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STATUTORY INSTRUMENTS

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**1998 No. 3132 (L.17)**

**SUPREME COURT OF ENGLAND AND WALES  
COUNTY COURTS**

**The Civil Procedure Rules 1998**

*Made* - - - - - *10th December 1998*  
*Laid before Parliament* *17th December 1998*  
*Coming into force* - - - *26th April 1999*

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997(1) to make rules of court under section 1 of that Act, make the following rules which may be cited as the Civil Procedure Rules 1998—

**Modifications etc. (not altering text)**

- C1** Rules applied in part (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **6.41**

**PART 1** **E+W**

**OVERRIDING OBJECTIVE**

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

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## The overriding objective **E+W**

1.1.—(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate—
  - (i) to the amount of money involved;
  - (ii) to the importance of the case;
  - (iii) to the complexity of the issues; and
  - (iv) to the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.

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### Commencement Information

**I1** [Rule 1.1](#) in force at 26.4.1999, see [Signature](#)

## Application by the court of the overriding objective **E+W**

1.2 The court must seek to give effect to the overriding objective when it—

- (a) exercises any power given to it by the Rules; or
- (b) interprets any rule.

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### Commencement Information

**I2** [Rule 1.2](#) in force at 26.4.1999, see [Signature](#)

## Duty of the parties **E+W**

1.3 The parties are required to help the court to further the overriding objective.

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### Commencement Information

**I3** [Rule 1.3](#) in force at 26.4.1999, see [Signature](#)

## Court’s duty to manage cases **E+W**

1.4.—(1) The court must further the overriding objective by actively managing cases.

(2) Active case management includes —

- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
- (b) identifying the issues at an early stage;
- (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

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- (d) deciding the order in which issues are to be resolved;
- (e) encouraging the parties to use an alternative dispute resolution<sup>(GL)</sup> procedure if the court considers that appropriate and facilitating the use of such procedure;
- (f) helping the parties to settle the whole or part of the case;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (i) dealing with as many aspects of the case as it can on the same occasion;
- (j) dealing with the case without the parties needing to attend at court;
- (k) making use of technology; and
- (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

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**Commencement Information**

**I4** [Rule 1.4](#) in force at 26.4.1999, see [Signature](#)

## PART 2 **E+W**

### APPLICATION AND INTERPRETATION OF THE RULES

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#### Application of the Rules **E+W**

- 2.1.**—(1) Subject to paragraph (2), these Rules apply to all proceedings in—
- (a) county courts;
  - (b) the High Court; and

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(c) the Civil Division of the Court of Appeal.

(2) These Rules do not apply to proceedings of the kinds specified in the first column of the following Table (proceedings for which rules may be made under the enactments specified in the second column) except to the extent that they are applied to those proceedings by another enactment—

<i>Proceedings</i>	<i>Enactments</i>
1. Insolvency proceedings	Insolvency Act 1986(2), ss.411 and 412
2. Non-contentious or common form probate proceedings	Supreme Court Act 1981(3), s.127
3. Proceedings in the High Court when acting as a Prize Court	Prize Courts Act 1894(4), s.3
4. Proceedings before the judge within the meaning of Part VII of the Mental Health Act 1983(5)	Mental Health Act 1983, s.106
5. Family proceedings	Matrimonial and Family Proceedings Act 1984(6), s.40
[ <sup>F1</sup> 6. Adoption proceedings]	[ <sup>F2</sup> Adoption Act 1976, s.66]

#### Textual Amendments

- F1** Words in rule 2.1 Table inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **3(a)**
- F2** Words in rule 2.1 Table inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **3(b)**

#### Commencement Information

- I5** [Rule 2.1](#) in force at 26.4.1999, see [Signature](#)

## The glossary **E+W**

**2.2.**—(1) The glossary at the end of these Rules is a guide to the meaning of certain legal expressions used in the Rules, but is not to be taken as giving those expressions any meaning in the Rules which they do not have in the law generally.

(2) Subject to paragraph (3), words in these Rules which are included in the glossary are followed by “(GL)”.

(3) The words ‘counterclaim’, ‘damages’, ‘practice form’ and ‘service’, which appear frequently in the Rules, are included in the glossary but are not followed by “(GL)”.

(2) 1986 c. 45.

(3) 1981 c. 54.

(4) 1894 c. 39.

(5) 1983 c. 20.

(6) 1984 c. 42. Section 40 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 50.

## Commencement Information

**16** Rule 2.2 in force at 26.4.1999, see [Signature](#)

## Interpretation **E+W**

### 2.3.—(1) In these Rules—

“child” has the meaning given by rule 21.1(2);

“claim for personal injuries” means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person’s death, and “personal injuries” includes any disease and any impairment of a person’s physical or mental condition;

“claimant” means a person who makes a claim;

“CCR” is to be interpreted in accordance with Part 50;

“court officer” means a member of the court staff;

“defendant” means a person against whom a claim is made;

[<sup>F3</sup>“defendant’s home court” means—

- (a) if the claim is proceeding in a county court, the county court for the district in which the defendant resides or carries on business; and
- (b) if the claim is proceeding in the High Court, the district registry for the district in which the defendant resides or carries on business or, where there is no such district registry, the Royal Courts of Justice;]

“filing”, in relation to a document, means delivering it, by post or otherwise, to the court office;

“judge” means, unless the context otherwise requires, a judge, Master or district judge or a person authorised to act as such;

“jurisdiction” means, unless the context otherwise requires, England and Wales and any part of the territorial waters of the United Kingdom adjoining England and Wales;

“legal representative” means a barrister or a solicitor, solicitor’s employee or other authorised litigator (as defined in the Courts and Legal Services Act 1990(7)) who has been instructed to act for a party in relation to a claim;

“litigation friend” has the meaning given by Part 21;

“patient” has the meaning given by rule 21.1(2);

“RSC” is to be interpreted in accordance with Part 50;

“statement of case”—

- (a) means a claim form, particulars of claim where these are not included in a claim form, defence, Part 20 claim, or reply to defence; and
- (b) includes any further information given in relation to them voluntarily or by court order under rule 18.1;

“statement of value” is to be interpreted in accordance with rule 16.3;

“summary judgment” is to be interpreted in accordance with Part 24.

(2) A reference to a “specialist list” is a reference to a list<sup>(GL)</sup> that has been designated as such by a relevant practice direction.

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(7) 1990 c. 41.

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(3) Where the context requires, a reference to “the court” means a reference to a particular county court, a district registry, or the Royal Courts of Justice.

#### Textual Amendments

**F3** Words in [rule 2.3\(1\)](#) substituted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), [rules 1, 3](#)

#### Commencement Information

**I7** [Rule 2.3](#) in force at 26.4.1999, see [Signature](#)

### Power of judge, Master or district judge to perform functions of the court **E+W**

**2.4** Where these Rules provide for the court to perform any act then, except where an enactment, rule or practice direction provides otherwise, that act may be performed—

- (a) in relation to proceedings in the High Court, by any judge, Master or district judge of that Court; and
- (b) in relation to proceedings in a county court, by any judge or district judge.

#### Commencement Information

**I8** [Rule 2.4](#) in force at 26.4.1999, see [Signature](#)

### Court staff **E+W**

**2.5.—(1)** Where these Rules require or permit the court to perform an act of a formal or administrative character, that act may be performed by a court officer.

(2) A requirement that a court officer carry out any act at the request of a party is subject to the payment of any fee required by a Fees Order for the carrying out of that act.

(Rule 3.2 allows a court officer to refer to a judge before taking any step)

#### Commencement Information

**I9** [Rule 2.5](#) in force at 26.4.1999, see [Signature](#)

### Court documents to be sealed **E+W**

**2.6.—(1)** The court must seal<sup>(GL)</sup> the following documents on issue—

- (a) the claim form; and
- (b) any other document which a rule or practice direction requires it to seal.

(2) The court may place the seal<sup>(GL)</sup> on the document—

- (a) by hand; or
- (b) by printing a facsimile of the seal on the document whether electronically or otherwise.

(3) A document purporting to bear the court’s seal<sup>(GL)</sup> shall be admissible in evidence without further proof.

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**Commencement Information**

**I10** [Rule 2.6](#) in force at 26.4.1999, see [Signature](#)

**Court's discretion as to where it deals with cases** **E+W**

**2.7** The court may deal with a case at any place that it considers appropriate.

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**Commencement Information**

**I11** [Rule 2.7](#) in force at 26.4.1999, see [Signature](#)

**Time** **E+W**

**2.8.**—(1) This rule shows how to calculate any period of time for doing any act which is specified—

- (a) by these Rules;
- (b) by a practice direction; or
- (c) by a judgment or order of the court.

(2) A period of time expressed as a number of days shall be computed as clear days.

(3) In this rule “clear days” means that in computing the number of days—

- (a) the day on which the period begins; and
- (b) if the end of the period is defined by reference to an event, the day on which that event occurs,

are not included.

**Examples**

(i) Notice of an application must be served at least 3 days before the hearing.

An application is to be heard on Friday 20 October.

The last date for service is Monday 16 October.

(ii) The court is to fix a date for a hearing.

The hearing must be at least 28 days after the date of notice.

If the court gives notice of the date of the hearing on 1 October, the earliest date for the hearing is 30 October.

(iii) Particulars of claim must be served within 14 days of service of the claim form.

The claim form is served on 2 October.

The last day for service of the particulars of claim is 16 October.

(4) Where the specified period—

- (a) is 5 days or less; and
- (b) includes—

- (i) a Saturday or Sunday; or

- (ii) a Bank Holiday, Christmas Day or Good Friday, that day does not count.

**Example**

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Notice of an application must be served at least 3 days before the hearing.

An application is to be heard on Monday 20 October.

The last date for service is Tuesday 14 October.

- (5) When the period specified—
- (a) by these Rules or a practice direction; or
  - (b) by any judgment or court order,

for doing any act at the court office ends on a day on which the office is closed, that act shall be in time if done on the next day on which the court office is open.

**Modifications etc. (not altering text)**

**C2** [Rule 2.8](#) applied (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **9.8(1)**

**Commencement Information**

**I12** [Rule 2.8](#) in force at 26.4.1999, see [Signature](#)

**Dates for compliance to be calendar dates and to include time of day** **E+W**

**2.9.**—(1) Where the court gives a judgment, order or direction which imposes a time limit for doing any act, the last date for compliance must, wherever practicable—

- (a) be expressed as a calendar date; and
- (b) include the time of day by which the act must be done.

(2) Where the date by which an act must be done is inserted in any document, the date must, wherever practicable, be expressed as a calendar date.

**Commencement Information**

**I13** [Rule 2.9](#) in force at 26.4.1999, see [Signature](#)

**Meaning of “month” in judgments, etc.** **E+W**

**2.10** Where “month” occurs in any judgment, order, direction or other document, it means a calendar month.

**Commencement Information**

**I14** [Rule 2.10](#) in force at 26.4.1999, see [Signature](#)

**Time limits may be varied by parties** **E+W**

**2.11** Unless these Rules or a practice direction provide otherwise or the court orders otherwise, the time specified by a rule or by the court for a person to do any act may be varied by the written agreement of the parties.

(Rules 3.8 (sanctions have effect unless defaulting party obtains relief), 28.4 (variation of case management timetable—fast track) and 29.5 (variation of case management timetable—multi-track) provide for time limits that cannot be varied by agreement between the parties)



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**Commencement Information**

**115** Rule 2.11 in force at 26.4.1999, see [Signature](#)

**PART 3** **E+W**

**THE COURT'S CASE MANAGEMENT POWERS**

**Contents of this Part**

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Power to strike out a statement of case	Rule 3.4
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Setting aside judgment entered after striking out	Rule 3.6
Sanctions for non-payment of certain fees	Rule 3.7
Sanctions have effect unless defaulting party obtains relief	Rule 3.8
Relief from sanctions	Rule 3.9
General power of the court to rectify matters where there has been an error of procedure	Rule 3.10

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**The court's general powers of management** **E+W**

**3.1.**—(1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(2) Except where these Rules provide otherwise, the court may —

- (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);
- (b) adjourn or bring forward a hearing;
- (c) require a party or a party's legal representative to attend the court;
- (d) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;
- (e) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings;
- (f) stay<sup>(GL)</sup> the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (g) consolidate proceedings;
- (h) try two or more claims on the same occasion;

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- (i) direct a separate trial of any issue;
  - (j) decide the order in which issues are to be tried;
  - (k) exclude an issue from consideration;
  - (l) dismiss or give judgment on a claim after a decision on a preliminary issue;
  - (m) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective.
- (3) When the court makes an order, it may —
- (a) make it subject to conditions, including a condition to pay a sum of money into court; and
  - (b) specify the consequence of failure to comply with the order or a condition.
- (4) Where the court gives directions it may take into account whether or not a party has complied with any relevant pre-action protocol<sup>(GL)</sup>.
- (5) The court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule, practice direction or a relevant pre-action protocol.
- (6) When exercising its power under paragraph (5) the court must have regard to—
- (a) the amount in dispute; and
  - (b) the costs which the parties have incurred or which they may incur.
- [<sup>F4</sup>(6A) Where a party pays money into court following an order under paragraph (3) or (5), the money shall be security for any sum payable by that party to any other party in the proceedings, subject to the right of a defendant under rule 37.2 to treat all or part of any money paid into court as a Part 36 payment.
- (Rule 36.2 explains what is meant by a Part 36 payment)]
- (7) A power of the court under these Rules to make an order includes a power to vary or revoke the order.

