
STATUTORY RULES OF NORTHERN IRELAND

1997 No. 70

**SUPREME COURT, NORTHERN IRELAND
PROCEDURE**

**The Rules of the Supreme Court
(Northern Ireland) (Amendment) 1997**

Made - - - - 19th February 1997

To be laid before Parliament

Coming into operation 17th March 1997

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978⁽¹⁾ to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers as follows:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment) 1997 and shall come into operation on 17th March 1997.

(2) In these Rules an Order referred to by number or an Appendix referred to by letter, means the Order so numbered and the Appendix so lettered in the Rules of the Supreme Court (Northern Ireland) 1980⁽²⁾.

Arrangement of Orders

2. The Arrangement of Orders at the beginning of the Rules of the Supreme Court (Northern Ireland) 1980 shall be amended, by substituting—

- (a) for the title to Order 36, the title “Trials before masters and referees”; and
- (b) for the title to Order 73, the title “Applications relating to Arbitration”.

⁽¹⁾ 1978 c. 23

⁽²⁾ S.R. 1980 No. 346; the relevant amending instruments are S.R. 1980 No. 433; S.R. 1982 No. 217; S.R. 1984 No. 110 and S.R. 1994 No. 286

Service of process etc. outside of the jurisdiction

3. Order 11, rule 9, paragraphs (1) and (4) shall each be amended by omitting the words “Subject to Order 73, rule 5”.

Trials before Masters and Referees

4. Order 36 shall be amended as follows—

- (a) by substituting for the title to the Order the title “TRIALS BEFORE MASTERS AND REFEREES”; and
- (b) in rule 1 the words “pursuant to section 20 of the Arbitration Act (Northern Ireland) 1937(a)” are deleted.

Appeals from arbitrations under section 30 of the County Courts (Northern Ireland) Order 1980

5. Order 94, rule 1 shall be amended by inserting after head (ii) the following head—

“(iii) Article 30(4)(b) of the County Courts (Northern Ireland) Order 1980 (appeals from small claims arbitrations)”

6. For Order 73 there shall be substituted the following—

“ORDER 73

APPLICATIONS RELATING TO ARBITRATION

Introduction

This Order is divided into three Parts. Part I is concerned with applications to the Court relating to arbitration to which Part I of the Arbitration Act 1996 applies. Part II restates with some necessary adjustments provisions of the existing Order which are to be preserved. Part III is concerned with applications for enforcement under the earlier Arbitration Acts and under the 1996 Act.

The application of the Order to particular proceedings may be determined by reference to the following table. Column 1 shows the date on which arbitral proceedings (if any) were commenced. Column 2 shows the date of the application to the Court. Column 3 shows the appropriate Part of the Order for the application.

Column 1 <i>Date of arbitral proceedings</i>	Column 2 <i>Date of application to the Court</i>	Column 3 <i>Appropriate Part of Order 73</i>
not commenced	before 31st January 1997	Part II
before 31st January 1997	before 31st January 1997	Part II
not commenced	on or after 31st January 1997	Part I
before 31st January 1997	on or after 31st January 1997	Part II
on or after 31st January 1997	on or after 31st January 1997	Part I
on or after 31st January 1997	before 31st January 1997	Part II

The other provisions of these Rules apply to applications relating to arbitration subject to the provisions of this Order and only to the extent that they do not conflict with it.

See, for example, the following provisions of these Rules for the following matters—

- Order 10 — service of originating process
- Order 12 — entry of appearance
- Order 29 — injunctions
- Order 32 — proceedings in chambers
- Order 41 — affidavits
- Order 65 — service of documents.

Part I

The overriding objective

1. This part of this Order is founded on the general principles in section 1 of the Arbitration Act and shall be construed accordingly.

Meaning of arbitration application

2.—(1) Subject to paragraph (2), “arbitration application” means the following—

- (a) an application to the Court under the Arbitration Act;
- (b) proceedings to determine—
 - (i) whether there is a valid arbitration agreement;
 - (ii) whether an arbitral tribunal is properly constituted;
 - (iii) what matters have been submitted to arbitration in accordance with an arbitration agreement;
- (c) proceedings to declare that an award made by an arbitral tribunal is not binding on a party;
- (d) any other application affecting arbitration proceedings (whether instituted or anticipated) or to construe or affecting an arbitration agreement,

and includes the originating process by which an arbitration application is begun.

(2) In this Part of this Order, an arbitration application does not include proceedings to enforce an award—

- (a) to which Part III of this Order applies; or
- (b) by an action on the award.

Interpretation

3. In this Part—

“applicant” means the party making an arbitration application and references to respondent shall be construed accordingly;

“the Arbitration Act” means the Arbitration Act 1996 and any expressions used in this Order and in Part I of the Arbitration Act have the same meanings in this Order as they have in that Part of the Arbitration Act.

Form and content of arbitration application

4.—(1) An arbitration application must be in Form No. 8A in Appendix A.

- (2) Every arbitration application must—
- (a) include a concise statement of—
 - (i) the remedy or relief claimed, and
 - (ii) (where appropriate) the questions on which the applicant seeks the determination or direction of the Court;
 - (b) give details of any arbitration award that is challenged by the applicant, showing the grounds for any such challenge;
 - (c) where the applicant claims an order for costs, identify the respondent against whom the claim is made;
 - (d) (where appropriate) specify the section of the Arbitration Act under which the application is brought; and
 - (e) show that any statutory requirements have been satisfied including those set out, by way of example, in the Table below.

