application under rule 20

22. Save where the Court for special reason to be stated in the Court’s order allows, an application for an order under rule 20 shall not be made later than 56 days before the date on which the proceedings are first listed for hearing.”

“V. MEDIATION DIRECTIVE**Application and interpretation**

45.—(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^(a).

(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 47(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.

Assignment of business and exercise of powers

46. Any applications to the High Court under the Mediation Directive shall be assigned to the Queen’s Bench Division and the powers conferred on the Court by that Directive may be dealt with by a judge in chambers or by a master.

Mediation settlement enforcement orders

47.—(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, the parties or party may apply by way of originating summons.

(2) An originating summons under this rule may be issued without naming a defendant and no appearance need be entered.

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

(a) OJ No. L136, 24.05.2008.

(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.

(5) A copy of the summons, 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) 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.

(11) 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.

(12) 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

48. 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

49.—(1) Where a person seeks disclosure or inspection of mediation evidence that is in the control of a mediator or mediation administrator, that person shall apply by way of originating summons.

(2) 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.

(3) 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.

(4) Where this rule applies, Orders 24, 38 and 39 shall apply to the extent they are consistent with this rule.

Mediation evidence: witnesses and depositions

50.—(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 38, rule 2(3) or rule 19;
- (c) an order under Order 39, rule 1 (power to order depositions to be taken);
- (d) an order under Order 39, rule 3 (order for the issue of a letter of request); or
- (e) an order under Order 39, rule 4 (enforcing attendance of witness at examination).

(2) When applying for a witness summons, permission under Order 38, rule 2(3) or rule 19, or an order under Order 39, rule 1, 3 or 4, 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 38, rule 2(3) or rule 19, or an order under Order 39, rule 1, 3 or 4, the Court may invite any person, whether or not a party, to make representations.

(4) Where this rule applies, Orders 24, 38 and 39 shall apply to the extent they are consistent with this rule.”

“ORDER 125

CORONERS AND JUSTICE ACT 2009 – EXPLOITATION PROCEEDS
ORDERS**Interpretation****1.** In this Order—

“defendant” has the same meaning as “respondent” in the Act;

“Master” means the Master (Queen’s Bench and Appeals)

“the Act” means the Coroners and Justice Act 2009(a), a section referred to by number means the section so numbered in the Act, and expressions used have the same meaning as in the Act;.

Assignment of proceedings

2. In this Order, the jurisdiction of the High Court under the Act shall be assigned to the Queen’s Bench Division and shall be exercised by a judge in chambers.

Title of proceedings

3. An originating summons under this Order shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents shall be so entitled.

Application for an exploitation proceeds order

4.—(1) An application under section 161 for an exploitation proceeds order shall be made by originating summons in Form No. 7 of Appendix A.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall—

- (a) provide evidence that the Advocate General for Northern Ireland has consented to the application being brought;
- (b) provide evidence that the defendant is a qualifying offender in accordance with sections 156, 157 or 158(3) by attaching—
 - (i) a certificate of conviction or finding by a United Kingdom court in respect of a relevant offence; or
 - (ii) where the defendant falls under section 156(3), a document from a court or authority, in the jurisdiction concerned, confirming the conviction or finding by that court in respect of a relevant offence;
- (c) specify how the defendant has obtained exploitation proceeds from the relevant offence;
- (d) identify the benefits derived by the defendant from such exploitation; and
- (e) specify the reasons why an exploitation proceeds order should be made, having regard to the matters mentioned in section 162(3).

(a) 2009 c.25

(3) Where a document provided in accordance with paragraph (2)(b)(ii) is not in English, it shall be accompanied by a translation of that document into English and shall be certified by the translator to be a correct translation; and the certificate shall contain a statement of that person's full name, his address and qualifications for making the translation.

Application following conviction being quashed

5.—(1) An application under section 166(3) or (5) shall be made by way of summons.

(2) An application under paragraph (1) shall be supported by an affidavit which shall—

- (a) specify how the conditions in sections 166(1), 166(2) or 166(4) are satisfied; and
- (b) attach—
 - (i) a certificate of order as evidence of the conviction in respect of the relevant offence having been quashed; or
 - (ii) a document from a court or authority in the jurisdiction concerned, confirming that the conviction in respect of the relevant offence has been quashed.

(3) Where a document provided in accordance with paragraph (2)(b)(ii) is not in English, it shall be accompanied by a translation of that document into English and shall be certified by the translator to be a correct translation; and the certificate shall contain a statement of that person's full name, his address and qualifications for making the translation.

Repeat applications

6. An application under section 167 shall be made by way of summons, supported by affidavit, which shall—

- (a) give full particulars of the grounds of the application in accordance with rule 4(2); and
- (b) attach a transcript of the earlier application along with a copy of the earlier order.

Additional proceeds reporting order

7.—(1) Where an additional proceeds reporting order is sought under section 168, an application for an order may be included in the originating summons under rule 4(1), and the affidavit in support shall specify the reasons as to why the order is sought having regard to section 168(2).

(2) An application to vary or discharge an additional proceeds reporting order may be made by—

- (a) the defendant; or
- (b) the person to whom financial reports are to be made under the order.

(3) An application under paragraph (2) shall be made by way of summons supported by affidavit, which shall—

- (a) attach a copy of the order made under section 168; and
- (b) specify the reasons for the variation or discharge sought.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Rules of the Court of Judicature (Northern Ireland) 1980 (S.R. 1980 No. 346) ('the principal Rules') to:

- make provision enabling 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 ("the Directive") on certain aspects of mediation in civil and commercial matters; and
- prescribe the procedure relating to applications for, or in relation to, an exploitation proceeds order under Part 7 of the Coroners and Justice Act 2009 ('the 2009 Act').

In particular, the Rules insert a new Part III in Order 1, make consequential amendments to Order 66, insert a new Part V in Order 71 and a new Order 125.

The new Part III of Order 1 makes provision for mediation in general and allows the Court 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.

The new Part V of Order 71 pertains to the Directive in particular and includes provision on the scope of the part and interpretation (rule 45), rules in relation to article 6 of the Directive (rules 48 and 49) and rules in relation to article 7 (rules 50 and 51).

New Order 125 prescribes the procedures in relation to; an application for an exploitation proceeds order under section 161 of the 2009 Act (rule 4); an application to discharge an exploitation proceeds order following the conviction on which it was based being quashed (rule 5); a repeat application for an exploitation proceeds order against a defendant (rule 6); and an application for, or in relation to, an additional proceeds reporting order (rule 7).

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STATUTORY RULES OF NORTHERN IRELAND

2011 No. 62

COURT OF JUDICATURE, NORTHERN IRELAND

PROCEDURE

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(Amendment) 2011

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