#### Textual Amendments

**F4** Rule 3.1(6A) and words inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 4

#### Modifications etc. (not altering text)

**C3** Rule 3.1(2)(a) applied (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **9.8(2)**

#### Commencement Information

**I16** Rule 3.1 in force at 26.4.1999, see [Signature](#)

### Court officer's power to refer to a judge **E+W**

- 3.2** Where a step is to be taken by a court officer—
- (a) the court officer may consult a judge before taking that step;
  - (b) the step may be taken by a judge instead of the court officer.

#### Commencement Information

**I17** Rule 3.2 in force at 26.4.1999, see [Signature](#)

### **Court's power to make order of its own initiative** **E+W**

**3.3.**—(1) Except where a rule or some other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(Part 23 sets out the procedure for making an application)

- (2) Where the court proposes to make an order of its own initiative—
  - (a) it may give any person likely to be affected by the order an opportunity to make representations; and
  - (b) where it does so it must specify the time by and the manner in which the representations must be made.
- (3) Where the court proposes—
  - (a) to make an order of its own initiative; and
  - (b) to hold a hearing to decide whether to make the order,

it must give each party likely to be affected by the order at least 3 days' notice of the hearing.

(4) The court may make an order of its own initiative without hearing the parties or giving them an opportunity to make representations.

- (5) Where the court has made an order under paragraph (4)—
  - (a) a party affected by the order may apply to have it set aside<sup>(GL)</sup>, varied or stayed<sup>(GL)</sup>; and
  - (b) the order must contain a statement of the right to make such an application.
- (6) An application under paragraph (5)(a) must be made—
  - (a) within such period as may be specified by the court; or
  - (b) if the court does not specify a period, not more than 7 days after the date on which the order was served on the party making the application.

#### **Commencement Information**

**118** Rule 3.3 in force at 26.4.1999, see [Signature](#)

### **Power to strike out a statement of case** **E+W**

**3.4.**—(1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.

- (2) The court may strike out<sup>(GL)</sup> a statement of case if it appears to the court—
  - (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
  - (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
  - (c) that there has been a failure to comply with a rule, practice direction or court order.
- (3) When the court strikes out a statement of case it may make any consequential order it considers appropriate.
- (4) Where—
  - (a) the court has struck out a claimant's statement of case;
  - (b) the claimant has been ordered to pay costs to the defendant; and

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- (c) before the claimant pays those costs, he starts another claim against the same defendant, arising out of facts which are the same or substantially the same as those relating to the claim in which the statement of case was struck out,
- the court may, on the application of the defendant, stay<sup>(GL)</sup> that other claim until the costs of the first claim have been paid.
- (5) Paragraph (2) does not limit any other power of the court to strike out<sup>(GL)</sup> a statement of case.

#### Commencement Information

**I19** Rule 3.4 in force at 26.4.1999, see [Signature](#)

### Judgment without trial after striking out **E+W**

**3.5.**—(1) This rule applies where—

- (a) the court makes an order which includes a term that the statement of case of a party shall be struck out if the party does not comply with the order; and
- (b) the party against whom the order was made does not comply with it.
- (2) A party may obtain judgment with costs by filing a request for judgment if—
- (a) the order referred to in paragraph (1)(a) relates to the whole of a statement of case; and
- (b) where the party wishing to obtain judgment is the claimant, the claim is for—
- (i) a specified amount of money;
  - (ii) an amount of money to be decided by the court;
  - (iii) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
  - (iv) any combination of these remedies.

[<sup>F5</sup>(3) Where judgment is obtained under this rule in a case to which paragraph (2)(b)(iii) applies, it will be judgment requiring the defendant to deliver the goods, or (if he does not do so) pay the value of the goods as decided by the court (less any payments made).]

[<sup>F6</sup>(4)] The request must state that the right to enter judgment has arisen because the court's order has not been complied with.

[<sup>F7</sup>(5)] A party must make an application in accordance with Part 23 if he wishes to obtain judgment under this rule in a case to which paragraph (2) does not apply.

#### Textual Amendments

- F5** Rule 3.5(3) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **3(c)**
- F6** Rule 3.5(3) renumbered as rule 3.5(4) (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **3(a)**
- F7** Rule 3.5(4) renumbered as rule 3.5(5) (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **3(b)**

#### Commencement Information

**I20** Rule 3.5 in force at 26.4.1999, see [Signature](#)

### Setting aside judgment entered after striking out **E+W**

**3.6.**—(1) A party against whom the court has entered judgment under rule 3.5 may apply to the court to set the judgment aside.

(2) An application under paragraph (1) must be made not more than 14 days after the judgment has been served on the party making the application.

(3) If the right to enter judgment had not arisen at the time when judgment was entered, the court must set aside<sup>(GL)</sup> the judgment.

(4) If the application to set aside<sup>(GL)</sup> is made for any other reason, rule 3.9 (relief from sanctions) shall apply.

#### Commencement Information

**I21** [Rule 3.6](#) in force at 26.4.1999, see [Signature](#)

### Sanctions for non—payment of certain fees **E+W**

**3.7.**—<sup>F8</sup>(1) This rule applies where—

- (a) an allocation questionnaire or a listing questionnaire is filed without payment of the fee specified by the relevant Fees Order;
- (b) the court dispenses with the need for an allocation questionnaire or a listing questionnaire or both;
- (c) these Rules do not require an allocation questionnaire or a listing questionnaire to be filed in relation to the claim in question; or
- (d) the court has made an order giving permission to proceed with a claim for judicial review. (Rule 26.3 provides for the court to dispense with the need for an allocation questionnaire and rules 28.5 and 29.6 provide for the court to dispense with the need for a listing questionnaire) (Rule 54.12 provides for the service of the order giving permission to proceed with a claim for judicial review)

(2) The court will serve a notice on the claimant requiring payment of the fee specified in the relevant Fees Order if, at the time the fee is due, the claimant has not paid it or made an application for exemption or remission.]

(3) The notice will specify the date by which the claimant must pay the fee.

(4) If the claimant does not—

- (a) pay the fee; or
- (b) make an application for an exemption from or remission of the fee,

by the date specified in the notice—

- (i) the claim shall be struck out; and
- (ii) the claimant shall be liable for the costs which the defendant has incurred unless the court orders otherwise.

(Rule 44.12 provides for the basis of assessment where a right to costs arises under this rule)

(5) Where an application for exemption from or remission of a fee is refused, the court will serve notice on the claimant requiring payment of the fee by the date specified in the notice.

(6) If the claimant does not pay the fee by the date specified in the notice—

- (a) the claim shall be struck out; and

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- (b) the claimant shall be liable for the costs which the defendant has incurred unless the court orders otherwise.
- (7) If—
- (a) a claimant applies under rule 3.9 (relief from sanctions) to have the claim reinstated; and
- (b) the court grants relief under that rule,
- the relief shall be conditional on the claimant—
- (i) paying the fee; or
- (ii) filing evidence of exemption from payment or remission of the fee,
- within 2 days of the date of the order.

#### Textual Amendments

**F8** Rule 3.7(1)(2) substituted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, 4

#### Commencement Information

**I22** [Rule 3.7](#) in force at 26.4.1999, see [Signature](#)

### Sanctions have effect unless defaulting party obtains relief **E+W**

**3.8.—**(1) Where a party has failed to comply with a rule, practice direction or court order, any sanction for failure to comply imposed by the rule, practice direction or court order has effect unless the party in default applies for and obtains relief from the sanction.

(Rule 3.9 sets out the circumstances which the court may consider on an application to grant relief from a sanction)

(2) Where the sanction is the payment of costs, the party in default may only obtain relief by appealing against the order for costs.

(3) Where a rule, practice direction or court order—

- (a) requires a party to do something within a specified time, and
- (b) specifies the consequence of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

#### Commencement Information

**I23** [Rule 3.8](#) in force at 26.4.1999, see [Signature](#)

### Relief from sanctions **E+W**

**3.9.—**(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances including—

- (a) the interests of the administration of justice;
- (b) whether the application for relief has been made promptly;
- (c) whether the failure to comply was intentional;
- (d) whether there is a good explanation for the failure;

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- (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre-action protocol<sup>(GL)</sup>;
  - (f) whether the failure to comply was caused by the party or his legal representative;
  - (g) whether the trial date or the likely trial date can still be met if relief is granted;
  - (h) the effect which the failure to comply had on each party; and
  - (i) the effect which the granting of relief would have on each party.
- (2) An application for relief must be supported by evidence.

**Commencement Information**

**I24** [Rule 3.9](#) in force at 26.4.1999, see [Signature](#)

**General power of the court to rectify matters where there has been an error of procedure** **E**  
**+W**

**3.10** Where there has been an error of procedure such as a failure to comply with a rule or practice direction—

- (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
- (b) the court may make an order to remedy the error.

**Commencement Information**

**I25** [Rule 3.10](#) in force at 26.4.1999, see [Signature](#)

**PART 4** **E+W**

**FORMS**

- 4.—**(1) The forms set out in a practice direction shall be used in the cases to which they apply.
- (2) A form may be varied by the court or a party if the variation is required by the circumstances of a particular case.
- (3) A form must not be varied so as to leave out any information or guidance which the form gives to the recipient.
- (4) Where these Rules require a form to be sent by the court or by a party for another party to use, it must be sent without any variation except such as is required by the circumstances of the particular case.
- (5) Where the court or a party produces a form shown in a practice direction with the words “Royal Arms”, the form must include a replica of the Royal Arms at the head of the first page.

**Commencement Information**

**I26** [Rule 4](#) in force at 26.4.1999, see [Signature](#)

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## PART 5 E+W

### COURT DOCUMENTS

#### Contents of this Part

Scope of this Part	Rule 5.1
Preparation of documents	Rule 5.2
Signature of documents by mechanical means	Rule 5.3
Supply of documents from court records	Rule 5.4

#### Scope of this Part E+W

- 5.1** This Part contains general provisions about—
- (a) documents used in court proceedings; and
  - (b) the obligations of a court officer in relation to those documents.

#### Commencement Information

**I27** [Rule 5.1](#) in force at 26.4.1999, see [Signature](#)

#### Preparation of documents E+W

**5.2.**—(1) Where under these Rules, a document is to be prepared by the court, the document may be prepared by the party whose document it is, unless—

- (a) a court officer otherwise directs; or
- (b) it is a document to which—
  - (i) CCR Order 25, rule 5(3) (reissue of enforcement proceedings);
  - (ii) CCR Order 25, rule 8(9) (reissue of warrant where condition upon which warrant was suspended has not been complied with); or
  - (iii) CCR Order 28, rule 11(1) (issue of warrant of committal),
 applies.

(2) Nothing in this rule shall require a court officer to accept a document which is illegible, has not been duly authorised, or is unsatisfactory for some other similar reason.

#### Commencement Information

**I28** [Rule 5.2](#) in force at 26.4.1999, see [Signature](#)

#### Signature of documents by mechanical means E+W

**5.3** Where any of these Rules or any practice direction requires a document to be signed, that requirement shall be satisfied if the signature is printed by computer or other mechanical means.



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**Commencement Information**

**I29** [Rule 5.3](#) in force at 26.4.1999, see [Signature](#)

**Supply of documents from court records** **E+W**

**5.4.**—(1) Any party to proceedings may be supplied from the records of the court with a copy of any document relating to those proceedings (including documents filed before the claim was commenced), provided that the party seeking the document—

- (a) pays any prescribed fee; and
- (b) files a written request for the document.

(2) Any other person who pays the prescribed fee may, during office hours, search for, inspect and take a copy of the following documents, namely—

- (a) a claim form which has been served;
- (b) any judgment or order given or made in public;
- (c) any other document if the court gives permission.

(3) An application for permission under paragraph (2)(c) may be made without notice.

(4) This rule does not apply in relation to any proceedings in respect of which a practice direction makes different provision.

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**Commencement Information**

**I30** [Rule 5.4](#) in force at 26.4.1999, see [Signature](#)

**PART 6** **E+W**

**SERVICE OF DOCUMENTS**

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**Modifications etc. (not altering text)**

- C4** [Pt. 6](#) applied (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **9.10**
- C5** [Pt. 6](#) excluded (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **9.11(1)**

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## ***I GENERAL RULES ABOUT SERVICE***

### **Part 6 rules about service apply generally** **E+W**

**6.1** The rules in this Part apply to the service of documents, except where—

- (a) any other enactment, a rule in another Part, or a practice direction makes a different provision; or
- (b) the court orders otherwise.

(Other rules which deal with service include the following—

- <sup>F10</sup>(a) . . . . .
- [<sup>F11</sup>(a)] service on the Crown—see RSC Order 77 r.4 and CCR Order 42 r.7;
- [<sup>F12</sup>(b)] service in [<sup>F13</sup>possession claims — see Part 55])

#### **Textual Amendments**

- F10** Words in rule 6.1 omitted (2.5.2000) by virtue of [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **4(2)(a)**
- F11** Words in rule 6.1 renumbered (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **4(2)(b)**
- F12** Words in rule 6.1 renumbered (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **4(2)(c)**
- F13** Words in rule 6.1 substituted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(d), **3**

#### **Commencement Information**

- I31** [Rule 6.1](#) in force at 26.4.1999, see [Signature](#)

### **Methods of service—general** **E+W**

**6.2.—(1)** A document may be served by any of the following methods—

- (a) personal service, in accordance with rule 6.4;
- (b) first class post;
- (c) leaving the document at a place specified in rule 6.5;
- (d) through a document exchange in accordance with the relevant practice direction; or
- (e) by fax or other means of electronic communication in accordance with the relevant practice direction.

(Rule 6.8 provides for the court to permit service by an alternative method)

(2) A company may be served by any method permitted under this Part as an alternative to the methods of service set out in—

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- (a) section 725 of the Companies Act 1985<sup>(8)</sup> (service by leaving a document at or posting it to an authorised place);
- (b) section 695 of that Act (service on oversea companies); and
- (c) section 694A of that Act (service of documents on companies incorporated outside the UK and Gibraltar and having a branch in Great Britain).