<i>Application made</i>	<i>Statutory requirements</i>
section 9 (stay of legal proceedings)	see section 9(3)
section 12 (extensions of time for beginning arbitral proceedings)	see section 12(2)
section 18 (failure of appointment procedure)	see section 18(2)
section 21 (umpires)	see section 21(5)
section 24 (removal of arbitrators)	see section 24(2)
section 32 (preliminary point of jurisdiction)	see section 32(3)
section 42 (enforcement of peremptory orders)	see section 42(3)
section 44 (powers in support of arbitral proceedings)	see section 44(4), (5)
section 45 (preliminary point of law)	see section 45(3)
section 50 (extension of time for making award)	see section 50(2)
section 56 (power to withhold award)	see section 56(4)
sections 67, 68 (challenging the award)	see section 70(2), (3)
section 69 (appeal on point of law)	see sections 69(2), (4), 70(2), (3)
section 77 (service of documents)	see section 77(3)

- (3) The arbitration application must also state
- (a) whether it is made *ex parte* or on notice and, if made on notice, must give the names and addresses of the persons to whom notice is to be given, stating their role in the arbitration and whether they are made respondents to the application;
 - (b) whether (having regard to rule 15) the application will be heard in open Court or in chambers; and

(c) the date and time when the application will be heard or that such date has not yet been fixed.

(4) Every arbitration application which is used as an originating process shall be indorsed with the applicant's address for service in accordance with Order 6, rule 4.

Assignment of arbitration proceedings among Divisions of High Court

5. An arbitration application or appeal to the High Court under the Arbitration Act, other than an application under section 9 or 10 of that Act or Part II of the Arbitration Act 1950⁽³⁾ made in proceedings assigned to the Chancery Division, shall be assigned to the Queen's Bench Division.

Stay of legal proceedings

6.—(1) An application under section 9 of the Arbitration Act to stay legal proceedings shall be served—

(a) in accordance with Order 65, rule 5, on the party bringing the relevant legal proceedings and on any other party to those proceedings who has given an address for service; and

(b) on any party to those legal proceedings who has not given an address for service, by sending to him (whether or not he is within the jurisdiction) at his last known address or at a place where it is likely to come to his attention, a copy of the application for his information.

(2) Where a question arises as to whether an arbitration agreement has been concluded or as to whether the dispute which is the subject-matter of the proceedings falls within the terms of such an agreement, the Court may determine that question or give directions for its determination, in which case it may order the proceedings to be stayed pending the determination of that question.

Service of arbitration application

7.—(1) Subject to paragraphs (2) and (4) below and to rules 6(1) and 8, an arbitration application shall be served in accordance with Order 10.

(2) Where the Court is satisfied on an *ex parte* application that

(a) arbitral proceedings are taking place, or an arbitration award has been made, within the jurisdiction; and

(b) an arbitration application is being made in connection with those arbitral proceedings or being brought to challenge the award or to appeal on a question of law arising out of the award; and

(c) the respondent to the arbitration application (not being an individual residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction)

(i) is or was represented in the arbitral proceedings by a solicitor or other agent within the jurisdiction who was authorised to receive service of any notice or other document served for the purposes of those proceedings; and

(ii) has not (at the time when the arbitration application is made) determined the authority of that solicitor or agent,

the Court may order service of the arbitration application to be effected on the solicitor or agent instead of the respondent.

(3) An order made under paragraph (2) must limit a time within which the respondent must enter an appearance and a copy of the order and of the arbitration application must be sent by post to the respondent at his address out of the jurisdiction.

(4) Where an arbitration application has been issued, any subsequent arbitration application made by the respondent and arising out of the same arbitration or arbitration agreement may be served on the applicant in accordance with Order 65, rule 5 (ordinary service: how effected) and similarly any subsequent arbitration application by any party may be served at the address for service given in the first arbitration application or in the memorandum of appearance.

(5) For the purposes of service, an arbitration application is valid in the first instance

- (a) where service is to be effected out of the jurisdiction, for such period as the Court may fix;
- (d) in any other case, for one month, beginning with the date of its issue.

Service out of the jurisdiction

8.—(1) Service out of the jurisdiction of an arbitration application is permissible with the leave of the Court if the arbitration application falls into one of the categories mentioned in the following table and satisfies the conditions specified.

<i>Nature of application</i>	<i>Conditions to be satisfied</i>
1. The applicant seeks to challenge, or to appeal to the Court on a question of law arising out of, an arbitration award.	Award must have been made in Northern Ireland. Section 53 of the Arbitration Act shall apply for determining the place where award is treated as made.
2. The application is for an order under section 44 of the Arbitration Act (Court powers exercisable in support of arbitral proceedings). Where the application is for interim relief in support of arbitral proceedings which are taking (or will take) place outside Northern Ireland, the Court may give leave for service out of the jurisdiction notwithstanding that no other relief is sought.	None.
3. The applicant seeks some other remedy or relief, or requires a question to be determined by the Court, affecting an arbitration (whether pending or anticipated), an arbitration agreement or an arbitration award.	The seat of the arbitration is or will be in Northern Ireland or the conditions in section 2(4) of the Arbitration Act are satisfied.

- (2) An application for the grant of leave under this rule must be supported by an affidavit
 - (a) stating the grounds on which the application is made; and
 - (b) showing in what place or country the person to be served is, or probably may be found,

and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.

