

STATUTORY INSTRUMENTS

2011 No. 88 (L. 1)

**SENIOR COURTS OF ENGLAND AND WALES
COUNTY COURTS, ENGLAND AND WALES**

The Civil Procedure (Amendment) Rules 2011

Made - - - - *17th January 2011*
Laid before Parliament *19th January 2011*
Coming into force - - *6th April 2011*

The Civil Procedure Rule Committee, in exercise of the power conferred by section 2 of the Civil Procedure Act 1997⁽¹⁾ to make rules of court under section 1 of that Act, after consulting in accordance with section 2(6)(a) of that Act, makes the following Rules—

PROSPECTIVE

Citation, commencement and interpretation

1. These Rules may be cited as the Civil Procedure (Amendment) Rules 2011, and come into force on 6th April 2011.
2. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998⁽²⁾.

Commencement Information

- I1** Rule 1 in force at 6.4.2011, see [rule 1](#)
I2 Rule 2 in force at 6.4.2011, see [rule 1](#)

Amendments to the Civil Procedure Rules 1998

3. In Part 5—
 - (a) in rule 5.4C(1)(b), after “a hearing)”, insert “, subject to paragraph (1B)”.
 - (b) after rule 5.4C(1A), insert—

⁽¹⁾ 1997 c. 12. Section 2 was amended by the Constitutional Reform Act 2005 (c.4), section 15(1) and Schedule 4, Part 1, paragraphs 261, 263(1) and (2).
⁽²⁾ S.I. 1998/3132. There are relevant amendments in S.I. 2000/2092, 2001/1388, 2007/3543 and 2009/2092.

Status: This version of this Instrument contains provisions that are prospective.

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“(1B) No document—

- (a) relating to an application under rule 78.24(1) for a mediation settlement enforcement order;
- (b) annexed to a mediation settlement enforcement order made under rule 78.24(5);
- (c) relating to an application under rule 78.26(1) or otherwise for disclosure or inspection of mediation evidence; or
- (d) annexed to an order for disclosure or inspection made under rule 78.26 or otherwise,

may be inspected without the court’s permission .”.

4. In Part 6—

- (a) In the table of contents—
 - (i) in the entry for the heading of Section II, at end insert “or in specified circumstances within the EEA”;
 - (ii) in the entry for the heading of rule 6.7, substitute “Service on a solicitor or European Lawyer within the United Kingdom or in any other EEA state”;
 - (iii) in the entry for the heading of rule 6.8, after “where” insert “before service”;
 - (iv) in the entry for the heading of Section III, at end insert “or in specified circumstances within the EEA”;
 - (v) in the entry for the heading of rule 6.23, at end insert “to be given after proceedings are started”;
- (b) in rule 6.2—
 - (i) at the end of sub-paragraph (c), delete “and”;
 - (ii) at the end of sub-paragraph (d), for “.” substitute “; and”; and
 - (iii) after sub-paragraph (d) insert—
 - “(e) “European Lawyer” has the meaning set out in article 2 of the [European Communities \(Services of Lawyers\) Order 1978 \(S. I. 1978/1910\)](#).
(The European Communities (Services of Lawyers) Order 1978 is annexed to Practice Direction 6A.)”;
- (c) in the heading to Section II, at end insert “or in specified circumstances within the EEA”;
- (d) in rule 6.3(1), after “A claim form may” insert “(subject to Section IV of this Part and the rules in this Section relating to service out of the jurisdiction on solicitors, European Lawyers and parties)”;
- (e) in rule 6.4(1), for “The” substitute “Subject to Section IV of this Part and the rules in this Section relating to service out of the jurisdiction on solicitors, European Lawyers and parties, the”;
- (f) in rule 6.6—
 - (i) in paragraph (1), after “rule 6.7(2)” insert “, 6.7(3)”;
 - (ii) in paragraph (2), after “full postcode” insert “or its equivalent in any EEA state (if applicable)”;
- (g) for rule 6.7 substitute—

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“Service on a solicitor or European Lawyer within the United Kingdom or in any other EEA state

6.7.—(1) Solicitor within the jurisdiction: Subject to rule 6.5(1), where—

- (a) the defendant has given in writing the business address within the jurisdiction of a solicitor as an address at which the defendant may be served with the claim form; or
- (b) a solicitor acting for the defendant has notified the claimant in writing that the solicitor is instructed by the defendant to accept service of the claim form on behalf of the defendant at a business address within the jurisdiction,

the claim form must be served at the business address of that solicitor.