#### Commencement Information

**I32** Rule 6.2 in force at 26.4.1999, see [Signature](#)

#### Who is to serve **E+W**

**6.3.**—(1) The court will serve a document which it has issued or prepared except where—

- (a) a rule provides that a party must serve the document in question;
- (b) the party on whose behalf the document is to be served notifies the court that he wishes to serve it himself;
- (c) a practice direction provides otherwise;
- (d) the court orders otherwise; or
- (e) the court has failed to serve and has sent a notice of non-service to the party on whose behalf the document is to be served in accordance with rule 6.11.

(2) Where the court is to serve a document, it is for the court to decide which of the methods of service specified in rule 6.2 is to be used.

(3) Where a party prepares a document which is to be served by the court, that party must file a copy for the court, and for each party to be served.

#### Commencement Information

**I33** Rule 6.3 in force at 26.4.1999, see [Signature](#)

#### Personal service **E+W**

**6.4.**—(1) A document to be served may be served personally, except as provided in paragraph (2).

(2) Where a solicitor—

- (a) is authorised to accept service on behalf of a party; and
- (b) has notified the party serving the document in writing that he is so authorised,

a document must be served on the solicitor, unless personal service is required by an enactment, rule, practice direction or court order.

(3) A document is served personally on an individual by leaving it with that individual.

(4) A document is served personally on a company or other corporation by leaving it with a person holding a senior position within the company or corporation.

(The service practice direction sets out the meaning of “senior position”)

(5) A document is served personally on a partnership where partners are being sued in the name of their firm by leaving it with—

<sup>(8)</sup> 1985 c. 6.

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- (a) a partner; or
- (b) a person who, at the time of service, has the control or management of the partnership business at its principal place of business.

**Commencement Information**

**I34** Rule 6.4 in force at 26.4.1999, see [Signature](#)

**Address for service** **E+W**

**6.5.**—(1) Except as provided by [F14Section III of this Part] (service out of the jurisdiction) a document must be served within the jurisdiction.

(“Jurisdiction” is defined in rule 2.3)

(2) A party must give an address for service within the jurisdiction.

(3) Where a party—

- (a) does not give the business address of his solicitor as his address for service; and
- (b) resides or carries on business within the jurisdiction,

he must give his residence or place of business as his address for service.

(4) Any document to be served—

- (a) by first class post;
- (b) by leaving it at the place of service;
- (c) through a document exchange; or
- (d) by fax or by other means of electronic communication,

must be sent or transmitted to, or left at, the address for service given by the party to be served.

(5) Where—

- (a) a solicitor is acting for the party to be served; and
- (b) the document to be served is not the claim form;

the party’s address for service is the business address of his solicitor.

(Rule 6.13 specifies when the business address of a defendant’s solicitor may be the defendant’s address for service in relation to the claim form)

(6) Where—

- (a) no solicitor is acting for the party to be served; and,
- (b) the party has not given an address for service,

the document must be sent or transmitted to, or left at, the place shown in the following table.

(Rule 6.2(2) sets out the statutory methods of service on a company)

<i>Nature of party to be served</i>	<i>Place of service</i>
Individual	• Usual or last known residence.
Proprietor of a business	• Usual or last known residence; or • Place of business or last known place of business.

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<i>Nature of party to be served</i>	<i>Place of service</i>
Individual who is suing or being sued in the name of a firm	<ul style="list-style-type: none"> <li>• Usual or last known residence; or</li> <li>• Principal or last known place of business of the firm.</li> </ul>
Corporation incorporated in England and Wales other than a company	<ul style="list-style-type: none"> <li>• Principal office of the corporation; or</li> <li>• Any place within the jurisdiction where the corporation carries on its activities and which has a real connection with the claim.</li> </ul>
Company registered in England and Wales	<ul style="list-style-type: none"> <li>• Principal office of the company; or</li> <li>• Any place of business of the company within the jurisdiction which has a real connection with the claim.</li> </ul>
Any other company or corporation	<ul style="list-style-type: none"> <li>• Any place within the jurisdiction where the corporation carries on its activities; or</li> <li>• Any place of business of the company within the jurisdiction.</li> </ul>

(7) This rule does not apply where an order made by the court under rule 6.8 (service by an alternative method) specifies where the document in question may be served.

[<sup>F15</sup>(Rule 42.1 provides that if the business address of his solicitor is given that solicitor will be treated as acting for that party)]

#### Textual Amendments

**F14** Words in rule 6.5 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **4(3)**

**F15** Words in rule 6.5 inserted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **5**

#### Commencement Information

**I35** [Rule 6.5](#) in force at 26.4.1999, see [Signature](#)

### Service of documents on children and patients **E+W**

**6.6.—(1)** The following table shows the person on whom a document must be served if it is a document which would otherwise be served on a child or a patient—

<i>Type of document</i>	<i>Nature of party</i>	<i>Person to be served</i>
Claim form	Child who is not also a patient	<ul style="list-style-type: none"> <li>• One of the child's parents or guardians; or</li> <li>• if there is no parent or guardian, the person with whom the child resides or in whose care the child is.</li> </ul>

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<i>Type of document</i>	<i>Nature of party</i>	<i>Person to be served</i>
Claim form	Patient	<ul style="list-style-type: none"> <li>• The person authorised under Part VII of the Mental Health Act 1983(9) to conduct the proceedings in the name of the patient or on his behalf; or</li> <li>• if there is no person so authorised, the person with whom the patient resides or in whose care the patient is.</li> </ul>
Application for an order appointing a litigation friend, where a child or patient has no litigation friend	Child or patient	See rule 21.8.
Any other document	Child or patient	The litigation friend who is conducting proceedings on behalf of the child or patient.

(2) The court may make an order permitting a document to be served on the child or patient, or on some person other than the person specified in the table in this rule.

(3) An application for an order under paragraph (2) may be made without notice.

(4) The court may order that, although a document has been served on someone other than the person specified in the table, the document is to be treated as if it had been properly served.

(5) This rule does not apply where the court has made an order under rule 21.2(3) allowing a child to conduct proceedings without a litigation friend.

(Part 21 contains rules about the appointment of a litigation friend)

**Commencement Information**

**I36** Rule 6.6 in force at 26.4.1999, see [Signature](#)

**Deemed service** **E+W**

**6.7.—(1)** A document which is served in accordance with these rules or any relevant practice direction shall be deemed to be served on the day shown in the following table—

<i>Method of service</i>	<i>Deemed day of service</i>
First class post	The second day after it was posted.
Document exchange	The second day after it was left at the document exchange.
Delivering the document to or leaving it at a permitted address	The day after it was delivered to or left at the permitted address.
Fax	<ul style="list-style-type: none"> <li>• If it is transmitted on a business day before 4 p.m, on that day; or</li> </ul>

(9) 1983 c. 20.

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<i>Method of service</i>	<i>Deemed day of service</i>
Other electronic method	<ul style="list-style-type: none"> <li>• in any other case, on the business day after the day on which it is transmitted.</li> </ul> <p>The second day after the day on which it is transmitted.</p>

[<sup>F16</sup>(Rule 2.8 excludes a Saturday, Sunday, a Bank Holiday, Christmas Day or Good Friday from calculations of periods of 5 days or less)]

[<sup>F17</sup>(2) If a document is served personally—

(a) after 5 p.m., on a business day; or

(b) at any time on a Saturday, Sunday or a Bank Holiday,

it will be treated as being served on the next business day.]

(3) In this rule—

“business day” means any day except Saturday, Sunday or a bank holiday; and

“bank holiday” includes Christmas Day and Good Friday.

#### Textual Amendments

**F16** Words in rule 6.7 inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **4(4)(a)**

**F17** Rule 6.7(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **4(4)(b)**

#### Commencement Information

**I37** [Rule 6.7](#) in force at 26.4.1999, see [Signature](#)

### Service by an alternative method **E+W**

**6.8.**—(1) Where it appears to the court that there is a good reason to authorise service by a method not permitted by these Rules, the court may make an order permitting service by an alternative method.

(2) An application for an order permitting service by an alternative method—

(a) must be supported by evidence; and

(b) may be made without notice.

(3) An order permitting service by an alternative method must specify—

(a) the method of service; and

(b) the date when the document will be deemed to be served.

#### Commencement Information

**I38** [Rule 6.8](#) in force at 26.4.1999, see [Signature](#)

### Power of court to dispense with service **E+W**

**6.9.**—(1) The court may dispense with service of a document.



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(2) An application for an order to dispense with service may be made without notice.

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**Commencement Information**

**I39** [Rule 6.9](#) in force at 26.4.1999, see [Signature](#)

**Certificate of service** **E+W**

**6.10** Where a rule, practice direction or court order requires a certificate of service, the certificate must state—

- (a) that the document has not been returned undelivered; and
- (b) the details set out in the following table—

<i>Method of service</i>	<i>Details to be certified</i>
Post	Date of posting
Personal	Date of personal service
Document exchange	Date of delivery to the document exchange
Delivery of document to or leaving it at a permitted place	Date when the document was delivered to or left at the permitted place
Fax	Date and time of transmission
Other electronic means	Date of transmission and the means used
Alternative method permitted by the court	As required by the court

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**Commencement Information**

**I40** [Rule 6.10](#) in force at 26.4.1999, see [Signature](#)

**Notice of non-service** **E+W**

**6.11** Where—

- (a) a document is to be served by the court; and
- (b) the court is unable to serve it,

the court must send a notice of non-service stating the method attempted to the party who requested service.

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**Commencement Information**

**I41** [Rule 6.11](#) in force at 26.4.1999, see [Signature](#)

## ***II SPECIAL PROVISIONS ABOUT SERVICE OF THE CLAIM FORM***

**General rules about service subject to special rules about service of claim form** **E+W**

**6.12** The general rules about service are subject to the special rules about service contained in rules 6.13 to 6.16.

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#### Commencement Information

**I42** [Rule 6.12](#) in force at 26.4.1999, see [Signature](#)

### Service of claim form by the court—defendant’s address for service **E+W**

**6.13.**—(1) Where a claim form is to be served by the court, the claim form must include the defendant’s address for service.

(2) For the purposes of paragraph (1), the defendant’s address for service may be the business address of the defendant’s solicitor if he is authorised to accept service on the defendant’s behalf but not otherwise.

(Rule 6.5 contains general provisions about the address for service)

#### Commencement Information

**I43** [Rule 6.13](#) in force at 26.4.1999, see [Signature](#)

### Certificate of service relating to the claim form **E+W**

**6.14.**—(1) Where a claim form is served by the court, the court must send the claimant a notice which will include the date when the claim form is deemed to be served under rule 6.7.

(2) Where the claim form is served by the claimant—

- (a) he must file a certificate of service within 7 days of service of the claim form; and
- (b) he may not obtain judgment in default under Part 12 unless he has filed the certificate of service.

(Rule 6.10 specifies what a certificate of service must show)

#### Commencement Information

**I44** [Rule 6.14](#) in force at 26.4.1999, see [Signature](#)

### Service of the claim form by contractually agreed method **E+W**

**6.15.**—(1) Where—

- (a) a contract contains a term providing that, in the event of a claim being issued in relation to the contract, the claim form may be served by a method specified in the contract; and
- (b) a claim form containing only a claim in respect of that contract is issued,

the claim form shall, subject to paragraph (2), be deemed to be served on the defendant if it is served by a method specified in the contract.

(2) Where the claim form is served out of the jurisdiction in accordance with the contract, it shall not be deemed to be served on the defendant unless—

- (a) permission to serve it out of the jurisdiction has been granted under RSC Order 11 [<sup>F18</sup>rule 6.20]; or
- (b) it may be served without permission under RSC Order 11 [<sup>F19</sup>rule 6.19].

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#### Textual Amendments

- F18** Words in rule 6.15(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment No. 2\) Rules 2000 \(S.I. 2000/940\)](#), rules 1, **4(a)**
- F19** Words in rule 6.15(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment No. 2\) Rules 2000 \(S.I. 2000/940\)](#), rules 1, **4(b)**

#### Commencement Information

- I45** [Rule 6.15](#) in force at 26.4.1999, see [Signature](#)

### Service of claim form on agent of principal who is overseas **E+W**

**6.16.**—(1) Where—

- (a) the defendant is overseas; and
- (b) the conditions specified in paragraph (2) are satisfied,

the court may, on an application only, permit a claim form relating to a contract to be served on a defendant's agent.

(2) The court may not make an order under this rule unless it is satisfied that—

- (a) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and
- (b) at the time of the application either the agent's authority has not been terminated or he is still in business relations with his principal.

(3) An application under this rule—

- (a) must be supported by evidence; and
- (b) may be made without notice.

(4) An order under this rule must state a period within which the defendant must respond to the particulars of claim.

(Rule 9.2 sets out how a defendant may respond to particulars of claim)

(5) The power conferred by this rule is additional to the power conferred by rule 6.8 (service by an alternative method).

(6) Where the court makes an order under this rule, the claimant must send to the defendant copies of—

- (a) the order; and
- (b) the claim form.

#### Commencement Information

- I46** [Rule 6.16](#) in force at 26.4.1999, see [Signature](#)

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## <sup>F20</sup> III SPECIAL PROVISIONS ABOUT SERVICE OUT OF THE JURISDICTION

### Textual Amendments

**F20** Pt. 6 Section 3 inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), 4(5), **Sch. 1 Pt. 2**

### Scope of this Section **E+W**

**6.17** This Section contains rules about—

- (a) service out of the jurisdiction;
- (b) how to obtain the permission of the court to serve out of the jurisdiction; and
- (c) the procedure for serving out of the jurisdiction.