(3) Order 11, rules 5 to 8 shall apply to the service of an arbitration application under this rule as they apply to the service of a writ.

(4) Service out of the jurisdiction of any order made on an arbitration application is permissible with the leave of the Court.

Affidavit in support of arbitration application

9.—(1) The applicant shall file an affidavit in support of the arbitration application which sets out the evidence on which he intends to rely and a copy of every affidavit so filed must be served with the arbitration application.

(2) Where an arbitration application is made with the written agreement of all the other parties to the arbitral proceedings or with the permission of the arbitral tribunal, the affidavit in support must

- (a) give details of the agreement or, as the case may be, permission; and
- (b) exhibit copies of any document which evidences that agreement or permission.

Requirements as to notice

10.—(1) Where the Arbitration Act requires that an application to the Court is to be made upon notice to other parties notice shall be given by making those parties respondents to the application and serving on them the arbitration application and any affidavit in support.

(2) Where an arbitration application is made under section 24, 28 or 56 of the Arbitration Act, the arbitrators or, in the case of an application under section 24, the arbitrator concerned shall be made respondents to the application and notice shall be given by serving on them the arbitration application and any affidavit in support.

(3) In cases where paragraph (2) does not apply, an applicant shall be taken as having complied with any requirement to give notice to the arbitrator if he sends a copy of the arbitration application to the arbitrator for his information at his last known address with a copy of any affidavit in support.

(4) This rule does not apply to applications under section 9 of the Arbitration Act to stay legal proceedings.

Memorandum of appearance by respondent

11.—(1) Service of an arbitration application may be acknowledged by completing a memorandum of appearance in Form No. 12A in Appendix A in accordance with Order 12 (as that Order applies by virtue of rule 9 of that Order).

(2) A respondent who—

- (a) fails to enter an appearance within the time limited for so doing; or
- (b) having indicated on his memorandum of appearance that he does not intend to contest the arbitration application, then wishes to do so, shall not be entitled to contest the application without the leave of the Court.

(3) The Court will not give notice of the date on which an arbitration application will be heard to a respondent who has failed to enter an appearance.

(4) The failure of a respondent to give notice of intention to contest the arbitration application or to enter an appearance shall not affect the applicant's duty to satisfy the Court that the order applied for should be made.

- (5) This rule does not apply to—
 - (a) applications under section 9 of the Arbitration Act to stay legal proceedings; or
 - (b) subsequent arbitration applications.

Entry of Appearance by arbitrator

12.—(1) An arbitrator who is sent a copy of an arbitration application for his information may make—

- (a) a request *ex parte* in writing to be made a respondent; or
- (b) representations to the Court under this rule,

and, where an arbitrator is ordered to be made a respondent, he shall enter an appearance within 14 days of the making of that order.

(2) An arbitrator who wishes to make representations to the Court under this rule may file an affidavit or make representations in writing to the Court.

(3) The arbitrator shall as soon as is practicable send a copy of any document filed or made under paragraph (2) to all the parties to the arbitration application.

(4) Nothing in this rule shall require the Court to admit a document filed or made under paragraph (2) and the weight to be given to any such document shall be a matter for the Court.

Automatic directions

13.—(1) Unless the Court otherwise directs, the following directions shall take effect automatically.

(2) A respondent who wishes to put evidence before the Court in response to any affidavit filed in support of an arbitration application shall serve his affidavit on the applicant before the expiration of 21 days after the time limited for entering an appearance or, in a case where a respondent is not required to enter an appearance, within 21 days after service of the arbitration application.

(3) An applicant who wishes to put evidence before the Court in response to an affidavit lodged under paragraph (2) shall serve his affidavit on the respondent within 7 days after service of the respondent's affidavit.

(4) Where a date has not been fixed for the hearing of the arbitration application, the applicant shall, and the respondent may, not later than 14 days after the expiration of the time limit specified in paragraph (2), apply to the Court for such a date to be fixed.

(5) Agreed indexed and paginated bundles of all the evidence and other documents to be used at the hearing shall be prepared by the applicant (with the co-operation of the respondent).

(6) Not later than 5 clear days before the hearing date estimates for the length of the hearing shall be lodged with the Court together with a complete set of the documents to be used.

(7) Not later than 2 days before the hearing date the applicant shall lodge with the Court—

- (a) a chronology of the relevant events cross-referenced to the bundle of documents;
- (b) (where necessary) a list of the persons involved;
- (c) a skeleton argument which lists succinctly
 - (i) the issues which arise for decision,

- (ii) the grounds of relief (or opposing relief) to be relied upon,
 - (iii) the submissions of fact to be made with the references to the evidence, and
 - (iv) the submissions of law with references to the relevant authorities,
- and shall send a copy to the respondent.

(8) Not later than the day before the hearing date the respondent shall lodge with the Court a skeleton argument which lists succinctly—

- (a) the issues which arise for decision,
- (b) the grounds of relief (or opposing relief) to be relied upon,
- (c) the submissions of fact to be made with the references to the evidence, and
- (d) the submissions of law with references to the relevant authorities,

and shall send a copy to the applicant.

Directions by the Court

14.—(1) The Court may give such directions as to the conduct of the arbitration application as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(2) Where the Court considers that there is or may be a dispute as to fact and that the just, expeditious and economical disposal of the application can best be secured by hearing the application on oral evidence or mainly on oral evidence, it may, if it thinks fit, order that no further evidence shall be filed and that the application shall be heard on oral evidence or partly on oral evidence and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(3) The Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any directions which it could give in proceedings begun by writ.