(“Solicitor” has the extended meaning set out in rule 6.2(d).)

(2) Solicitor in Scotland or Northern Ireland or EEA state other than the United Kingdom: Subject to rule 6.5(1) and the provisions of Section IV of this Part, and except where any other rule or practice direction makes different provision, where—

- (a) the defendant has given in writing the business address in Scotland or Northern Ireland of a solicitor as an address at which the defendant may be served with the claim form;
- (b) the defendant has given in writing the business address within any other EEA state of a solicitor as an address at which the defendant may be served with the claim form; or
- (c) a solicitor acting for the defendant has notified the claimant in writing that the solicitor is instructed by the defendant to accept service of the claim form on behalf of the defendant at a business address within any other EEA state,

the claim form must be served at the business address of that solicitor.

(3) European Lawyer in any EEA state: Subject to rule 6.5(1) and the provisions of Section IV of this Part, and except where any other rule or practice direction makes different provision, where—

- (a) the defendant has given in writing the business address of a European Lawyer in any EEA state as an address at which the defendant may be served with the claim form; or
- (b) a European Lawyer in any EEA state has notified the claimant in writing that the European Lawyer is instructed by the defendant to accept service of the claim form on behalf of the defendant at a business address of the European Lawyer,

the claim form must be served at the business address of that European Lawyer.

(“European Lawyer” has the meaning set out in rule 6.2(e).)

(For Production Centre Claims see paragraph 2.3(7) of Practice Direction 7C; for Money Claims Online see paragraph 4(6) of Practice Direction 7E; and for Possession Claims Online see paragraph 5.1(4) of Practice Direction 55B.)”.

(h) in rule 6.8—

- (i) in the heading, after “where” insert “before service”;
- (ii) after “rules 6.5(1) and 6.7” insert “and the provisions of Section IV of this Part”;
- (iii) in sub-paragraph (a), for “within the jurisdiction” substitute “at which the defendant resides or carries on business within the UK or any other EEA state and”;

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(iv) at end insert—

“(For Production Centre Claims see paragraph 2.3(7) of Practice Direction 7C; for Money Claims Online see paragraph 4(6) of Practice Direction 7E; and for Possession Claims Online see paragraph 5.1(4) of Practice Direction 55B.)

(For service out of the jurisdiction see rules 6.40 to 6.47.)”;

(i) in rule 6.9—

(i) in paragraph (1)(b), after “solicitor” insert “or European Lawyer”;

(ii) at end insert—

“(For service out of the jurisdiction see rules 6.40 to 6.47.)”;

(j) in rule 6.14, after “A claim form served” insert “within the United Kingdom”;

(k) in the heading to Section III, at end insert “or in specified circumstances within the EEA”;

(l) in rule 6.20(1), for “A” substitute “Subject to Section IV of this Part and the rules in this Section relating to service out of the jurisdiction on solicitors, European Lawyers and parties, a”;

(m) in rule 6.21(1), for “A” substitute “Subject to Section IV of this Part and the rules in this Section relating to service out of the jurisdiction on solicitors, European Lawyers and parties, a”;

(n) in rule 6.22—

(i) in paragraph (2)(a), after “rule 6.23” delete “(2)(a)”;

(ii) at end insert—

“(For service out of the jurisdiction see rules 6.40 to 6.47.)”;

(o) in rule 6.23—

(i) in the heading, at end insert “to be given after proceedings are started”;

(ii) in paragraph (1), after “full postcode” insert “or its equivalent in any EEA state (if applicable)”;

(iii) for paragraph (2), substitute—

“(2) Except where any other rule or practice direction makes different provision, a party’s address for service must be—

(a) the business address either within the United Kingdom or any other EEA state of a solicitor acting for the party to be served; or

(b) the business address in any EEA state of a European Lawyer nominated to accept service of documents; or

(c) where there is no solicitor acting for the party or no European Lawyer nominated to accept service of documents —

(i) an address within the United Kingdom at which the party resides or carries on business; or

(ii) an address within any other EEA state at which the party resides or carries on business.