(Rule 2.3 defines “jurisdiction”)

### Definitions **E+W**

**6.18** For the purposes of this Part—

- (a) “the 1982 Act” means the Civil Jurisdiction and Judgments Act 1982(9);
- (b) “the Hague Convention” means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on November 15, 1965;
- (c) “Contracting State” has the meaning given by section 1(3) of the 1982 Act;
- (d) “Convention territory” means the territory or territories of any Contracting State to which the Brussels or Lugano Conventions (as defined in section 1(1) of the 1982 Act) apply;
- (e) “Civil Procedure Convention” means the Brussels and Lugano Conventions and any other Convention entered into by the United Kingdom regarding service outside the jurisdiction;
- [ “the Service Regulation” means Council Regulation (EC) No 1348/2000 of 29 May 2000<sup>F21</sup>(ea) on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;]
- (f) “United Kingdom Overseas Territory” means those territories as set out in the relevant practice direction.
- (g) “domicile” is to be determined in accordance with sections 41 to 46 of the 1982 Act;
- (h) “claim form” includes petition and application notice; and
- (i) “claim” includes petition and application.

(Rule 6.30 provides that where an application notice is to be served out of the jurisdiction under this Part, rules 6.21(4), 6.22 and 6.23 do not apply)

### Textual Amendments

**F21** [Rule 6.18\(ea\)](#) inserted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **3**

**Service out of the jurisdiction where the permission of the court is not required** **E+W**

**6.19.**—(1) A claim form may be served on a defendant out of the jurisdiction where each claim included in the claim form made against the defendant to be served is a claim which the court has power to determine under the 1982 Act and—

- (a) no proceedings between the parties concerning the same claim are pending in the courts of any part of the United Kingdom or any other Convention territory; and
- (b) (i) the defendant is domiciled in the United Kingdom or in any Convention territory;  
(ii) Article 16 of Schedule 1, 3C or 4 to the 1982 Act refers to the proceedings; or  
(iii) the defendant is a party to an agreement conferring jurisdiction to which Article 17 of Schedule 1, 3C or 4 to the 1982 Act refers.

(2) A claim form may be served on a defendant out of the jurisdiction where each claim included in the claim form made against the defendant to be served is a claim which, under any other enactment, the court has power to determine, although—

- (a) the person against whom the claim is made is not within the jurisdiction; or
- (b) the facts giving rise to the claim did not occur within the jurisdiction.

(3) Where a claim form is to be served out of the jurisdiction under this rule, it must contain a statement of the grounds on which the claimant is entitled to serve it out of the jurisdiction.

**Service out of the jurisdiction where the permission of the court is required** **E+W**

**6.20** In any proceedings to which rule 6.19 does not apply, a claim form may be served out of the jurisdiction with the permission of the court if—

- (1) a claim is made for a remedy against a person domiciled within the jurisdiction;

**General grounds**

(2) a claim is made for an injunction<sup>(g1)</sup> ordering the defendant to do or refrain from doing an act within the jurisdiction;

- (3) a claim is made against someone on whom the claim form has been or will be served and—
  - (a) there is between the claimant and that person a real issue which it is reasonable for the court to try; and
  - (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim;

[  
F22(3A) a claim is a Part 20 claim and the person to be served is a necessary or proper party to the claim against the Part 20 claimant;]

**Claims for interim remedies**

- (4) a claim is made for an interim remedy under section 25(1) of the 1982 Act;

**Claims in relation to contracts**

- (5) a claim is made in respect of a contract where the contract—
  - (a) was made within the jurisdiction;
  - (b) was made by or through an agent trading or residing within the jurisdiction;
  - (c) is governed by English law; or
  - (d) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract;
- (6) a claim is made in respect of a breach of contract committed within the jurisdiction;

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(7) a claim is made for a declaration that no contract exists where, if the contract was found to exist, it would comply with the conditions set out in paragraph (5);

**Claims in tort**

(8) a claim is made in tort where—

- (a) damage was sustained within the jurisdiction; or
- (b) the damage sustained resulted from an act committed within the jurisdiction;

**Enforcement**

(9) a claim is made to enforce any judgment or arbitral award;

**Claims about property within the jurisdiction**

(10) the whole subject matter of a claim relates to property located within the jurisdiction;

**Claims about trusts etc.**

(11) a claim is made for any remedy which might be obtained in proceedings to execute the trusts of a written instrument where—

- (a) the trusts ought to be executed according to English law; and
- (b) the person on whom the claim form is to be served is a trustee of the trusts;

(12) a claim is made for any remedy which might be obtained in proceedings for the administration of the estate of a person who died domiciled within the jurisdiction;

(13) a claim is made in probate proceedings which includes a claim for the rectification of a will;

(14) a claim is made for a remedy against the defendant as constructive trustee where the defendant's alleged liability arises out of acts committed within the jurisdiction;

(15) a claim is made for restitution where the defendant's alleged liability arises out of acts committed within the jurisdiction;

(Probate proceedings are defined in the Contentious Probate Proceedings practice direction supplementing Part 49)

**Claims by the Inland Revenue**

(16) a claim is made by the Commissioners of the Inland Revenue relating to duties or taxes against a defendant not domiciled in Scotland or Northern Ireland;

**Claim for costs order in favour of or against third parties**

(17) a claim is made by a party to proceedings for an order that the court exercise its power under section 51 of the Supreme Court Act 1981 to make a costs order in favour of or against a person who is not a party to those proceedings;

(Rule 48.2 sets out the procedure where the court is considering whether to exercise its discretion to make a costs order in favour of or against a non-party)

**Claims under various enactments**

(18) a claim [<sup>F23</sup>is] made under an enactment specified in the relevant practice direction.

**Textual Amendments**

**F22** Rule 6.20(3A) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, 3 (with rule 39)

**F23** Word in rule 6.20(18) inserted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), 4

**Application for permission to serve claim form out of jurisdiction** **E+W**

**6.21.—(1)** An application for permission under rule 6.20 must be supported by written evidence stating—

- (a) the grounds on which the application is made and the paragraph or paragraphs of rule 6.20 relied on;
- (b) that the claimant believes that his claim has a reasonable prospect of success; and
- (c) the defendant's address or, if not known, in what place or country the defendant is, or is likely, to be found.

(2) Where the application is made in respect of a claim referred to in rule 6.20(3), the written evidence must also state the grounds on which the witness believes that there is between the claimant and the person on whom the claim form has been, or will be served, a real issue which it is reasonable for the court to try.

[  
F24(2A) The court will not give permission unless satisfied that England and Wales is the proper place in which to bring the claim.]

(3) Where—

- (a) the application is for permission to serve a claim form in Scotland or Northern Ireland; and
- (b) it appears to the court that the claimant may also be entitled to a remedy there, the court, in deciding whether to give permission, shall—
  - (i) compare the cost and convenience of proceeding there or in the jurisdiction; and
  - (ii) (where relevant) have regard to the powers and jurisdiction of the Sheriff court in Scotland or the county courts or courts of summary jurisdiction in Northern Ireland.

(4) An order giving permission to serve a claim form out of the jurisdiction must specify the periods within which the defendant may—

- (a) file an acknowledgment of service;
- (b) file or serve an admission; and
- (c) file a defence.

(Part 11 sets out the procedure by which a defendant may dispute the court's jurisdiction)

#### Textual Amendments

F24 Rule 6.21(2A) inserted (2.5.2000) by [The Civil Procedure \(Amendment No. 2\) Rules 2000 \(S.I. 2000/940\)](#), rules 1, 5

#### Period for acknowledging service or admitting the claim where the claim form is served out of the jurisdiction under rule 6.19 **E+W**

**6.22.**—(1) This rule sets out the period for filing an acknowledgment of service or filing or serving an admission where a claim form has been served out of the jurisdiction under rule 6.19.

(Part 10 contains rules about the acknowledgment of service and Part 14 contains rules about admissions)

(2) If the claim form is to be served under rule 6.19(1) in Scotland, Northern Ireland or in the European territory of another Contracting State the period is—

- (a) where the defendant is served with a claim form which states that particulars of claim are to follow, 21 days after the service of the particulars of claim; and
- (b) in any other case, 21 days after service of the claim form.

(3) If the claim form is to be served under rule 6.19(1) in any other territory of a Contracting State the period is—

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- (a) where the defendant is served with a claim form which states that particulars of claim are to follow, 31 days after the service of the particulars of claim; and
  - (b) in any other case, 31 days after service of the claim form.
- (4) If the claim form is to be served under—
- (a) rule 6.19(1) in a country not referred to in paragraphs (2) or (3); or
  - (b) rule 6.19(2),
- the period is set out in the relevant practice direction.

### **Period for filing a defence where the claim form is served out of the jurisdiction under rule 6.19** E+W

**6.23.**—(1) This rule sets out the period for filing a defence where a claim form has been served out of the jurisdiction under rule 6.19.

(Part 15 contains rules about the defence)

(2) If the claim form is to be served under rule 6.19(1) in Scotland, Northern Ireland or in the European territory of another Contracting State the period is—

- (a) 21 days after service of the particulars of claim; or
- (b) if the defendant files an acknowledgment of service, 35 days after service of the particulars of claim.

(3) If the claim form is to be served under rule 6.19(1) in any other territory of a Contracting State the period is—

- (a) 31 days after service of the particulars of claim; or
- (b) if the defendant files an acknowledgment of service, 45 days after service of the particulars of claim.

(4) If the claim form is to be served under—

- (a) rule 6.19(1) in a country not referred to in paragraphs (2) or (3); or
- (b) rule 6.19(2),

the period is set out in the relevant practice direction.

### **Method of service—general provisions** E+W

**6.24.**—(1) Where a claim form is to be served out of the jurisdiction, it may be served by any method—

- (a) permitted by the law of the country in which it is to be served;
- (b) provided for by—
  - (i) rule 6.25 (service through foreign governments, judicial authorities and British Consular authorities); <sup>F25</sup>...
  - [ rule 6.26A (service in accordance with the Service Regulation); or ]
  - <sup>F26</sup>(ii)
  - [<sup>F27</sup>(iii)] rule [<sup>F28</sup>rule 6.27] (service on a State); or
- (c) permitted by a Civil Procedure Convention.

(2) Nothing in this rule or in any court order shall authorise or require any person to do anything in the country where the claim form is to be served which is against the law of that country.



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### Textual Amendments

- F25** Word in rule 6.24(1)(b)(i) omitted (31.5.2001) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **5(a)**
- F26** Rule 6.24(1)(b)(ii) inserted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **5(c)**
- F27** Rule 6.24(1)(b)(ii) renumbered as rule 6.24(b)(iii) (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **5(b)**
- F28** Words in rule 6.24(1)(b)(ii) substituted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **4**

### Service through foreign governments, judicial authorities and British Consular authorities **E+W**

**6.25.**—(1) Where a claim form is to be served on a defendant in any country which is a party to the Hague Convention, the claim form may be served—

- (a) through the authority designated under the Hague Convention in respect of that country; or
- (b) if the law of that country permits—
  - (i) through the judicial authorities of that country, or
  - (ii) through a British Consular authority in that country.

(2) Where—

- (a) paragraph (4) (service in Scotland etc., other than under the Hague Convention) does not apply; and
- (b) a claim form is to be served on a defendant in any country which is a party to a Civil Procedure Convention (other than the Hague Convention) providing for service in that country,

the claim form may be served, if the law of that country permits—

- (i) through the judicial authorities of that country; or
- (ii) through a British Consular authority in that country (subject to any provisions of the applicable convention about the nationality of persons who may be served by such a method).

(3) Where—

- (a) paragraph (4) (service in Scotland etc., other than under the Hague Convention) does not apply; and
- (b) a claim form is to be served on a defendant in any country with respect to which there is no Civil Procedure Convention providing for service in that country,

the claim form may be served, if the law of that country so permits—

- (i) through the government of that country, where that government is willing to serve it; or
- (ii) through a British Consular authority in that country.

(4) Except where a claim form is to be served in accordance with paragraph (1) (service under the Hague Convention), the methods of service permitted by this rule are not available where the claim form is to be served in—

- (a) Scotland, Northern Ireland, the Isle of Man or the Channel Islands;
- (b) any Commonwealth State; [<sup>F29</sup>or]
- (c) any United Kingdom Overseas Territory [<sup>F30</sup>.]

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<sup>F31</sup>(d) .....  
[  
<sup>F32</sup>(5) This rule does not apply where service is to be effected in accordance with the Service Regulation.]

**Textual Amendments**  
**F29** Word in rule 6.25(4)(b) inserted (31.5.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(c), **6(a)(i)**  
**F30** Rule 6.25(4)(c): full stop substituted for word (31.5.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(c), **6(a)(ii)**  
**F31** Rule 6.25(4)(d) omitted (31.5.2001) by virtue of The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(c), **6(a)(iii)**  
**F32** Rule 6.25(5) inserted (31.5.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(c), **6(b)**

**Procedure where service is to be through foreign governments, judicial authorities and British Consular authorities E+W**

- 6.26.**—(1) This rule applies where the claimant wishes to serve the claim form through—
- (a) the judicial authorities of the country where the claim form is to be served;
  - (b) a British Consular authority in that country;
  - (c) the authority designated under the Hague Convention in respect of that country; or
  - (d) the government of that country.
- (2) Where this rule applies, the claimant must file—
- (a) a request for service of the claim form by the method in paragraph (1) that he has chosen;
  - (b) a copy of the claim form;
  - (c) any translation required under rule 6.28; and
  - (d) any other documents, copies of documents or translations required by the relevant practice direction.
- (3) When the claimant files the documents specified in paragraph (2), the court officer will—
- (a) seal <sup>(g1)</sup> the copy of the claim form; and
  - (b) forward the documents to the Senior Master.
- (4) The Senior Master will send documents forwarded under this rule—
- (a) where the claim form is being served through the authority designated under the Hague Convention, to that authority; or
  - (b) in any other case, to the Foreign and Commonwealth Office with a request that it arranges for the claim to be served by the method indicated in the request for service filed under paragraph (2) or, where that request indicates alternative methods, by the most convenient method.
- (5) An official certificate which—
- (a) states that the claim form has been served in accordance with this rule either personally, or in accordance with the law of the country in which service was effected;
  - (b) specifies the date on which the claim form was served; and
  - (c) is made by—

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- (i) a British Consular authority in the country where the claim form was served;
- (ii) the government or judicial authorities in that country; or
- (iii) any other authority designated in respect of that country under the Hague Convention,

shall be evidence of the facts stated in the certificate.