(4) If the applicant makes default in complying with these rules or with any order or direction of the Court as to the conduct of the application, or if the Court is satisfied that the applicant is not prosecuting the application with due despatch, the Court may order the application to be dismissed or may make such other order as may be just.

(5) If the respondent fails to comply with these rules or with any order or direction given by the Court in relation to the evidence to be relied on, or the submissions to be made by that respondent, the Court may, if it thinks fit, hear and determine the application without having regard to that evidence or those submissions.

Hearing of applications: open Court or in chambers

15.—(1) The Court may order that any arbitration application be heard either in open court or in chambers.

(2) Subject to any order made under paragraph (1) and to paragraph (3), all arbitration applications shall be heard in chambers.

(3) Subject to any order made under paragraph (1), the determination of a preliminary point of law under section 45 of the Arbitration Act or an appeal under section 69 on a question of law arising out of an award shall be heard in open Court.

(4) Paragraph (3) shall not apply to—

- (a) the preliminary question whether the Court is satisfied of the matters set out in section 45(2)(b); or

- (b) an application for leave to appeal under section 69(2)(b).

Securing the attendance of witnesses

16.—(1) A party to arbitral proceedings being conducted in Northern Ireland who wishes to rely on section 43 of the Arbitration Act to secure the attendance of a witness may apply for a writ of subpoena ad testificandum or of subpoena duces tecum to the Central Office.

(2) A writ of subpoena shall not be issued until the applicant lodges an affidavit which shows that the application is made with the permission of the tribunal or the agreement of the other parties.

Security for costs

17. Subject to section 70(6) of the Arbitration Act, the Court may order any applicant (including an applicant who has been granted leave to appeal) to provide security for costs of any arbitration application.

Powers exercisable in support of arbitral proceedings

18.—(1) Where the case is one of urgency, an application for an order under section 44 of the Arbitration Act (Court powers exercisable in support of arbitral proceedings) may be made *ex parte* on affidavit (before the issue of an arbitration application) and the affidavit shall (in addition to dealing with the matters required to be dealt with by rule 9) state the reasons—

- (a) why the application is made *ex parte*; and
- (b) (where the application is made without the permission of the arbitral tribunal or the agreement of the other parties to the arbitral proceedings) why it was not practicable to obtain that permission or agreement, and
- (c) why the deponent believes that the condition in section 44(5) is satisfied.

(2) Where the case is not one of urgency, an application for an order under section 44 of the Arbitration Act shall be made on notice and the affidavit in support shall (in addition to dealing with the matters required to be dealt with by rule 9 and paragraph (1)(c) above) state that the application is made with the permission of the tribunal or the written agreement of the other parties to the arbitral proceedings.

(3) Where an application for an order under section 44 of the Arbitration Act is made before the issue of an arbitration application, any order made by the Court may be granted on terms providing for the issue of an application and such other terms, if any, as the Court thinks fit.

Applications under sections 32 and 45 of the Arbitration Act

19.—(1) This rule applies to the following arbitration applications—

- (a) applications for the determination of a question as to the substantive jurisdiction of the arbitral tribunal under section 32 of the Arbitration Act; and
- (b) applications for the determination of a preliminary point of law under section 45 of the Arbitration Act.

(2) Where an application is made without the agreement in writing of all the other parties to the arbitral proceedings but with the permission of the arbitral tribunal, the affidavits filed by the parties shall set out any evidence relied on by the parties in support of their contention that the Court should, or should not, consider the application.

(3) As soon as practicable after the affidavits are lodged, the Court shall decide whether or not it should consider the application and, unless the Court otherwise directs, shall so decide without a hearing.

Applications for leave to appeal

20.—(1) Where the applicant seeks leave to appeal to the Court on a question of law arising out of an arbitration award, the arbitration application shall identify the question of law and state the grounds on which the applicant alleges that leave should be granted.

(2) The affidavit in support of the application shall set out any evidence relied on by the applicant for the purpose of satisfying the Court of the matters mentioned in section 69(3) of the Arbitration Act and for satisfying the Court that leave should be granted.

(3) The affidavit lodged by the respondent to the application shall—

- (a) state the grounds on which the respondent opposes the grant of leave;
- (b) set out any evidence relied on by him relating to the matters mentioned in section 69(3) of the Arbitration Act; and
- (c) specify whether the respondent wishes to contend that the award should be upheld for reasons not expressed (or not fully expressed) in the award and, if so, state those reasons.

(4) As soon as practicable after the lodging of the affidavits, the Court shall determine the application for leave in accordance with section 69(5) of the Arbitration Act.

(5) Where leave is granted, a date shall be fixed for the hearing of the appeal.

Extension of time: applications under section 12

21. An application for an order under section 12 of the Arbitration Act may include as an alternative an application for a declaration that such an order is not needed.

Time limit for challenges to or appeals from awards

22.—(1) An applicant shall not be taken as having complied with the time limit of 28 days referred to in section 70(3) of the Arbitration Act unless the arbitration application has been issued, and all the affidavits in support have been sworn and filed, by the expiry of that time limit.

(2) An applicant who wishes—

- (a) to challenge an award under section 67 or 68 of the Arbitration Act; or
- (b) to appeal under section 69 on a question of law arising out of an award,

may, where the time limit of 28 days has not yet expired, apply *ex parte* on affidavit for an order extending that time limit.