(For Production Centre Claims see paragraph 2.3(7) of Practice Direction 7C; for Money Claims Online see paragraph 4(6) of Practice Direction 7E; and for Possession Claims Online see paragraph 5.1(4) of Practice Direction 55B.)”;

(iv) in paragraph (3), for the words from “there” to “business” substitute “none of subparagraphs (2)(a), (b) or (c) applies”;

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- (v) in paragraph (4), for “Any” substitute “Subject to the provisions of Section IV of this Part (where applicable), any”;
- (vi) at end insert—
 - “(For service out of the jurisdiction see rules 6.40 to 6.47.)”;
- (p) in rule 6.26, after “claim form, served” insert “within the United Kingdom”;
- (q) in rule 6.40—
 - (i) in paragraph (2), for “any document” substitute “a claim form or other document”;
 - (ii) in paragraph (3)—
 - (aa) in the heading and where it subsequently occurs, for “defendant”, substitute “party”;
 - (bb) for “the claimant” substitute “a party”;
 - (cc) after “claim form or” in the first place where it occurs delete “any”;
 - (dd) after “Convention” insert “or Treaty”;
 - (iii) for the parentheses that follow the rule, substitute—
 - “(The texts of the Civil Procedure Treaties which the United Kingdom has entered into may be found on the Foreign and Commonwealth Office website at [- \(i\) in paragraph \(1\), for “the claimant” substitute “a party”;
 - \(ii\) in paragraph \(2\), for “claimant” substitute “party”;
 - \(iii\) in paragraph \(3\)—
 - \(aa\) for “the claimant” substitute “a party”;
 - \(bb\) for the words after “will” to the end substitute “forward the relevant documents to the Senior Master”;
 - \(iv\) in the second set of parentheses that follow the rule, at end insert “The Regulation does not apply to service in EEA states that are not member states of the EU.”;](http://www.fco.gov.uk/en/publications-and-documents/treaties/lists-treaties/bilateral-civil-procedure.”)”(r) in rule 6.41—<ul style=)
 - (s) in rule 6.42—
 - (i) in paragraph (1)—
 - (aa) for “the claimant” substitute “a party”;
 - (bb) delete “on a defendant”;
 - (cc) after “Civil Procedure Convention” insert “or Treaty”;
 - (dd) after “Hague Convention” insert “or any other Civil Procedure Convention or Treaty”;
 - (ii) in paragraph (2)—
 - (aa) for “the claimant” substitute “a party”;
 - (bb) delete “on a defendant”;
 - (cc) after “Convention” insert “or Treaty”;
 - (iii) in paragraph (3)—
 - (aa) for “the claimant” the first time it occurs substitute “a party”;