(6) A document purporting to be an official certificate under paragraph (5) shall be treated as such a certificate, unless it is proved not to be.

[<sup>F33</sup>(7) This rule does not apply where service is to be effected in accordance with the Service Regulation.]

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**Textual Amendments**

**F33** Rule 6.26(7) inserted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), 7

[<sup>F34</sup>**Service in accordance with the Service Regulation** **E+W**]

**6.26A.**—(1) This rule applies where a claim form is to be served in accordance with the Service Regulation.

(2) The claimant must file the claim form and any translations or other documents required by the Service Regulation.

(3) When the claimant files the documents referred to in paragraph (2), the court officer will—

- (a) seal<sup>(GL)</sup> the copy of the claim form; and
- (b) forward the documents to the Senior Master.

(4) Rule 6.31 does not apply.

(The Service Regulation is annexed to the relevant practice direction)]

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**Textual Amendments**

**F34** Rule 6.26A inserted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), 8

**Service of claim form on State where court permits service out of the jurisdiction** **E+W**

**6.27.**—(1) This rule applies where a claimant wishes to serve the claim form on a State.

(2) The claimant must file in the Central Office of the Royal Courts of Justice—

- (a) a request for service to be arranged by the Foreign and Commonwealth Office;
- (b) a copy of the claim form; and
- (c) any translation required under rule 6.28.

(3) The Senior Master will send documents filed under this rule to the Foreign and Commonwealth Office with a request that it arranges for the claim form to be served.

(4) An official certificate by the Foreign and Commonwealth Office stating that a claim form has been duly served on a specified date in accordance with a request made under this rule shall be evidence of that fact.

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(5) A document purporting to be such a certificate shall be treated as such a certificate, unless it is proved not to be.

(6) Where—

- (a) section 12(6) of the State Immunity Act 1978 applies; and
- (b) the State has agreed to a method of service other than through the Foreign and Commonwealth Office,

the claim may be served either by the method agreed or in accordance with this rule.

(Section 12(6) of the State Immunity Act 1978 provides that section 12(1) of that Act, which prescribes a method for serving documents on a State, does not prevent the service of a claim form or other document in a manner to which the State has agreed)

(7) In this rule “State” has the meaning given by section 14 of the State Immunity Act 1978.

#### **Translation of claim form** E+W

**6.28.**—(1) Except where paragraph (4) or (5) applies, every copy of the claim form filed under rule 6.26 (service through judicial authorities, foreign governments etc.) or 6.27 (service on State) must be accompanied by a translation of the claim form.

(2) The translation must be—

- (a) in the official language of the country in which it is to be served; or
- (b) if there is more than one official language of that country, in any official language which is appropriate to the place in the country where the claim form is to be served.

(3) Every translation filed under this rule must be accompanied by a statement by the person making it that it is a correct translation, and the statement must include—

- (a) the name of the person making the translation;
- (b) his address; and
- (c) his qualifications for making a translation.

(4) The claimant is not required to file a translation of a claim form filed under rule 6.26 (service through judicial authorities, foreign governments etc.) where the claim form is to be served—

- (a) in a country of which English is an official language; or
- (b) on a British subject,

unless a Civil Procedure Convention expressly requires a translation.

(5) The claimant is not required to file a translation of a claim form filed under rule 6.27 (service on State) where English is an official language of the State where the claim form is to be served.

#### **Undertaking to be responsible for expenses of the Foreign and Commonwealth Office** E +W

**6.29** Every request for service filed under rule 6.26 (service through judicial authorities, foreign governments etc.) or rule 6.27 (service on State) must contain an undertaking by the person making the request—

- (a) to be responsible for all expenses incurred by the Foreign and Commonwealth Office or foreign judicial authority; and
- (b) to pay those expenses to the Foreign and Commonwealth Office or foreign judicial authority on being informed of the amount.

## Service of documents other than the claim form **E+W**

**6.30.**—(1) Where an application notice is to be served out of the jurisdiction under this Section of this Part—

- (a) rules 6.21(4), 6.22 and 6.23 do not apply; and
- (b) where the person on whom the application notice has been served is not a party to proceedings in the jurisdiction in which the application is made, that person may make an application to the court under rule 11(1) as if he were a defendant and rule 11(2) does not apply.

(Rule 6.21(4) provides that an order giving permission to serve a claim form out of the jurisdiction must specify the periods within which the defendant may (a) file an acknowledgment of service, (b) file or serve an admission, and (c) file a defence)

(Rule 6.22 provides rules for the period for acknowledging service or admitting the claim where the claim form is served out of the jurisdiction under rule 6.19)

(Rule 6.23 provides rules for the period for filing a defence where the claim form is served out of the jurisdiction under rule 6.19)

(The practice direction supplementing this Section of this Part provides that where an application notice is to be served out of the jurisdiction in accordance with this Section of this Part, the court must have regard to the country in which the application notice is to be served in setting the date for the hearing of the application and giving any direction about service of the respondent's evidence)

(Rule 11(1) provides that a defendant may make an application to the court to dispute the court's jurisdiction to try the claim or argue that the court should not exercise its jurisdiction. Rule 11(2) provides that a defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10)

(2) Unless paragraph (3) applies, where the permission of the court is required for a claim form to be served out of the jurisdiction the permission of the court must also be obtained for service out of the jurisdiction of any other document to be served in the proceedings.

(3) Where—

- (a) the court gives permission for a claim form to be served out of the jurisdiction; and
- (b) the claim form states that particulars of claim are to follow, the permission of the court is not required to serve the particulars of claim out of the jurisdiction.

## Proof of service **E+W**

**6.31** Where—

- (a) a hearing is fixed when the claim is issued;
- (b) the claim form is served on a defendant out of the jurisdiction; and
- (c) that defendant does not appear at the hearing,

the claimant may take no further steps against that defendant until the claimant files written evidence showing that the claim form has been duly served.]

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## PART 7 **E+W**

### HOW TO START PROCEEDINGS—THE CLAIM FORM

#### Contents of this Part

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Production Centre for claims	Rule 7.10

#### Where to start proceedings **E+W**

**7.1** Restrictions on where proceedings may be started are set out in the relevant practice direction.

##### Commencement Information

**I47** [Rule 7.1](#) in force at 26.4.1999, see [Signature](#)

#### How to start proceedings **E+W**

**7.2.**—(1) Proceedings are started when the court issues a claim form at the request of the claimant.

(2) A claim form is issued on the date entered on the form by the court.

(A person who seeks a remedy from the court before proceedings are started or in relation to proceedings which are taking place, or will take place, in another jurisdiction must make an application under Part 23)

(Part 16 sets out what the claim form must include)

[<sup>F35</sup>(The costs practice direction sets out the information about a funding arrangement to be provided with the claim form where the claimant intends to seek to recover an additional liability)

(“Funding arrangements” and “additional liability” are defined in rule 43.2)]

##### Textual Amendments

**F35** Words in [rule 7.2](#) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), [rules 1, 4](#) (with [rule 39](#))

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
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**Commencement Information**

**I48** [Rule 7.2](#) in force at 26.4.1999, see [Signature](#)

**Right to use one claim form to start two or more claims** **E+W**

**7.3** A claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings.

**Commencement Information**

**I49** [Rule 7.3](#) in force at 26.4.1999, see [Signature](#)

**Particulars of claim** **E+W**

**7.4.**—(1) Particulars of claim must—

- (a) be contained in or served with the claim form; or
- (b) subject to paragraph (2) be served on the defendant by the claimant within 14 days after service of the claim form.

(2) Particulars of claim must be served on the defendant no later than the latest time for serving a claim form.

(Rule 7.5 sets out the latest time for serving a claim form)

(3) Where the claimant serves particulars of claim separately from the claim form in accordance with paragraph (1)(b), he must, within 7 days of service on the defendant, file a copy of the particulars together with a certificate of service.

(Part 16 sets out what the particulars of claim must include)

(Part 22 requires particulars of claim to be verified by a statement of truth)

(Rule 6.10 makes provision for a certificate of service)

**Commencement Information**

**I50** [Rule 7.4](#) in force at 26.4.1999, see [Signature](#)

**Service of a claim form** **E+W**

**7.5.**—(1) After a claim form has been issued, it must be served on the defendant.

(2) The general rule is that a claim form must be served within 4 months after the date of issue.

(3) The period for service is 6 months where the claim form is to be served out of the jurisdiction.

**Commencement Information**

**I51** [Rule 7.5](#) in force at 26.4.1999, see [Signature](#)

**Extension of time for serving a claim form** **E+W**

**7.6.**—(1) The claimant may apply for an order extending the period within which the claim form may be served.

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
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- (2) The general rule is that an application to extend the time for service must be made—
- (a) within the period for serving the claim form specified by rule 7.5; or
  - (b) where an order has been made under this rule, within the period for service specified by that order.
- (3) If the claimant applies for an order to extend the time for service of the claim form after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if—
- (a) the court has been unable to serve the claim form; or
  - (b) the claimant has taken all reasonable steps to serve the claim form but has been unable to do so; and
  - (c) in either case, the claimant has acted promptly in making the application.
- (4) An application for an order extending the time for service—
- (a) must be supported by evidence; and
  - (b) may be made without notice.

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**Commencement Information**

**I52** [Rule 7.6](#) in force at 26.4.1999, see [Signature](#)

**Application by defendant for service of claim form** **E+W**

**7.7.**—(1) Where a claim form has been issued against a defendant, but has not yet been served on him, the defendant may serve a notice on the claimant requiring him to serve the claim form or discontinue the claim within a period specified in the notice.

(2) The period specified in a notice served under paragraph (1) must be at least 14 days after service of the notice.

(3) If the claimant fails to comply with the notice, the court may, on the application of the defendant—

- (a) dismiss the claim; or
- (b) make any other order it thinks just.

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**Commencement Information**

**I53** [Rule 7.7](#) in force at 26.4.1999, see [Signature](#)

**Form for defence etc. must be served with particulars of claim** **E+W**

**7.8.**—(1) When particulars of claim are served on a defendant, whether they are contained in the claim form, served with it or served subsequently, they must be accompanied by—

- (a) a form for defending the claim;
  - (b) a form for admitting the claim; and
  - (c) a form for acknowledging service.
- (2) Where the claimant is using the procedure set out in Part 8 (alternative procedure for claims)—
- (a) paragraph (1) does not apply; and
  - (b) a form for acknowledging service must accompany the claim form.



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#### Commencement Information

**I54** [Rule 7.8](#) in force at 26.4.1999, see [Signature](#)

### Fixed date and other claims **E+W**

**7.9** A practice direction—

- (a) may set out the circumstances in which the court may give a fixed date for a hearing when it issues a claim;
- (b) may list claims in respect of which there is a specific claim form for use and set out the claim form in question; and
- (c) may disapply or modify these Rules as appropriate in relation to the claims referred to in paragraphs (a) and (b).

#### Commencement Information

**I55** [Rule 7.9](#) in force at 26.4.1999, see [Signature](#)

### Production Centre for claims **E+W**

**7.10.**—(1) There shall be a Production Centre for the issue of claim forms and other related matters.

(2) The relevant practice direction makes provision for—

- (a) which claimants may use the Production Centre;
- (b) the type of claims which the Production Centre may issue;
- (c) the functions which are to be discharged by the Production Centre;
- (d) the place where the Production Centre is to be located; and
- (e) other related matters.

(3) The relevant practice direction may disapply or modify these Rules as appropriate in relation to claims issued by the Production Centre.

#### Commencement Information

**I56** [Rule 7.10](#) in force at 26.4.1999, see [Signature](#)

### <sup>F36</sup>Human Rights **E+W**

**7.11.**—(1) A claim under section 7(1)(a) of the Human Rights Act 1998 in respect of a judicial act may be brought only in the High Court.

(2) Any other claim under section 7(1)(a) of that Act may be brought in any court.]

