

Magistrates Courts

Practice Direction No. 17 of 2010 (amended)

Issued: 1 November 2010

Amended 16 December 2010

Consent Orders of the Registrar

1. This Practice Direction provides a streamlined and cost effective procedure for obtaining a consent order from the Registrar under Rule 666 of the Uniform Civil Procedure Rules 1999, and offers guidance as to the types of orders which may be made by the Registrar.
 2. The practice direction does not apply to the adjournment of the hearing of an application pursuant to Rule 30 where no other order is sought. Where the parties seek only to adjourn a hearing, parties must file a *Consent Adjournment of Application form* (Form 11).
 3. Applications where consent orders should ordinarily be sought from the Registrar in the first instance include applications for:
 - (a) an order that an application continue as a claim (and in respect of which the Registrar may require payment of additional fees);
 - (b) an order seeking dispensation with a procedural requirement (eg dispensing with the signing of a Request for Trial Date form);
 - (c) the listing of a matter for trial;
 - (d) the awarding or fixing of costs, including reserved costs;
 - (e) the assessment of costs (an affidavit exhibiting a copy of the order or other authority entitling the party to costs is required);
 - (f) the appointment of an assessor to assess costs;
 - (g) the adjournment of an application with a costs or other simple order;
 - (h) the transfer of a Magistrates Court proceeding to the District Court (an affidavit justifying the transfer is required);
 - (i) the transfer of a Magistrates Court proceeding from one place at which the court sits to another;
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- (j) in a proceeding not under judicial case management, directions as to the conduct of a proceeding which are considered appropriate by the Registrar;
- (k) extension of time for steps to be taken prior to, or in the course of, a proceeding (eg pre-court procedural steps under the *Personal Injuries Proceedings Act 2002*);
- (l) provision of security for costs, or dealing with security held for that purpose (eg substituting a bank guarantee for money, calling in a guarantee, paying monies out of court);
- (m) the stay of a judgment or the enforcement of an order pending the determination of an appeal;
- (n) the setting aside of a judgment (including a default judgment);
- (o) leave to discontinue a proceeding;
- (p) leave to commence a proceeding and other orders under the *Personal Injuries Proceedings Act 2002*, *Motor Accident Insurance Act 1994*, and *Workers' Compensation & Rehabilitation Act 2003*;
- (q) orders for mediation or another alternative dispute resolution process.

4. Applications where consent orders are more appropriately made by a magistrate and will generally be refused by the Registrar, include applications for:

- (a) expert evidence orders;
- (b) directions about limitations on evidence;
- (c) trial by affidavit;
- (d) directions in judicially case managed matters;
- (e) a "guillotine" order;
- (f) the sanctioning of a settlement (eg for children);
- (g) orders under Part 19 of the *Property Law Act 1974* (de facto relationships);
- (h) consolidation of proceedings or a direction that proceedings be heard together;
- (i) an order containing an undertaking (other than the extension of an undertaking made or given before a magistrate);
- (j) an order which a magistrate would not routinely make without submission, authorities or detailed evidence or explanation;
- (k) an order directing the disclosure of information about a third party which is protected by privacy legislation;

- (l) the delisting of a matter for trial;
 - (m) an order waiving compliance with rule 467 UCPR (ie the filing of a request for trial date – form 48).
5. The documents lodged when a consent order under Rule 666 UCPR is sought must contain sufficient, yet concise information (including copies of relevant statutory provisions), to persuade the Registrar that the order should be made. The Registrar should not need to search out legislation, or material in the court file, to check that pre-requisites for the making of the consent order have been satisfied.

The following documents must be filed together:

- (a) a *Request for Consent Order of Registrar* (Form 59A) if respective parties have signed separate Request forms. All forms must be attached together when filed. If the party is legally represented the form must be signed by a solicitor personally and must state the solicitor's name and the firm name;
- (b) two copies of the proposed draft order – *Consent Order* (Form 59);
- (c) an affidavit may be filed if necessary (this must be as concise as possible and not exhibit unnecessary or extensive material).

The Registrar will notify the parties of the result and, if requested, will refer the matter to a magistrate.

6. In light of the philosophy and the overriding obligations on parties under rule 5 UCPR, if a matter under paragraph 3 is in the first instance brought before a magistrate or a party takes the position of “neither consenting to nor opposing” the making of orders which are reasonably warranted and could have been made by consent utilising Rule 666, the magistrate may require an affidavit of justification. Adverse cost consequences may follow should the magistrate consider the matter in that instance could appropriately have been disposed of by consent, utilising Rule 666.

**Judge Brendan Butler AM SC
Chief Magistrate
16 December 2010**