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- (bb) after “Hague Convention” insert “or is such a party but HM Government has not declared acceptance of its accession to the Convention”;
 - (cc) for “the claimant” the second time it occurs substitute “the party”;
 - (dd) for “claimant’s” substitute “party’s”;
 - (t) in rule 6.43—
 - (i) in paragraph (1), for “the claimant” substitute “a party”;
 - (ii) in paragraph (2), for “the claimant” substitute “that party”;
 - (iii) in paragraph (3), for “the claimant” substitute “a party”;
 - (iv) in paragraph (4), after “Hague Convention” insert “or any other Civil Procedure Convention or Treaty”;
 - (v) in paragraph (5), for “the Hague Convention” substitute “a Civil Procedure Convention or Treaty”;
 - (u) in rule 6.44—
 - (i) in paragraphs (1) and (3), for “claimant” substitute “party”;
 - (ii) in paragraph (5), after “claim form” insert “or other document”; and
 - (v) in rule 6.45—
 - (i) in paragraph (4)—
 - (aa) for “The claimant” substitute “A party”;
 - (bb) after “Convention” insert “or Treaty”;
 - (ii) in paragraph (5), for “The claimant” substitute “A party”.
- 5.** Omit the fifth set of parentheses that follow rule 7.2.
- 6.** In the second set of parentheses that follow rule 8.1, after “procedure.” insert “It also provides procedures for applications for mediation settlement enforcement orders in relation to certain cross-border disputes.”.
- 7.** In rule 10.5, for the first set of parentheses that follow the rule substitute—
“(Rule 6.23 makes provision in relation to addresses for service.)”.
- 8.** In rule 16.5—
- (a) in paragraph (8), for “he” substitute “the defendant”; and
 - (b) for the second set of parentheses that follow the rule substitute—
“(Rule 6.23 makes provision in relation to addresses for service.)”.
- 9.** In Part 31—
- (a) in rule 31.3(1)—
 - (i) at the end of paragraph (b), omit “or”;
 - (ii) at the end of paragraph (c), for “.”, substitute “; or”; and
 - (iii) after paragraph (c), insert—
“(d) rule 78.26 applies.”.
 - (b) after the second set of parentheses that follow rule 31.3(1), insert—
“(Rule 78.26 contains rules in relation to the disclosure and inspection of evidence arising out of mediation of certain cross-border disputes.)”.
 - (c) after the parentheses that follow rule 31.12(3), insert—

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“(Rule 78.26 contains rules in relation to the disclosure and inspection of evidence arising out of mediation of certain cross-border disputes.)”.

(d) at the end of rule 31.16, insert—

“(Rule 78.26 contains rules in relation to the disclosure and inspection of evidence arising out of mediation of certain cross-border disputes.)”.

(e) at the end of rule 31.17, insert—

“(Rule 78.26 contains rules in relation to the disclosure and inspection of evidence arising out of mediation of certain cross-border disputes.)”.

10. At the end of rule 32.7(2), insert—

“(Rules 78.26 to 78.28 contain rules in relation to evidence arising out of mediation of certain cross-border disputes. Rule 78.27(1)(b) relates specifically to this rule.)”.

11. In Part 45—

(a) in the table of contents, after—

“Summary assessment of the costs of an application where a party has Rule 45.43”
behaved unreasonably

insert—

“VIII FIXED COSTS: HM REVENUE AND CUSTOMS

Scope, interpretation and application	Rule 45.44
Amount of fixed commencement costs in a county court claim for the recovery of money	Rule 45.45
Costs on entry of judgment in a county court claim for recovery of money	Rule 45.46
When the defendant is only liable for the fixed commencement costs	Rule 45.47”; and

(b) after rule 45.43 insert Section VIII (Fixed Costs: HM Revenue and Customs) as set out in Schedule 1 to these Rules.

12. In Part 78—

(a) in the title to this Part omit “Order for Payment and European Small Claims”;

(b) in the table of contents, after—

“Stay of or limitation on enforcement” Rule 78.22”

insert—

“SECTION III – MEDIATION DIRECTIVE

Scope of this Section and interpretation	Rule 78.23
Making a mediation settlement enforceable (mediation settlement enforcement orders)	Rule 78.24
Mediation settlement enforcement orders: foreign currency	Rule 78.25
Mediation evidence: disclosure or inspection	Rule 78.26

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“SECTION III – MEDIATION DIRECTIVE

Mediation evidence: witnesses and depositions	Rule 78.27
Mediation evidence: small claims	Rule 78.28”

(c) after rule 78.1(2), insert—

“(2A) Section III contains rules about 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.”; and

(d) after Section II, insert Section III as set out in Schedule 2 to these Rules.