#### Textual Amendments

**F36** [Rule 7.11](#) inserted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, 6

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## PART 8 **E+W**

### ALTERNATIVE PROCEDURE FOR CLAIMS

#### Contents of this Part

Types of claim in which Part 8 procedure may be followed	Rule 8.1
Contents of the claim form	Rule 8.2
Acknowledgment of service	Rule 8.3
Consequence of not filing an acknowledgment of service	Rule 8.4
Filing and serving written evidence	Rule 8.5
Evidence—general	Rule 8.6
Part 20 claims	Rule 8.7
Procedure where defendant objects to use of Part 8 procedure	Rule 8.8
Modifications to the general rules	Rule 8.9

#### Types of claim in which Part 8 procedure may be followed **E+W**

- 8.1.**—(1) The Part 8 procedure is the procedure set out in this Part.
- (2) A claimant may use the Part 8 procedure where—
- he seeks the court’s decision on a question which is unlikely to involve a substantial dispute of fact; or
  - paragraph (6) applies.
- (3) The court may at any stage order the claim to continue as if the claimant had not used the Part 8 procedure and, if it does so, the court may give any directions it considers appropriate.
- (4) Paragraph (2) does not apply if a practice direction provides that the Part 8 procedure may not be used in relation to the type of claim in question.
- (5) Where the claimant uses the Part 8 procedure he may not obtain default judgment under Part 12.
- (6) A rule or practice direction may, in relation to a specified type of proceedings—
- require or permit the use of the Part 8 procedure; and
  - disapply or modify any of the rules set out in this Part as they apply to those proceedings.
- (Rule 8.9 provides for other modifications to the general rules where the Part 8 procedure is being used)

#### Commencement Information

**I57** [Rule 8.1](#) in force at 26.4.1999, see [Signature](#)

## Contents of the claim form **E+W**

**8.2** Where the claimant uses the Part 8 procedure the claim form must state—

- (a) that this Part applies;
- (b) (i) the question which the claimant wants the court to decide; or  
(ii) the remedy which the claimant is seeking and the legal basis for the claim to that remedy;
- (c) if the claim is being made under an enactment, what that enactment is;
- (d) if the claimant is claiming in a representative capacity, what that capacity is; and
- (e) if the defendant is sued in a representative capacity, what that capacity is.

(Part 22 provides for the claim form to be verified by a statement of truth)

(Rule 7.5 provides for service of the claim form)

[<sup>F37</sup>(The costs practice direction sets out the information about a funding arrangement to be provided with the claim form where the claimant intends to seek to recover an additional liability)

(“Funding arrangement” and “additional liability” are defined in rule 43.2)]

### Textual Amendments

**F37** Words in [rule 8.2](#) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), [rules 1, 5](#) (with [rule 39](#))

### Commencement Information

**I58** [Rule 8.2](#) in force at 26.4.1999, see [Signature](#)

## [<sup>F38</sup>Issue of claim form without naming defendants **E+W**

**8.2A.**—[<sup>F39</sup>(1) A practice direction may set out the circumstances in which a claim form may be issued under this Part without naming a defendant.

(2) The practice direction may set out those cases in which an application for permission must be made by application notice before the claim form is issued.]

(3) The application notice for permission—

- (a) need not be served on any other person; and
- (b) must be accompanied by a copy of the claim form that the applicant proposes to issue.

(4) Where the court gives permission it will give directions about the future management of the claim.]

### Textual Amendments

**F38** [Rule 8.2A](#) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\), 5](#)

**F39** [Rule 8.2A\(1\)\(2\)](#) substituted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), [rules 1\(a\), 5](#)

## Acknowledgment of service **E+W**

**8.3.**—(1) The defendant must—

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- (a) file an acknowledgment of service in the relevant practice form not more than 14 days after service of the claim form; and
  - (b) serve the acknowledgment of service on the claimant and any other party.
- (2) The acknowledgment of service must state—
- (a) whether the defendant contests the claim; and
  - (b) if the defendant seeks a different remedy from that set out in the claim form, what that remedy is.
- (3) The following rules of Part 10 (acknowledgment of service) apply—
- (a) rule 10.3(2) (exceptions to the period for filing an acknowledgment of service); and
  - (b) rule 10.5 (contents of acknowledgment of service).
- (4) Part 11 (disputing the court’s jurisdiction) applies subject to the modification that in rule 11(4) (a) and (5)(b) (time limit for application disputing court’s jurisdiction) references to the period for filing a defence are treated as if they were references to a period of 14 days from the filing of an acknowledgment of service.

[<sup>F40</sup>(The costs practice direction sets out the information about a funding arrangement to be provided with the acknowledgment of service where the defendant intends to seek to recover an additional liability)

(“Funding arrangement” and “additional liability” are defined in rule 43.2)]

#### Textual Amendments

**F40** Words in [rule 8.3](#) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, [6](#) (with [rule 39](#))

#### Commencement Information

**I59** [Rule 8.3](#) in force at 26.4.1999, see [Signature](#)

### Consequence of not filing an acknowledgment of service **E+W**

**8.4.**—(1) This rule applies where—

- (a) the defendant has failed to file an acknowledgment of service; and
- (b) the time period for doing so has expired.

(2) The defendant may attend the hearing of the claim but may not take part in the hearing unless the court gives permission.

#### Commencement Information

**I60** [Rule 8.4](#) in force at 26.4.1999, see [Signature](#)

### Filing and serving written evidence **E+W**

**8.5.**—(1) The claimant must file any written evidence on which he intends to rely when he files his claim form.

(2) The claimant’s evidence must be served on the defendant with the claim form.

(3) A defendant who wishes to rely on written evidence must file it when he files his acknowledgment of service.

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
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- (4) If he does so, he must also, at the same time, serve a copy of his evidence on the other parties.
- (5) The claimant may, within 14 days of service of the defendant's evidence on him, file further written evidence in reply.
- (6) If he does so, he must also, within the same time limit, serve a copy of his evidence on the other parties.
- (7) The claimant may rely on the matters set out in his claim form as evidence under this rule if the claim form is verified by a statement of truth.

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**Commencement Information**

**I61** [Rule 8.5](#) in force at 26.4.1999, see [Signature](#)

**Evidence—general** **E+W**

- 8.6.**—(1) No written evidence may be relied on at the hearing of the claim unless—
- (a) it has been served in accordance with rule 8.5; or
  - (b) the court gives permission.
- (2) The court may require or permit a party to give oral evidence at the hearing.
- (3) The court may give directions requiring the attendance for cross-examination<sup>(GL)</sup> of a witness who has given written evidence.
- (Rule 32.1 contains a general power for the court to control evidence)

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**Commencement Information**

**I62** [Rule 8.6](#) in force at 26.4.1999, see [Signature](#)

**Part 20 claims** **E+W**

**8.7** Where the Part 8 procedure is used, Part 20 (counterclaims and other additional claims) applies except that a party may not make a Part 20 claim (as defined by rule 20.2) without the court's permission.

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**Commencement Information**

**I63** [Rule 8.7](#) in force at 26.4.1999, see [Signature](#)

**Procedure where defendant objects to use of the Part 8 procedure** **E+W**

- 8.8.**—(1) Where the defendant contends that the Part 8 procedure should not be used because—
- (a) there is a substantial dispute of fact; and
  - (b) the use of the Part 8 procedure is not required or permitted by a rule or practice direction, he must state his reasons when he files his acknowledgment of service.
- (Rule 8.5 requires a defendant who wishes to rely on written evidence to file it when he files his acknowledgment of service)
- (2) When the court receives the acknowledgment of service and any written evidence it will give directions as to the future management of the case.

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(Rule 8.1(3) allows the court to make an order that the claim continue as if the claimant had not used the Part 8 procedure)

#### Commencement Information

**I64** [Rule 8.8](#) in force at 26.4.1999, see [Signature](#)

### Modifications to the general rules **E+W**

**8.9** Where the Part 8 procedure is followed—

- (a) provision is made in this Part for the matters which must be stated in the claim form and the defendant is not required to file a defence and therefore—
  - (i) Part 16 (statements of case) does not apply;
  - (ii) Part 15 (defence and reply) does not apply;
  - (iii) any time limit in these Rules which prevents the parties from taking a step before a defence is filed does not apply; and
  - (iv) the requirement under rule 7.8 to serve on the defendant a form for defending the claim does not apply;
- (b) the claimant may not obtain judgment by request on an admission and therefore—
  - (i) rules 14.4 to 14.7 do not apply; and
  - (ii) the requirement under rule 7.8 to serve on the defendant a form for admitting the claim does not apply; and
- (c) the claim shall be treated as allocated to the multi-track and therefore Part 26 does not apply.

#### Commencement Information

**I65** [Rule 8.9](#) in force at 26.4.1999, see [Signature](#)

## PART 9 **E+W**

### RESPONDING TO PARTICULARS OF CLAIM—GENERAL

#### Contents of this Part

Scope of this Part	Rule 9.1
Defence, admission or acknowledgment of service	Rule 9.2

#### Scope of this Part **E+W**

- 9.1.**—(1) This Part sets out how a defendant may respond to particulars of claim.
- (2) Where the defendant receives a claim form which states that particulars of claim are to follow, he need not respond to the claim until the particulars of claim have been served on him.

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
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**Commencement Information**

**I66** Rule 9.1 in force at 26.4.1999, see [Signature](#)

**Defence, admission or acknowledgment of service** **E+W**

**9.2** When particulars of claim are served on a defendant, the defendant may—

- (a) file or serve an admission in accordance with Part 14;
- (b) file a defence in accordance with Part 15,

(or do both, if he admits only part of the claim); or

- (c) file an acknowledgment of service in accordance with Part 10.

**Commencement Information**

**I67** Rule 9.2 in force at 26.4.1999, see [Signature](#)

**PART 10** **E+W**

**ACKNOWLEDGMENT OF SERVICE**

**Contents of this Part**

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Acknowledgment of service	Rule 10.1
Consequence of not filing an acknowledgment of service	Rule 10.2
The period for filing an acknowledgment of service	Rule 10.3
Notice to claimant that defendant has filed an acknowledgment of service	Rule 10.4
Contents of acknowledgment of service	Rule 10.5

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**Acknowledgment of service** **E+W**

**10.1.**—(1) This Part deals with the procedure for filing an acknowledgment of service.

(2) Where the claimant uses the procedure set out in Part 8 (alternative procedure for claims) this Part applies subject to the modifications set out in rule 8.3.

(3) A defendant may file an acknowledgment of service if—

- (a) he is unable to file a defence within the period specified in rule 15.4; or
- (b) he wishes to dispute the court’s jurisdiction.

(Part 11 sets out the procedure for disputing the court’s jurisdiction)

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#### Commencement Information

**I68** Rule 10.1 in force at 26.4.1999, see [Signature](#)

### Consequence of not filing an acknowledgment of service **E+W**

#### 10.2 If—

- (a) a defendant fails to file an acknowledgment of service within the period specified in rule 10.3; and
- (b) does not within that period file a defence in accordance with Part 15 or serve or file an admission in accordance with Part 14,

the claimant may obtain default judgment if Part 12 allows it.

#### Commencement Information

**I69** Rule 10.2 in force at 26.4.1999, see [Signature](#)

### The period for filing an acknowledgment of service **E+W**

#### 10.3.—(1) The general rule is that the period for filing an acknowledgment of service is—

- (a) where the defendant is served with a claim form which states that particulars of claim are to follow, 14 days after service of the particulars of claim; and
  - (b) in any other case, 14 days after service of the claim form.
- (2) The general rule is subject to the following rules—
- (a) [F41rule 6.22] (which specifies how the period for filing an acknowledgment of service is calculated where the claim form is served out of the jurisdiction); and
  - (b) rule 6.16(4) (which requires the court to specify the period for responding to the particulars of claim when it makes an order under that rule).

#### Textual Amendments

**F41** Words in rule 10.3(2)(a) substituted (2.5.2000) by [The Civil Procedure \(Amendment No. 2\) Rules 2000 \(S.I. 2000/940\)](#), rules 1, 6

#### Commencement Information

**I70** Rule 10.3 in force at 26.4.1999, see [Signature](#)

### Notice to claimant that defendant has filed an acknowledgment of service **E+W**

**10.4** On receipt of an acknowledgment of service, the court must notify the claimant in writing.

#### Commencement Information

**I71** Rule 10.4 in force at 26.4.1999, see [Signature](#)



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## Contents of acknowledgment of service **E+W**

**10.5** An acknowledgment of service must—

- (a) be signed by the defendant or his legal representative; and
- (b) include the defendant's address for service.

(Rule 6.5 provides that an address for service must be within the jurisdiction)

[<sup>F42</sup>(Rule 19.8A modifies this Part where a notice of claim is served under that rule to bind a person not a party to the claim)]

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### Textual Amendments

**F42** Words in Pt. 10 inserted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **6**

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### Commencement Information

**I72** [Rule 10.5](#) in force at 26.4.1999, see [Signature](#)

## PART 11 **E+W**

### DISPUTING THE COURT'S JURISDICTION

#### Contents of this Part

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Procedure for disputing the court's jurisdiction. Rule 11

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## Procedure for disputing the court's jurisdiction **E+W**

**11.**—(1) A defendant who wishes to—

- (a) dispute the court's jurisdiction to try the claim; or
- (b) argue that the court should not exercise its jurisdiction,

may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

(2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10.

(3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court's jurisdiction.

(4) An application under this rule must—

- (a) be made within the period for filing a defence; and
- (b) be supported by evidence.

(Rule 15.4 sets out the period for filing a defence)

(5) If the defendant—

- (a) files an acknowledgment of service; and
- (b) does not make such an application within the period for filing a defence,

he is to be treated as having accepted that the court has jurisdiction to try the claim.

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- (6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including—
- (a) setting aside the claim form;
  - (b) setting aside service of the claim form;
  - (c) discharging any order made before the claim was commenced or before the claim form was served; and
  - (d) staying<sup>(GL)</sup> the proceedings.
- (7) If on an application under this rule the court does not make a declaration—
- (a) the acknowledgment of service shall cease to have effect; and
  - (b) the defendant may file a further acknowledgment of service within 14 days or such other period as the court may direct.
- (8) If the defendant files a further acknowledgment of service in accordance with paragraph (7) (b) he shall be treated as having accepted that the court has jurisdiction to try the claim.
- (9) Where a defendant makes an application under this rule he need not file a defence before the hearing of the application.
- (10) Where the claimant uses the procedure set out in Part 8 (alternative procedure for claims) this Part applies subject to the modifications set out in rule 8.3.