(3) In any case where an applicant seeks to challenge an award under section 67 or 68 of the Arbitration Act or to appeal under section 69 after the time limit of 28 days has already expired, the following provisions shall apply:

- (a) the applicant must state in his arbitration application the grounds why an order extending time should be made and his affidavit in support shall set out the evidence on which he relies;
- (b) a respondent who wishes to oppose the making of an order extending time shall file an affidavit within 7 days after service of the applicant's affidavit, and

(c) the Court shall decide whether or not to extend time without a hearing unless it appears to the Court that a hearing is required, and, where the Court makes an order extending the time limit, the respondent shall file his affidavit in response to the arbitration application 21 days after the making of the order.

Part II

Application of this Part

23.—(1) This Part of this Order applies to any application to the Court to which the old law applies and, in this rule, “the old law” means the enactments specified in section 107 of the Arbitration Act 1996⁽⁴⁾ as they stood before their amendment or repeal by that Act.

(2) This Part of this Order does not apply to proceedings to enforce an award—

- (a) to which Part III of this Order applies; or
- (b) by an action on the award.

(3) Reference should be made to the other provisions of these rules (except Parts I and III of this Order) for the procedure for any application not expressly provided for in this Part.

Matters for a judge in court

24.—(1) Every application to the Court—

- (a) to remit an award under section 15 of the Arbitration Act (Northern Ireland) 1937⁽⁵⁾, or
- (b) to remove an arbitrator or umpire under section 7(1) of that Act, or
- (c) to set aside an award under section 7(2) thereof,

must be made by originating motion.

(2) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction may be made by originating motion but the foregoing provision shall not be taken as affecting the Court’s power to refuse to make such a declaration in proceedings begun by motion.

Matters for a judge in chambers or master

25.—(1) Subject to the provisions of this Order and the provisions of this rule the jurisdiction of the High Court under the Arbitration Act (Northern Ireland) 1937 and the Arbitration Act 1950⁽⁶⁾ may be exercised by a judge in chambers or a master.

(2) Any application to which this rule applies shall, where an application is pending, be made by summons in the action and in any other case by an originating summons for which no appearance need be entered.

Time-limits and other special provisions as to applications under the Arbitration Act (Northern Ireland) 1937

26.—(1) An application to the Court—

(4) 1996 c. 23
(5) 1937 c. 8 (N.I.)
(6) 1950 c. 27

(a) to remit an award under section 15 of the Arbitration Act (Northern Ireland) 1937, or
(b) to set aside an award under section 7(2) of that Act, must be made, and the notice of motion must be served, within 6 weeks after the award has been made and published to the parties.

(2) A special case stated under section 22 of the Arbitration Act (Northern Ireland) 1937 shall be heard by a judge. The decision thereon shall be deemed to be a judgment of the Court and the provisions of Order 56 shall apply thereto.

(3) In the case of every application to which this rule applies, the notice of originating motion must state the grounds of the application and, where the application is founded on evidence by affidavit, or is made with the consent of the arbitrator or umpire or of the other parties, a copy of every affidavit intended to be used, or as the case may be, of every consent given in writing, must be served with the notice of motion.

Service out of the jurisdiction of summons, notice etc.

27.—(1) Service out of the jurisdiction—

- (a) of an originating summons for the appointment of an arbitrator or umpire, or
- (b) of notice of an originating motion to remove an arbitrator or umpire or to remit or set aside an award, or
- (c) of any order made on such a summons or motion as aforesaid

is permissible with the leave of the court provided that the arbitration to which the summons, motion or order relates is governed by the law of Northern Ireland or has been, is being, or is held within the jurisdiction.

(2) Service out of the jurisdiction of an originating summons for leave to enforce an award is permissible with the leave of the Court whether or not the award is governed by the law of Northern Ireland.

(3) An application for the grant of leave under this rule must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.

(4) Order 11, rules 5, 6 and 8, shall apply in relation to any such summons, notice or order as is referred to in paragraph (1) as they apply in relation to notice of a writ.

Part III

Application of this Part

28. This Part of this Order applies to all enforcement proceedings (other than by an action on the award) regardless of when they are commenced and when the arbitral proceedings took place.

Enforcement of awards

29.—(1) This rule applies to applications to enforce awards which are brought in the High Court.

(2) An application for leave under—

- (a) section 66 of the Arbitration Act 1996⁽⁷⁾;
- (b) section 101 of the Arbitration Act 1996;
- (c) section 16 of the Arbitration Act (Northern Ireland) 1937⁽⁸⁾; or
- (d) section 3(1)(c) of the Arbitration Act 1975⁽⁹⁾;

to enforce an award in the same manner as a judgment or order may be made *ex parte* in Form No. 8A in Appendix A.

(3) The Court hearing an application under paragraph (2) may direct that the application is to be served on such parties to the arbitration as it may specify and service of the application out of the jurisdiction is permissible with the leave of the Court irrespective of where the award is, or is treated as, made.

(4) Where a direction is given under paragraph (3), rules 11 and 13 to 17 shall apply with the necessary modifications as they apply to applications under Part I of this Order.

(5) Where the applicant applies to enforce an agreed award within the meaning of section 51(2) of the Arbitration Act 1996, the application must state that the award is an agreed award and any order made by the Court shall also contain such a statement.