Commencement Information

- I3** Rule 3 in force at 6.4.2011, see [rule 1](#)
- I4** Rule 4 in force at 6.4.2011, see [rule 1](#)
- I5** Rule 5 in force at 6.4.2011, see [rule 1](#)
- I6** Rule 6 in force at 6.4.2011, see [rule 1](#)
- I7** Rule 7 in force at 6.4.2011, see [rule 1](#)
- I8** Rule 8 in force at 6.4.2011, see [rule 1](#)
- I9** Rule 9 in force at 6.4.2011, see [rule 1](#)
- I10** Rule 10 in force at 6.4.2011, see [rule 1](#)
- I11** Rule 11 in force at 6.4.2011, see [rule 1](#)
- I12** Rule 12 in force at 6.4.2011, see [rule 1](#)

Transitional Provision

13. The amendments made by rule 12 of these Rules, which insert a new Section III in Part 78, apply only where the mediation of a cross-border dispute was commenced on or after 6th April 2011.

Commencement Information

- I13** Rule 13 in force at 6.4.2011, see [rule 1](#)

*Neuberger of Abbotsbury, M.R.
Martin Moore-Bick, L.J.
Launcelot Henderson, J.
HHJ Stephen Stewart Q.C.
District Judge Robert Hill
William Featherby Q.C.
David Grant
Edward Pepperall*

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I allow these Rules
Signed by authority of the Lord Chancellor

17th January 2011

J Djanogly
Parliamentary Under Secretary of State
Ministry of Justice

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PROSPECTIVE

SCHEDULE 1

Rule 11(b)

Commencement Information

I14 Sch. 1 in force at 6.4.2011, see [rule 1](#)

*“SECTION VIII**FIXED COSTS: HM REVENUE AND CUSTOMS***Scope, interpretation and application**

45.44.—(1) This Section sets out the amounts which, unless the court orders otherwise, are to be allowed in respect of HM Revenue & Customs charges (“HMRC charges”) in the cases to which this Section applies.

(2) For the purpose of this Section—

“HMRC Officer” means a person appointed by the Commissioners under section 2 of the Commissioners for Revenue and Customs Act 2005 and authorised to conduct county court proceedings for recovery of debt under section 25(1A) of that Act;

“debt” means any sum payable to the Commissioners under or by virtue of an enactment or under a contract settlement; and

“HMRC charges” means the fixed costs set out in Tables 9 and 10 in this Section.

(3) HMRC charges shall, for the purpose of this Section, be claimed as “solicitor costs” on relevant court forms.

(4) This Section applies where the only claim is a claim conducted by an HMRC Officer in the county court for recovery of a debt and the Commissioners obtain judgment on the claim.

(5) Any appropriate court fee will be allowed in addition to the costs set out in this Section.

(6) The claim form may include a claim for fixed commencement costs.

Amount of fixed commencement costs in a county court claim for the recovery of money

45.45. The amount of fixed commencement costs in a claim to which rule 45.44 applies—

(a) shall be calculated by reference to Table 9; and

(b) the amount claimed in the claim form is to be used for determining which claim band in Table 9 applies.

TABLE 9**FIXED COSTS ON COMMENCEMENT OF A COUNTY COURT CLAIM CONDUCTED BY AN HMRC OFFICER**

Where the value of the claim exceeds £25

£33

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but does not exceed £500	
Where the value of the claim exceeds £500	£47
but does not exceed £1,000	
Where the value of the claim exceeds £1,000	£53
but does not exceed £5,000	
Where the value of the claim exceeds £5,000	£67
but does not exceed £15,000	
Where the value of the claim exceeds £15,000	£90
but does not exceed £50,000	
Where the value of the claim exceeds £50,000	£113
but does not exceed £100,000	
Where the value of the claim exceeds £100,000	£127
but does not exceed £150,000	
Where the value of the claim exceeds £150,000	£140
but does not exceed £200,000	
Where the value of the claim exceeds £200,000	£153
but does not exceed £250,000	
Where the value of the claim exceeds £250,000	£167
but does not exceed £300,000	
Where the value of the claim exceeds £300,000	£180

Costs on entry of judgment in a county court claim for recovery of money

45.46. Where—

- (a) an HMRC Officer has claimed fixed commencement costs under Rule 45.45; and
- (b) judgment is entered in a claim to which rule 45.44 applies the amount to be included in the judgment for HMRC charges is the total of—
 - (i) the fixed commencement costs; and
 - (ii) the amount in Table 10 relevant to the value of the claim.