#### Commencement Information

**I73** [Rule 11](#) in force at 26.4.1999, see [Signature](#)

## PART 12 E+W

### DEFAULT JUDGMENT

#### Contents of this Part

Meaning of “default judgment”	Rule 12.1
Claims in which default judgment may not be obtained	Rule 12.2
Conditions to be satisfied	Rule 12.3
Procedure for obtaining default judgment	Rule 12.4
Nature of judgment where default judgment obtained by filing a request	Rule 12.5
Interest	Rule 12.6
Procedure for deciding an amount or value	Rule 12.7
Claim against more than one defendant	Rule 12.8
Procedure for obtaining default judgment for costs only	Rule 12.9
Default judgment obtained by making an application	Rule 12.10

Supplementary provisions where applications for default judgment are made Rule 12.11

### Meaning of “default judgment” **E+W**

**12.1** In these Rules, “default judgment” means judgment without trial where a defendant—

- (a) has failed to file an acknowledgment of service; or
- (b) has failed to file a defence.

(Part 10 contains provisions about filing an acknowledgment of service and Part 15 contains provisions about filing a defence)

#### Commencement Information

**I74** Rule 12.1 in force at 26.4.1999, see [Signature](#)

### Claims in which default judgment may not be obtained **E+W**

**12.2** A claimant may not obtain a default judgment—

- (a) on a claim for delivery of goods subject to an agreement regulated by the Consumer Credit Act 1974(10);
- (b) where he uses the procedure set out in Part 8 (alternative procedure for claims); or
- (c) in any other case where a practice direction provides that the claimant may not obtain default judgment.

#### Commencement Information

**I75** Rule 12.2 in force at 26.4.1999, see [Signature](#)

### Conditions to be satisfied **E+W**

**12.3.—(1)** The claimant may obtain judgment in default of an acknowledgment of service only if—

- (a) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
- (b) the relevant time for doing so has expired.

[<sup>F43</sup>(2) Judgment in default of defence may be obtained only—

- (a) where an acknowledgment of service has been filed but a defence has not been filed;
- (b) in a counterclaim made under rule 20.4, where a defence has not been filed,

and, in either case, the relevant time limit for doing so has expired.]

[<sup>F44</sup>(Rule 20.4 makes general provision for a defendant’s counterclaim against a claimant, and rule 20.4(3) provides that Part 10 (acknowledgment of service) does not apply to a counterclaim made under that rule)]

(Rules 10.3 and 15.4 deal respectively with the period for filing an acknowledgment of service and the period for filing a defence)

(10) 1974 c. 39.

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

- (3) The claimant may not obtain a default judgment if—
- [<sup>F45</sup>(a) the defendant has applied—
- (i) to have the claimant’s statement of case struck out under rule 3.4; or
  - (ii) for summary judgment under Part 24,
- and, in either case, that application has not been disposed of;]
- (b) the defendant has satisfied the whole claim (including any claim for costs) on which the claimant is seeking judgment; or
- (c) (i) the claimant is seeking judgment on a claim for money; and
- (ii) the defendant has filed or served on the claimant an admission under rule 14.4 or 14.7 (admission of liability to pay all of the money claimed) together with a request for time to pay.

(Part 14 sets out the procedure where a defendant admits a money claim and asks for time to pay)

(Rule 6.14 provides that, where the claim form is served by the claimant, he may not obtain default judgment unless he has filed a certificate of service)

[<sup>F46</sup>(Article 19(1) of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters applies in relation to judgment in default where the claim form is served in accordance with that Regulation)]

#### Textual Amendments

- F43** Rule 12.3(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **6(a)**
- F44** Words in rule 12.3 inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **6(b)**
- F45** Rule 12.3(3)(a) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **6(c)**
- F46** Words in rule 12.3 inserted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **9**

#### Commencement Information

- I76** Rule 12.3 in force at 26.4.1999, see [Signature](#)

### Procedure for obtaining default judgment **E+W**

**12.4.**—(1) Subject to paragraph (2), a claimant may obtain a default judgment by filing a request in the relevant practice form where the claim is for—

- (a) a specified amount of money;
- (b) an amount of money to be decided by the court;
- (c) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
- (d) any combination of these remedies.

(2) The claimant must make an application in accordance with Part 23 if he wishes to obtain a default judgment—

- (a) on a claim which consists of or includes a claim for any other remedy; or
- (b) where rule 12.9 or rule 12.10 so provides.

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- (3) Where a claimant—
- (a) claims any other remedy in his claim form in addition to those specified in paragraph (1); but
  - (b) abandons that claim in his request for judgment,
- he may still obtain a default judgment by filing a request under paragraph (1).

**Commencement Information**

I77 Rule 12.4 in force at 26.4.1999, see [Signature](#)

**Nature of judgment where default judgment obtained by filing a request** **E+W**

**12.5.**—(1) Where the claim is for a specified sum of money, the claimant may specify in a request filed under rule 12.4(1)—

- (a) the date by which the whole of the judgment debt is to be paid; or
- (b) the times and rate at which it is to be paid by instalments.

(2) Except where paragraph (4) applies, a default judgment on a claim for a specified amount of money obtained on the filing of a request, will be judgment for the amount of the claim (less any payments made) and costs—

- (a) to be paid by the date or at the rate specified in the request for judgment; or
- (b) if none is specified, immediately.

(Interest may be included in a default judgment obtained by filing a request if the conditions set out in Rule 12.6 are satisfied)

(Rule 45.4 provides for fixed costs on the entry of a default judgment)

**12.5.**—(3) Where the claim is for an unspecified amount of money, a default judgment obtained on the filing of a request will be for an amount to be decided by the court and costs.

(4) Where the claim is for delivery of goods and the claim form gives the defendant the alternative of paying their value, a default judgment obtained on the filing of a request will be judgment requiring the defendant to—

- (a) deliver the goods or (if he does not do so) pay the value of the goods as decided by the court (less any payments made); and
- (b) pay costs.

(Rule 12.7 sets out the procedure for deciding the amount of a judgment or the value of the goods)

(5) The claimant's right to enter judgment requiring the defendant to deliver goods is subject to rule 40.14 (judgment in favour of certain part owners relating to the detention of goods).

**Commencement Information**

I78 Rule 12.5 in force at 26.4.1999, see [Signature](#)

**Interest** **E+W**

**12.6.**—(1) A default judgment on a claim for a specified amount of money obtained on the filing of a request may include the amount of interest claimed to the date of judgment if—

- (a) the particulars of claim include the details required by rule 16.4;

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- (b) where interest is claimed under section 35A of the Supreme Court Act 1981(11) or section 69 of the County Courts Act 1984(12), the rate is no higher than the rate of interest payable on judgment debts at the date when the claim form was issued; and
- (c) the claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.

(2) In any case where paragraph (1) does not apply, judgment will be for an amount of interest to be decided by the court.

(Rule 12.7 sets out the procedure for deciding the amount of interest)

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**Commencement Information**

**I79** [Rule 12.6](#) in force at 26.4.1999, see [Signature](#)

**Procedure for deciding an amount or value** **E+W**

**12.7.**—(1) This rule applies where the claimant obtains a default judgment on the filing of a request under rule 12.4(1) and judgment is for—

- (a) an amount of money to be decided by the court;
- (b) the value of goods to be decided by the court; or
- (c) an amount of interest to be decided by the court.

(2) Where the court enters judgment it will—

- (a) give any directions it considers appropriate; and
- (b) if it considers it appropriate, allocate the case.

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**Commencement Information**

**I80** [Rule 12.7](#) in force at 26.4.1999, see [Signature](#)

**Claim against more than one defendant** **E+W**

**12.8.**—(1) A claimant may obtain a default judgment on request under this Part on a claim for money or a claim for delivery of goods against one of two or more defendants, and proceed with his claim against the other defendants.

(2) Where a claimant applies for a default judgment against one of two or more defendants—

- (a) if the claim can be dealt with separately from the claim against the other defendants—
  - (i) the court may enter a default judgment against that defendant; and
  - (ii) the claimant may continue the proceedings against the other defendants;
- (b) if the claim cannot be dealt with separately from the claim against the other defendants—
  - (i) the court will not enter default judgment against that defendant; and
  - (ii) the court must deal with the application at the same time as it disposes of the claim against the other defendants.

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(11) 1981 c. 54. Section 35A was inserted by the Administration of Justice Act 1982 (c. 53), section 15(1), Schedule 1, Part I.

(12) 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 46.

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(3) A claimant may not enforce against one of two or more defendants any judgment obtained under this Part for possession of land or for delivery of goods unless—

- (a) he has obtained a judgment for possession or delivery (whether or not obtained under this Part) against all the defendants to the claim; or
- (b) the court gives permission.

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**Commencement Information**

**181** [Rule 12.8](#) in force at 26.4.1999, see [Signature](#)

**Procedure for obtaining a default judgment for costs only** **E+W**

**12.9.**—(1) Where a claimant wishes to obtain a default judgment for costs only—

- (a) if the claim is for fixed costs, he may obtain it by filing a request in the relevant practice form;
- (b) if the claim is for any other type of costs, he must make an application in accordance with Part 23.

(2) Where an application is made under this rule for costs only, judgment shall be for an amount to be decided by the court.

(Part 45 sets out when a claimant is entitled to fixed costs)

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**Commencement Information**

**182** [Rule 12.9](#) in force at 26.4.1999, see [Signature](#)

**Default judgment obtained by making an application** **E+W**

**12.10** The claimant must make an application in accordance with Part 23 where—

- (a) the claim is—
  - (i) a claim against a child or patient;
  - (ii) a claim in tort by one spouse against the other; or
  - (iii) a claim against the Crown.
- (b) he wishes to obtain a default judgment where the defendant has failed to file an acknowledgment of service—
  - (i) against a defendant who has been served with the claim out of the jurisdiction under <sup>[F47]</sup>rule 6.19(1) (service without leave under the Civil Jurisdiction and Judgments Act 1982(13));
  - (ii) against a defendant domiciled in Scotland or Northern Ireland or in any other Convention territory;
  - (iii) against a State;
  - (iv) against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of the Diplomatic Privileges Act 1964(14); or

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(13) 1982 c. 27.

(14) 1964 c. 81.

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- (v) against persons or organisations who enjoy immunity from civil jurisdiction pursuant to the provisions of the International Organisations Acts 1968 and 1981<sup>(15)</sup>.

#### Textual Amendments

**F47** Words in rule 12.10(b) substituted (2.5.2000) by [The Civil Procedure \(Amendment No. 2\) Rules 2000 \(S.I. 2000/940\)](#), rules 1, 7

#### Commencement Information

**I83** [Rule 12.10](#) in force at 26.4.1999, see [Signature](#)

### Supplementary provisions where applications for default judgment are made **E+W**

**12.11.**—(1) Where the claimant makes an application for a default judgment, judgment shall be such judgment as it appears to the court that the claimant is entitled to on his statement of case.

(2) Any evidence relied on by the claimant in support of his application need not be served on a party who has failed to file an acknowledgment of service.

(3) An application for a default judgment on a claim against a child or patient or a claim in tort between spouses must be supported by evidence.

(4) An application for a default judgment may be made without notice if—

- (a) the claim was served in accordance with the Civil Jurisdiction and Judgments Act 1982;
- (b) the defendant has failed to file an acknowledgment of service; and
- (c) notice does not need to be given under any other provision of these Rules.

(5) Where an application is made against a State for a default judgment where the defendant has failed to file an acknowledgment of service—

- (a) the application may be made without notice, but the court hearing the application may direct that a copy of the application notice be served on the State;
- (b) if the court—
  - (i) grants the application; or
  - (ii) directs that a copy of the application notice be served on the State,

the judgment or application notice (and the evidence in support) may be served out of the jurisdiction without any further order;

- (c) where paragraph (5)(b) permits a judgment or an application notice to be served out of the jurisdiction, the procedure for serving the judgment or the application notice is the same as for serving a claim form under [F<sup>48</sup>Section III of Part 6] except where an alternative method of service has been agreed under section 12(6) of the State Immunity Act 1978<sup>(16)</sup>.

(Rule 23.1 defines “application notice”)

(6) For the purposes of this rule and rule 12.10—

- (a) “domicile” is to be determined in accordance with the provisions of sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982;
- (b) “Convention territory” means the territory or territories of any Contracting State, as defined by section 1(3) of the Civil Jurisdiction and Judgments Act 1982, to which the Brussels Conventions or Lugano Convention apply;

<sup>(15)</sup> 1968 c. 48; 1981 c. 9.

<sup>(16)</sup> 1978 c. 33.



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- (c) “State” has the meaning given by section 14 of the State Immunity Act 1978; and
- (d) “Diplomatic agent” has the meaning given by Article 1 (e) of Schedule 1 to the Diplomatic Privileges Act 1964.

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**Textual Amendments**

**F48** Words in [rule 12.11\(5\)\(c\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment No. 2\) Rules 2000 \(S.I. 2000/940\)](#), [rules 1, 8](#)

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**Commencement Information**

**I84** [Rule 12.11](#) in force at 26.4.1999, see [Signature](#)

## PART 13 **E+W**

### SETTING ASIDE OR VARYING DEFAULT JUDGMENT

#### Contents of this Part

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Scope of this Part	Rule 13.1
Cases where the court must set aside judgment entered under Part 12	Rule 13.2
Cases where the court may set aside or vary judgment entered under Part 12	Rule 13.3
Application to set aside or vary judgment— procedure	Rule 13.4
Claimant’s duty to apply to set aside judgment	Rule 13.5
Abandoned claim restored where default judgment set aside	Rule 13.6

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#### Scope of this Part **E+W**

**13.1** The rules in this Part set out the procedure for setting aside or varying judgment entered under Part 12 (default judgment).