(6) An application for leave must be supported by affidavit—

- (a) exhibiting
 - (i) where the application is made under section 66 of the Arbitration Act 1996 or under section 16 of the Arbitration Act (Northern Ireland) 1937, the arbitration agreement and the original award or, in either case, a copy thereof;
 - (ii) where the application is under section 101 of the Arbitration Act 1996, the documents required to be produced by section 102 of that Act;
 - (iii) where the application is under section 3(1)(c) of the Arbitration Act 1975, the documents required to be produced by section 4 of that Act;
- (b) stating the name and the usual or last known place of residence or business of the applicant and of the person against whom it is sought to enforce the award respectively;
- (c) stating as the case may require, either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

(7) An order giving leave must be drawn up by or on behalf of the applicant and must be served on the respondent by delivering a copy to him personally or by sending a copy to him at his usual or last known place of residence or business or in such other manner as the Court may direct.

(8) Service of the order out of the jurisdiction is permissible without leave, and Order 11, rules 5 to 8, shall apply in relation to such an order as they apply in relation to a writ.

(9) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix, the respondent may apply to set aside the order and the award shall not be enforced until after the expiration of that period or, if the respondent applies within that period to set aside the order, until after the application is finally disposed of.

(10) The copy of the order served on the respondent shall state the effect of paragraph (9).

(7) 1996 c. 23
(8) 1937 c. 8 (N.I.)
(9) 1975 c. 3

(11) In relation to a body corporate this rule shall have effect as if for any reference to the place of residence or business of the applicant or the respondent there were substituted a reference to the registered or principal address of the body corporate.

(12) Nothing in this rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate.

Interest on awards

30.—(1) Where an applicant seeks to enforce an award of interest, the whole or any part of which relates to a period after the date of the award, he shall file a certificate giving the following particulars—

- (a) whether simple or compound interest was awarded;
- (b) the date from which interest was awarded;
- (c) whether rests were provided for, specifying them;
- (d) the rate of interest awarded, and
- (e) a calculation showing the total amount claimed up to the date of the certificate and any sum which will become due thereafter on a *per diem basis*.

(2) The certificate under paragraph (1) must be filed whenever the amount of interest has to be quantified for the purpose of obtaining a judgement or order under section 66 of the Arbitration Act 1996 (enforcement of the award) or for the purpose of enforcing such a judgment or order by one of the means mentioned in Order 45, rule 2.

Registration in High Court of foreign awards

31. Where an award is made in proceedings on an arbitration in any part of Her Majesty's dominions or other territory to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933⁽¹⁰⁾ extends, being a part to which Part II of the Administration of Justice Act 1920⁽¹¹⁾ extended immediately before the said Part I was extended thereto, then, if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place, Order 71 shall apply in relation to the award as it applies in relation to a judgment given by that court, subject, however, to the following modifications:—

- (a) for references to the country of the original court there shall be substituted references to the place where the award was made; and
- (b) the affidavit required by rule 3 of the said Order must state (in addition to the other matters required by that rule) that to the best of the information or belief of the deponent the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

Registration of awards under the Arbitration (International Investment Disputes) Act 1966⁽¹²⁾

32.—(1) In this rule and in any provision of these rules as applied by this rule—
“the Act of 1966” means the Arbitration (International Investment Disputes) Act 1966;

(10) 1933 c. 13
(11) 1920 c. 81
(12) 1966 c. 41

“award” means an award rendered pursuant to the Convention;

“the Convention” means the Convention referred to in section 1(1) of the Act of 1966;

“judgment creditor” and “judgment debtor” means respectively the person seeking recognition or enforcement of an award and the other party to the award.

(2) Subject to the provisions of this rule, the following provisions of Order 71, namely, rules 1, 3(1) (except sub-paragraphs (c)(iv) and (d) thereof) and 7 (except paragraph (3) (c) and (d) thereof), shall apply with the necessary modifications in relation to an award as they apply in relation to a judgment to which Part II of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies.

(3) An application to have an award registered in the High Court under section 1 of the Act of 1966 shall be made by originating summons which shall be in Form 7 in Appendix A.

(4) The affidavit required by Order 71, rule 3, in support of an application for registration shall—

(a) in lieu of exhibiting the judgment of a copy thereof, exhibit a copy of the award certified pursuant to the Convention; and

(b) in addition to stating the matters mentioned in paragraph 3(1)(c)(i) and (ii) of the said rule 3, state whether at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) pursuant to the Convention and whether any, and if so what, application has been made pursuant to the Convention, which, if granted, might result in a stay of the enforcement of the award.

(5) There shall be kept in the Central Office a register of the awards ordered to be registered under the Act of 1966.

(6) Where it appears to the Court on granting leave to register an award or an application made by the judgment debtor after an award has been registered—

(a) that the enforcement of the award has been stayed (whether provisionally or otherwise) pursuant to the Convention, or

(b) that an application has been made pursuant to the Convention, which, if granted, might result in a stay of the enforcement of the award,

the Court shall, or in the case referred to in sub-paragraph (b) may, stay enforcement of the award for such time as it considers appropriate in the circumstances.

(7) An application by the judgment debtor under paragraph (6) shall be made by summons and supported by affidavit.”.

New Forms

7. After Form No. 8 in Appendix A there shall be inserted the new Form 8A set out in the Schedule to these Rules and after Form No. 12 in Appendix A there shall be inserted the new Form 12A set out in the Schedule to these Rules.