TABLE 10

FIXED COSTS ON ENTRY OF JUDGMENT IN A COUNTY COURT CLAIM CONDUCTED BY AN HMRC OFFICER

Where the value of the claim does not exceed £5,000	£15
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Where the value of the claim exceeds £5,000

£20

When the defendant is only liable for fixed commencement costs

45.47. Where—

- (a) the only claim is for a specified sum of money; and
- (b) the defendant pays the money claimed within 14 days after service of the particulars of claim, together with the fixed commencement costs stated in the claim form,

the defendant is not liable for any further costs unless the court orders otherwise.”

SCHEDULE 2

Rule 12(d)

Commencement Information

I15 Sch. 2 in force at 6.4.2011, see [rule 1](#)

“SECTION III

MEDIATION DIRECTIVE

Scope of this Section and interpretation

78.23.—(1) This Section 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.

(2) In this Section—

“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. A copy of the Directive can be found at Annex 3;

“cross-border dispute” has the meaning given by article 2 of the Mediation Directive;

“mediation” has the meaning given by article 3(a) of the Mediation Directive;

“mediation administrator” means a person involved in the administration of the mediation process;

“mediation evidence” means evidence arising out of or in connection with a mediation process;

“mediation settlement” means the content of a written agreement resulting from mediation of a relevant dispute;

“mediation settlement agreement” means a written agreement resulting from mediation of a relevant dispute;

“mediation settlement enforcement order” means an order made under rule 78.24(5);

“mediator” has the meaning given by article 3(b) of the Mediation Directive; and

“relevant dispute” means a cross-border dispute that is subject to the Mediation Directive.

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Making a mediation settlement enforceable (mediation settlement enforcement orders)

78.24.—(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—

- (a) where there are existing proceedings in England and Wales, by an application made in accordance with Part 23; or
- (b) where there are no existing proceedings in England and Wales, by the Part 8 procedure as modified by this rule and Practice Direction 78 – European Procedures.

(2) Where rule 78.24(1)(b) applies, rules 8.3 to 8.8 will not apply.

(3) The mediation settlement agreement must be annexed to the application notice or claim form when it is filed.

(4) Except to the extent that paragraph (7) applies, the parties must file any evidence of explicit consent to the application under paragraph (1) when the parties file the application or claim form.

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

(6) The court will not make an order under paragraph (5) 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.

(7) 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.

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

Mediation settlement enforcement orders: foreign currency

78.25.—(1) Where a person applies to enforce a mediation settlement enforcement order which is expressed in a foreign currency, the application must 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.

(Parts 70 to 74 contain further rules about enforcement.)

Mediation evidence: disclosure or inspection

78.26.—(1) Where a person seeks disclosure or inspection of mediation evidence that is in the control of a mediator or mediation administrator, that person must apply—

- (a) where there are existing proceedings in England and Wales, by an application made in accordance with Part 23; and
- (b) where there are no existing proceedings in England and Wales, by the Part 8 procedure.

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- (2) Where the application is made—
 - (a) under paragraph (1)(a), the mediator or mediation administrator who has control of the mediation evidence must be named as a respondent to the application and must be served with a copy of the application notice; and
 - (b) under paragraph (1)(b), the mediator or mediation administrator who has control of the mediation evidence must be made a party to the claim.
- (3) Evidence in support of the application under paragraph (1)(a) or (1)(b) must 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) This rule does not apply to proceedings in England and Wales that have been allocated to the small claims track.
- (5) Where this rule applies, Parts 31 to 34 apply to the extent they are consistent with this rule.

