

CJRS 14/2008

**Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform**

**Procedure under New Order 25 –
Case Management Summons and Conference**

Purpose

On behalf of the Judiciary, the Judiciary Administration presents this paper, which sets out the procedure under the new Order 25 – Case Management Summons and Conference in the latest draft Rules of the High Court (Amendment) Rules 2008 (“Draft RHC”). It must be emphasised that where views on the law are expressed herein, such views are not to be taken as statements of law by the courts. Judicial determinations or statements of law may only be made in actual cases that come before the courts after hearing argument.

New Order 25

2. Currently, Order 25 lays down the procedures for parties to seek directions from the court after close of pleadings. A plaintiff is required to take out a “summons for directions” within one month after the pleadings in the action are deemed to be closed in order to obtain the Court’s directions on all matters which have to be dealt with before the trial of the action. In practice, if at the hearing of the summons for directions, the parties are not ready to proceed on any outstanding interlocutory steps, as is often the case, the hearing will be adjourned to such date as may be ordered or at such time as when the parties are available. This leads to inevitable delays.

3. The intention behind the new Order 25 is to enable the Court, at an early stage of the proceedings, to have a greater involvement in ensuring that a case gets to trial as expeditiously as possible. Rather than a timetable largely dictated by the parties (which is often the case at present), a court-determined timetable instead will be set taking into account the reasonable requests of the parties but with the focus on the

needs of the particular case to have it resolved at trial as expeditiously and efficiently as possible. This court-determined timetable will map out dates for the various interlocutory steps up to and including the trial itself. Such dates will include “milestone dates” for the major steps in any proceedings, i.e. (i) case management conferences (“CMC”), (ii) pre-trial reviews (“PTR”) and / or (iii) the trial or trial period, and also “non-milestone dates” for the less critical steps. Only in the most exceptional circumstances would a milestone date be changed: this is critical in order to ensure that proceedings are properly controlled and expeditiously resolved. It is for this reason that the new regime under the proposed Order 25 will require that both the Court and the parties have a good grasp of the real issues in a case at an earlier stage of the proceedings than at present. Properly administered, the new Order 25. should reduce delays.

Questionnaire and Case Management Summons

4. Within 28 days after close of pleadings, the parties are to complete a questionnaire (to be prescribed by a practice direction) providing information mapping out the intended progress of their action.

5. If the parties are able to agree on (i) the directions which they wish the Court to make, or (ii) a timetable for the action up to trial, they may procure an order to that effect by filing a consent summons. See O.25, r.1(1) and (1A).

6. Where there is no agreement on (i) or (ii), the parties should each set out their proposed directions on the questionnaire. The plaintiff should further take out a case management summons (“CMS”), which replaces the “summons for directions” under the existing O.25. Where the plaintiff fails to do so, the defendant may issue a CMS instead or apply for an order to dismiss the action. See O.25, r.1(1B) and (4).

Court-determined Timetable and CMC

7. Upon receipt of the questionnaire, depending on the needs of the particular case and the reasonable requests of the parties, the Court may -

- (a) Give directions relating to the management of the case and fix a timetable for all steps in the action up to trial. The timetable

will incorporate a date for a PTR and / or a trial date or period. It is expected that the Court can usually give such directions without further hearing (before or after taking out of a CMS) by making an order nisi. See O.25, r.1A(1) & (4). In the absence of application to the contrary, the order nisi will become absolute within 14 days. See O.25, r.1A(4)-(6); or

- (b) Fix a CMC, at which the Court will give directions leading up to the trial of the action, fix a date for a PTR, and / or a trial date or period in which the trial is to take place. See O.25, r.1A(2) & (3).

Milestone Dates and Non-milestone Dates

8. The timetable which the Court determines in the course of making its directions will fix “milestone” and “non-milestone” dates. “Milestone dates” are any days fixed for hearing a CMC, a PTR and the trial. All other dates are “non-milestone dates”. See O.25, r.1B(7)

Variation of Timetable

9. The parties may vary non-milestone dates by consent. See O.25, r.1B(3). If there is no consent, a party may apply to vary a non-milestone date but the Court will only vary the date where “sufficient grounds” have been shown. Even where such grounds may be shown, the court will not grant the application if this would result in the trial date or trial period being changed. See O.25, r.1B(4),(5)&(6).

10. A party must apply to vary a milestone date. The parties cannot vary such date by consent. See O.25, r.1B(2). As mentioned above, milestone dates will only be varied in exceptional circumstances.

Failure to Appear at CMC or PTR

11. If a plaintiff fails to appear at a CMC or PTR, the action will be provisionally struck out. See O.25, r.1C(1). The plaintiff may apply within 3 months to restore the action. The court will not, however, restore the action unless good reason has been shown. The Court may impose terms for any restoration. See O.25, r.1C(2), (3) & (4).

12. Where an action has been provisionally struck out, the defendant may apply within 3 months for a counterclaim to be restored. See O.25, r.1C(6) & (7).

Application to Action in Specialist Lists

13. A specialist list judge may, by a practice direction, determine the extent to which the new Order 25 is to apply to an action in a specialist list. See O.25, r.10.

Transitional Provisions

14. The transitional provision in O.25, r.11 applies the new O.25 to all existing actions as at the date the new Rules come into effect.

Judiciary Administration
April 2008