*R. D. Carswell
John MacDermott
Brian Kerr
Tony Caher
Owen Catchpole
Patrick Coghlin*

Dated 17th February 1997.

I concur,

Dated 19th February 1997.

Mackay of Clashfern, C

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Rule 7

“No. 8A Arbitration application

(O. 73, r. 4(1), r. 29)

Guidance notes for Applicants

- 1. You should read the following notes carefully before completing the attached form. The form can be used to either:—**
- (a) make an application in existing proceedings;
 - or
 - (b) begin proceedings (as an originating document).

Notes 2 and 4 are relevant to an application as at 1(a); Notes 3 and 4 are relevant to an application as at 1(b).

- 2. No memorandum of appearance is required if the form is being used to make an application in existing proceedings. You should delete the notes relating to returning a memorandum of appearance. But you must still complete the address boxes at the end of the form as appropriate.**

3. Service

- (a) A completed memorandum of appearance must be served with the arbitration application. Notes for guidance attached to that form will tell you how to fill it in.
- (b) The application may not be served more than 1 month from the date of issue unless:—
 - it is to be served on a party outside Northern Ireland,
 - or
 - the time for service has been extended by the Court.
- (c) You must write in the appropriate time limit for returning the memorandum of appearance. The relevant number of days should be given in the box below paragraph 6 of the notes about service.
- (d) If you are an applicant acting in person and you reside at an address which is not in Northern Ireland, you must give an address for service which is within the Court's jurisdiction.

- 4. Detach the guidance notes before this form is served.**

Arbitration application

In the High Court of Justice

19

No.

Queen's Bench Division

Central Office

1. (i) In an arbitration application between

and

Applicant

of

Respondent

of

Respondent

of

Respondent

(ii) and in the matter of an (anticipated) arbitration between

Claimant

Respondent(s)

(iii) The arbitrator(s) to whom notice of this application is given are:

give name of any
arbitrator(s) listed
above as respondents

or

give full names
and addresses
where not named
as respondents

Hearing

(delete (i) or (ii) as applicable)

2. (i) This application is made on notice (ex parte).

**(ii) The hearing of this application will take place in court (chambers)
on a date and at a time to be fixed.**

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Grounds for application and details of what is being claimed

The grounds for making the application and details of what is being claimed should be set out either in the box below or on a separate sheet attached to this application. The details should include those required by Order 73.

(Set out below the grounds and details of your claim)

The applicant seeks an order for the costs of this application against:

(Set out below the name of the person(s) against whom costs are sought)

Dated

Returning the memorandum of appearance

(See also “Notes for arbitrators”, at paragraph 5 below)

1. If you are (a) named as a respondent to this application, and (b) served with a copy of this application you should complete and enter the accompanying memorandum of appearance to the court office which issued it. **You have only a limited time in which to do this.** Full details of the time allowed are set out in the notes for guidance to the form of memorandum of appearance. **Whether or not you enter the appearance, and how you complete it, if you decide to do so, will affect your right:**
 - to contest the application; and
 - to be kept informed of any hearing or future hearings.
2. If you enter the memorandum of appearance and indicate that you intend to contest the application, you will be notified of all hearing dates relating to this application and will be entitled to put your case to the Court. If you wish to put evidence before the Court in response to any affidavit filed by the applicant in support of the application, you must serve your affidavit on the applicant within 21 days after the time limited for entering the memorandum of appearance (see time for entering an appearance).
3. If you enter the memorandum of appearance but do not indicate that you intend to contest the application, you will be notified of all hearing dates relating to the application but, unless the court gives permission, you **will not be allowed to put your case to the Court.** The Court will make whatever order it feels is just in the circumstances. If, after entering the memorandum of appearance, you decide you do wish to contest the application, you must ask the Court’s permission to do so.
4. If you do not enter a memorandum of appearance, you will not be entitled to contest the application, or be notified of any hearing dates relating to it. If you fail to enter a memorandum of appearance within the time allowed for the purpose (see the notes for guidance on the form of memorandum of appearance) you must ask the Court’s permission to return the form of memorandum of appearance after the proper time. Unless the Court gives permission, you will not be allowed to put your case to the Court. The Court will make whatever order it feels is just in the circumstances.

Notes for arbitrators

5. If you were or are an arbitrator in the arbitration which gives rise to this application and you are named as a respondent to the application, paragraphs 1 to 4 above apply to you as to any other respondent.
6. If you were or are an arbitrator in the arbitration which gave rise to this application and you are **not** named as a respondent, the application has been sent to you for your information. You need not complete or return the memorandum of appearance. You may, if you wish, file an affidavit or make representations in writing to the Court. If you wish to do this, you should do so as soon as practicable. You should send a copy of the document which you have sent to the Court to all parties to the arbitration application. Alternatively, you may apply to be made a respondent to the application. Any such application should be made to the Court in writing.

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write in 14 days, or where application is to be served out of the jurisdiction the time limit set by the Court)

The time limit for the respondents to enter a memorandum of appearance is days.

<p>This summons was issued by</p> <p>of</p> <p>(Applicant) (Solicitor for the applicant)</p>

(Complete only if you are an applicant acting in person and you reside at an address which is outside the Court's jurisdiction)

Applicant's address for service within the jurisdiction is

"No. 12A Memorandum of Appearance to Arbitration Application (O. 73, r. 11(1))

Guidance notes for the Applicant

Read these notes carefully

The notes explain what you have to do before this form is sent to ("served" on) the respondent

Form heading

You must fill in the heading of the form with:

- the number allocated to the application
- the names of the parties (the 'title') as they appear on the application.