Mediation evidence: witnesses and depositions

- 78.27.**—(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 rule 32.7 or 33.4;
 - (c) an order under rule 34.8 (evidence by deposition);
 - (d) an order under rule 34.10 (enforcing attendance of witness);
 - (e) an order under rule 34.11(4) (deponent’s evidence to be given orally); or
 - (f) an order under rule 34.13(1A) (order for the issue of a letter of request).
- (2) When applying for a witness summons, permission under rule 32.7 or 33.4 or an order under rule 34.8, 34.10, 34.11(4) or 34.13(1A), the party must 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 rule 32.7 or 33.4 or an order under rule 34.8, 34.10, 34.11(4) or 34.13(1A), the court may invite any person, whether or not a party, to make representations.
- (4) This rule does not apply to proceedings in England and Wales that have been allocated to the small claims track.
- (5) Where this rule applies, Parts 31 to 34 apply to the extent they are consistent with this rule.

Status: This version of this Instrument contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Civil Procedure (Amendment) Rules 2011. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Mediation evidence: small claims

78.28. Where a party wishes to rely on mediation evidence in proceedings that are allocated to the small claims track, that party must inform the court immediately.”

PROSPECTIVE

EXPLANATORY NOTE

(This note is not part of these Rules)

These Rules amend the Civil Procedure Rules 1998 in that they—

- amend Part 6 of the CPR (with consequential amendments in rules 10.5 and 16.5): (a) to allow for the address of a European Lawyer in an EEA state, or, for a litigant in person, the litigant’s normal residence or place of business in the United Kingdom or failing that any EEA state, to be provided as an address for service, and (b) to update references to Civil Procedure Conventions or Treaties which make provision for service of documents;
- insert a new Section VIII in Part 45 to provide for a scale of fixed costs to apply where HM Revenue and Customs officers are successful in a claim in a county court for the recovery of a sum payable to the Commissioners for Revenue and Customs;
- make provision enabling the transposition of 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, by inserting a new section (Section III – Mediation Directive) into Part 78, together with consequential amendments in Parts 5, 7, 8, 31 and 32. The new Section III includes information on the scope of the section and interpretation (rule 78.23), rules in relation to article 6 of the Directive (rules 78.24 and 78.25) and rules in relation to article 7 (rules 78.26 to 78.28).

Status:

This version of this Instrument contains provisions that are prospective.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Civil Procedure (Amendment) Rules 2011. Any changes that have already been made by the team appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

- Sch. 1 coming into force by [S.I. 2011/88 rule 1](#)
- Sch. 2 coming into force by [S.I. 2011/88 rule 1](#)
- rule 1 coming into force by [S.I. 2011/88 rule 1](#)
- rule 2 coming into force by [S.I. 2011/88 rule 1](#)
- rule 3 coming into force by [S.I. 2011/88 rule 1](#)
- rule 4 coming into force by [S.I. 2011/88 rule 1](#)
- rule 4(a)(i) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(a)(iv) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(b)(iii) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(c) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(d) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(e) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(f) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(h)(ii) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(i)(i) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(k) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(l) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(m) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(o)(ii) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 4(r) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 5 coming into force by [S.I. 2011/88 rule 1](#)
- rule 5 revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 6 coming into force by [S.I. 2011/88 rule 1](#)
- rule 6 revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 7 coming into force by [S.I. 2011/88 rule 1](#)
- rule 8 coming into force by [S.I. 2011/88 rule 1](#)
- rule 9 coming into force by [S.I. 2011/88 rule 1](#)
- rule 9(b)-(e) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 10 coming into force by [S.I. 2011/88 rule 1](#)
- rule 10 revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- rule 11 coming into force by [S.I. 2011/88 rule 1](#)
- rule 12 coming into force by [S.I. 2011/88 rule 1](#)
- rule 13 coming into force by [S.I. 2011/88 rule 1](#)