Part 3 Please leave blank for respondent to complete

Part 4

Return address

Contains the full address of the office in the Royal Courts of Justice to which the form should be returned.

On the reverse of the memorandum of appearance (Applicant's (Applicant's solicitor's) details).

Fill in your name and the address to which papers about the case should be sent.

Detach these guidance notes before the form is sent to the respondent.

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**Memorandum of appearance to
Arbitration application**

Guidance notes for the Respondent

Read these notes carefully

They will help you to fill in the form attached and tell you what other steps you need to take.

Act quickly

You have only a limited time to return the form.

Help and advice

You can get help and legal advice from:

- a solicitor, or
- a Citizens' Advice Bureau

They will also tell you if you qualify for help with your legal costs ("legal aid").

Staff at the Central Office, Royal Courts of Justice, Belfast will help you to fill in the form.

Time for returning the memorandum of appearance

You have **14 days** from the day you receive the arbitration application to **return the completed memorandum of appearance to the court**. The day on which the 14 day period begins depends on how you received the application (how it was "served" on you).

If the application was:

- handed to you personally, the 14 days begins on the day you were given the application;
- delivered by post, the 14 days begins 7 days from the date of the postmark;
- put through your letter box, the 14 days begins 7 days from the day this was done.

If you are a limited company and the application was delivered by post, the 14 days begins:

- on the second working day from the date of the postmark if first class post was used;
- on the fourth working day from the date of the postmark if the second class post was used.

Note: You have less than 14 days to return the form in certain kinds of proceedings where an early hearing date has been fixed. If in doubt, seek advice.

If the arbitration application was served on you at an address outside Northern Ireland, the application will tell you how long you have to return the memorandum of appearance.

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Filling in the form

Read these notes carefully

They will help you to fill in the form and tell you what other steps you need to take.

You can use the same form of memorandum of appearance for two (or more) respondents provided the form makes this clear and they all wish to reply in the same way.

If you are **under 18 or suffering certain mental disorders** ("under disability") you **must ask another person to act for you**. That person can be any friend or relative who is over 18 and not a co-defendant in the same claim. But they must act on your behalf with the help of a solicitor. **The solicitor must fill in the memorandum of appearance.**

Part 1	<p>Write in your full name. If your name was incorrect on the summons, add the words "sued as" followed by the name stated on the application.</p> <p>If you are:</p> <ul style="list-style-type: none"> • a person trading in a name other than your own, write in your name followed by the words "trading as" and the name under which you trade; • a partner in a firm, write in your name followed by the words "a partner in the firm of" and the name of the firm. If you are sued as a partner but are not, say so.
Part 2	<p>Tick the appropriate box to show whether you intend to contest the application, the claim for costs, or neither. Read note 2 below.</p>
Part 3	<p>Unless your solicitor is filling in the form on your behalf, you must sign the form and give an address to which court documents should be sent, and any reference, telephone or fax numbers. If you are being sued as an individual (that is in your own name rather than of your firm or company) the address you give must be one in Northern Ireland. If you are a limited company, the form may be filled in by an authorised officer who must state his position in that company, or a solicitor. A solicitor may give his firm's address, an authorised officer must give the registered or principal office of the company.</p>

What to do when you have filled in the form.

1. Return the form

Detach these guidance notes and send or take the memorandum of appearance to the Central Office in the Royal Courts of Justice.

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2. Preparing your defence

If you are a respondent and wish to contest the application, you must set out your reasons in an affidavit (a sworn statement). You must send a copy of the affidavit to the applicant, the court and the other respondents. You must do this not more than 21 days after the last day for returning the memorandum of appearance, that is, 14 days after service.

If you are an arbitrator who is not named as a respondent, you may apply to be made a respondent or make representations to the court. If you wish to make representations, you may do so informally in writing or in an affidavit. You must send a copy to the court and all other parties as soon as practicable after you receive the application.

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**Memorandum of appearance to originating summons
Arbitration application**

In the High Court of Justice

19

No.

Queen's Bench Division

Central Office Use black ink and capital letters

Respondent

Applicant

Part 1 (Your) (Respondent's) _____
full name _____

Part 2 (Do you) (Does the respondent) intend to contest:

the application? _____

the claim for costs
(if applicable)? _____

or neither? _____

Part 3 Please enter a memorandum of appearance for me in respect of this arbitration application

Signed _____ Date _____

Respondent (Solicitor for the respondent) (Authorised officer)

Address to which papers about this case should be sent.

Solicitor's _____ Telephone _____ Fax No. _____
ref. _____ No. _____

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Part 4 When completed this form should be returned to:

The Central Office
Royal Courts of Justice
Chichester Street
Belfast BT1 3JJ

Applicant's (Applicant's solicitor's) details

Address to which papers about this case should be sent.

Solicitor's ref. _____ Telephone No. _____ Fax No. _____

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 to take account of the coming into force of the Arbitration Act 1996. In particular the Rules—

- (i) provide for the procedure contained in Order 56 of the Rules of the Supreme Court (Northern Ireland) 1980 to apply to appeals by way of case stated from the district judge in arbitrations under Article 30(4)(b) of the County Courts (Northern Ireland) Order 1980;
- (ii) provide for the bringing of applications and appeals under the Arbitration Act 1996.