(CCR Order 22 r.10 sets out the procedure for varying the rate at which a judgment debt must be paid)

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**Commencement Information**

**I85** [Rule 13.1](#) in force at 26.4.1999, see [Signature](#)

#### Cases where the court must set aside judgment entered under Part 12 **E+W**

**13.2** The court must set aside<sup>(GL)</sup> a judgment entered under Part 12 if judgment was wrongly entered because—

- (a) in the case of a judgment in default of an acknowledgment of service, any of the conditions in [rule 12.3\(1\)](#) and [12.3\(3\)](#) was not satisfied;

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- (b) in the case of a judgment in default of a defence, any of the conditions in rule 12.3(2) and 12.3(3) was not satisfied; or
- (c) the whole of the claim was satisfied before judgment was entered.

**Commencement Information**  
**I86** Rule 13.2 in force at 26.4.1999, see [Signature](#)

**Cases where the court may set aside or vary judgment entered under Part 12** **E+W**

**13.3.**—(1) In any other case, the court may set aside<sup>(GL)</sup> or vary a judgment entered under Part 12 if—

- (a) the defendant has a real prospect of successfully defending the claim; or
- (b) it appears to the court that there is some other good reason why—
  - (i) the judgment should be set aside or varied; or
  - (ii) the defendant should be allowed to defend the claim.

(2) In considering whether to set aside<sup>(GL)</sup> or vary a judgment entered under Part 12, the matters to which the court must have regard include whether the person seeking to set aside the judgment made an application to do so promptly.

(Rule 3.1(3) provides that the court may attach conditions when it makes an order)

[<sup>F49</sup>(Article 19(4) of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters applies to applications to appeal a judgment in default when the time limit for appealing has expired)]

**Textual Amendments**  
**F49** Words in rule 13.3 inserted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **10**

**Commencement Information**  
**I87** Rule 13.3 in force at 26.4.1999, see [Signature](#)

**Application to set aside or vary judgment—procedure** **E+W**

**13.4.**—(1) Where—

- (a) the claim is for a specified amount of money;
- (b) the judgment was obtained in a court which is not the defendant’s home court;
- (c) the claim has not been transferred to another defendant’s home court under rule 14.12 (admission—determination of rate of payment by judge) or rule 26.2 (automatic transfer); and
- (d) the defendant is an individual,

the court will transfer an application by a defendant under this Part to set aside<sup>(GL)</sup> or vary judgment to the defendant’s home court.

<sup>F50</sup> ...

<sup>F51</sup>(1A) .....

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13.4.—(2) Paragraph (1) does not apply where the claim was commenced in a specialist list.

(3) An application under rule 13.3 (cases where the court may set aside<sup>(GL)</sup> or vary judgment) must be supported by evidence.

#### Textual Amendments

**F50** Words in rule 13.4 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 5

**F51** [Rule 13.4\(1A\)](#) omitted (2.10.2000) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, 7

#### Commencement Information

**I88** [Rule 13.4](#) in force at 26.4.1999, see [Signature](#)

### Claimant's duty to apply to set aside judgment **E+W**

13.5.—(1) This rule applies where—

- (a) the claimant has purported to serve particulars of claim; and
- (b) the claimant has entered judgment under Part 12 against the defendant to whom the particulars of claim were sent.

(2) If a claimant who has entered judgment subsequently has good reason to believe that the particulars of claim did not reach the defendant before the claimant entered judgment, he must—

- (a) file a request for the judgment to be set aside<sup>(GL)</sup>; or
- (b) apply to the court for directions.

(3) The claimant may take no further step in the proceedings for the enforcement of the judgment until the judgment has been set aside<sup>(GL)</sup> or the court has disposed of the application for directions.

#### Commencement Information

**I89** [Rule 13.5](#) in force at 26.4.1999, see [Signature](#)

### Abandoned claim restored where default judgment set aside **E+W**

13.6 Where—

- (a) the claimant claimed a remedy in addition to one specified in rule 12.4(1) (claims in respect of which the claimant may obtain default judgment by filing a request);
- (b) the claimant abandoned his claim for that remedy in order to obtain default judgment on request in accordance with rule 12.4(3); and
- (c) that default judgment is set aside<sup>(GL)</sup> under this Part,

the abandoned claim is restored when the default judgment is set aside.

#### Commencement Information

**I90** [Rule 13.6](#) in force at 26.4.1999, see [Signature](#)

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## PART 14 **E+W**

### ADMISSIONS

#### Contents of this Part

Making an admission	Rule 14.1
Period for making an admission	Rule 14.2
Admission by notice in writing—application for judgment	Rule 14.3
Admission of whole of claim for specified amount of money	Rule 14.4
Admission of part of claim for specified amount of money	Rule 14.5
Admission of liability to pay whole of claim for unspecified amount of money	Rule 14.6
Admission of liability to pay claim for unspecified amount of money where defendant offers a sum in satisfaction of the claim	Rule 14.7
Allocation of claims in relation to outstanding matters	Rule 14.8
Request for time to pay	Rule 14.9
Determination of rate of payment	Rule 14.10
Determination of rate of payment by court officer	Rule 14.11
Determination of rate of payment by judge	Rule 14.12
Right of re-determination	Rule 14.13
Interest	Rule 14.14

#### Making an admission **E+W**

- 14.1.**—(1) A party may admit the truth of the whole or any part of another party’s case.
- (2) He may do this by giving notice in writing (such as in a statement of case or by letter).
- (3) Where the only remedy which the claimant is seeking is the payment of money, the defendant may also make an admission in accordance with—
- (a) rule 14.4 (admission of whole claim for specified amount of money);
  - (b) rule 14.5 (admission of part of claim for specified amount of money);
  - (c) rule 14.6 (admission of liability to pay whole of claim for unspecified amount of money); or
  - (d) rule 14.7 (admission of liability to pay claim for unspecified amount of money where defendant offers a sum in satisfaction of the claim).
- (4) Where the defendant makes an admission as mentioned in paragraph (3), the claimant has a right to enter judgment except where—

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- (a) the defendant is a child or patient; or
- (b) the claimant is a child or patient and the admission is made under rule 14.5 or 14.7.

(Rule 21.10 provides that, where a claim is made by or on behalf of a child or patient or against a child or patient, no settlement, compromise or payment shall be valid, so far as it relates to that person's claim, without the approval of the court)

- (5) The court may allow a party to amend or withdraw an admission.

(Rule 3.1(3) provides that the court may attach conditions when it makes an order)

#### Commencement Information

**I91** Rule 14.1 in force at 26.4.1999, see [Signature](#)

#### Period for making an admission **E+W**

**14.2.**—(1) The period for returning an admission under rule 14.4 or for filing it under rules 14.5, 14.6 or 14.7 is—

- (a) where the defendant is served with a claim form which states that particulars of claim will follow, 14 days after service of the particulars; and
- (b) in any other case, 14 days after service of the claim form.

(2) Paragraph (1) is subject to the following rules—

- (a) [<sup>F52</sup>rule 6.22] (which specifies how the period for filing or returning an admission is calculated where the claim form is served out of the jurisdiction); and
- (b) rule 6.16(4) (which requires the court to specify the period for responding to the particulars of claim when it makes an order under that rule).

(3) A defendant may return an admission under rule 14.4 or file it under rules 14.5, 14.6 or 14.7 after the end of the period for returning or filing it specified in paragraph (1) if the claimant has not obtained default judgment under Part 12.

- (4) If he does so, this Part shall apply as if he had made the admission within that period.

#### Textual Amendments

**F52** Words in rule 14.2(2)(a) substituted (2.5.2000) by [The Civil Procedure \(Amendment No. 2\) Rules 2000 \(S.I. 2000/940\)](#), rules 1, 9

#### Commencement Information

**I92** Rule 14.2 in force at 26.4.1999, see [Signature](#)

#### Admission by notice in writing—application for judgment **E+W**

**14.3.**—(1) Where a party makes an admission under rule 14.1(2) (admission by notice in writing), any other party may apply for judgment on the admission.

(2) Judgment shall be such judgment as it appears to the court that the applicant is entitled to on the admission.

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**Commencement Information**

**193** [Rule 14.3](#) in force at 26.4.1999, see [Signature](#)

**Admission of whole of claim for specified amount of money** **E+W**

**14.4.**—(1) This rule applies where—

- (a) the only remedy which the claimant is seeking is the payment of a specified amount of money; and
- (b) the defendant admits the whole of the claim.

(2) The defendant may admit the claim by returning to the claimant an admission in the relevant practice form.

(3) The claimant may obtain judgment by filing a request in the relevant practice form and, if he does so—

- (a) if the defendant has not requested time to pay, the procedure in paragraphs (4) to (6) will apply;
- (b) if the defendant has requested time to pay, the procedure in rule 14.9 will apply.

(4) The claimant may specify in his request for judgment—

- (a) the date by which the whole of the judgment debt is to be paid; or
- (b) the times and rate at which it is to be paid by instalments.

(5) On receipt of the request for judgment the court will enter judgment.

(6) Judgment will be for the amount of the claim (less any payments made) and costs—

- (a) to be paid by the date or at the rate specified in the request for judgment; or
- (b) if none is specified, immediately.

(Rule 14.14 deals with the circumstances in which judgment under this rule may include interest)

**Commencement Information**

**194** [Rule 14.4](#) in force at 26.4.1999, see [Signature](#)

**Admission of part of a claim for a specified amount of money** **E+W**

**14.5.**—(1) This rule applies where—

- (a) the only remedy which the claimant is seeking is the payment of a specified amount of money; and
- (b) the defendant admits part of the claim.

(2) The defendant may admit part of the claim by filing an admission in the relevant practice form.

(3) On receipt of the admission, the court will serve a notice on the claimant requiring him to return the notice stating that—

- (a) he accepts the amount admitted in satisfaction of the claim;
- (b) he does not accept the amount admitted by the defendant and wishes the proceedings to continue; or
- (c) if the defendant has requested time to pay, he accepts the amount admitted in satisfaction of the claim, but not the defendant's proposals as to payment.

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- (4) The claimant must—
- (a) file the notice; and
  - (b) serve a copy on the defendant,
- within 14 days after it is served on him.
- (5) If the claimant does not file the notice within 14 days after it is served on him, the claim is stayed<sup>(GL)</sup> until he files the notice.
- (6) If the claimant accepts the amount admitted in satisfaction of the claim, he may obtain judgment by filing a request in the relevant practice form and, if he does so—
- (a) if the defendant has not requested time to pay, the procedure in paragraphs (7) to (9) will apply;
  - (b) if the defendant has requested time to pay, the procedure in rule 14.9 will apply.
- (7) The claimant may specify in his request for judgment—
- (a) the date by which the whole of the judgment debt is to be paid; or
  - (b) the time and rate at which it is to be paid by instalments.
- (8) On receipt of the request for judgment, the court will enter judgment.
- (9) Judgment will be for the amount admitted (less any payments made) and costs—
- (a) to be paid by the date or at the rate specified in the request for judgment; or
  - (b) if none is specified, immediately.

(If the claimant files notice under paragraph (3) that he wishes the proceedings to continue, the procedure which then follows is set out in Part 26)

**Commencement Information**

**I95** [Rule 14.5](#) in force at 26.4.1999, see [Signature](#)

**Admission of liability to pay whole of claim for unspecified amount of money** **E+W**

- 14.6.**—(1) This rule applies where—
- (a) the only remedy which the claimant is seeking is the payment of money;
  - (b) the amount of the claim is not specified; and
  - (c) the defendant admits liability but does not offer to pay a specified amount of money in satisfaction of the claim.
- (2) The defendant may admit the claim by filing an admission in the relevant practice form.
- (3) On receipt of the admission, the court will serve a copy on the claimant.
- (4) The claimant may obtain judgment by filing a request in the relevant practice form.
- (5) If the claimant does not file a request for judgment within 14 days after service of the admission on him, the claim is stayed<sup>(GL)</sup> until he files the request.
- (6) On receipt of the request for judgment the court will enter judgment.
- (7) Judgment will be for an amount to be decided by the court and costs.

**Commencement Information**

**I96** [Rule 14.6](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

### Admission of liability to pay claim for unspecified amount of money where defendant offers a sum in satisfaction of the claim **E+W**

14.7.—(1) This rule applies where—

- (a) the only remedy which the claimant is seeking is the payment of money;
- (b) the amount of the claim is not specified; and
- (c) the defendant—
  - (i) admits liability; and
  - (ii) offers to pay a specified amount of money in satisfaction of the claim.

(2) The defendant may admit the claim by filing an admission in the relevant practice form.

(3) On receipt of the admission, the court will serve a notice on the claimant requiring him to return the notice stating whether or not he accepts the amount in satisfaction of the claim.

(4) If the claimant does not file the notice within 14 days after it is served on him, the claim is stayed<sup>(GL)</sup> until he files the notice.

(5) If the claimant accepts the offer he may obtain judgment by filing a request in the relevant practice form and if he does so—

- (a) if the defendant has not requested time to pay, the procedure in paragraphs (6) to (8) will apply;
- (b) if the defendant has requested time to pay, the procedure in rule 14.9 will apply.

(6) The claimant may specify in his request for judgment—

- (a) the date by which the whole of the judgment debt is to be paid; or
- (b) the times and rate at which it is to be paid by instalments.

(7) On receipt of the request for judgment, the court will enter judgment.

(8) Judgment will be for the amount offered by the defendant (less any payments made) and costs—

- (a) to be paid on the date or at the rate specified in the request for judgment; or
- (b) if none is specified, immediately.

(9) If the claimant does not accept the amount offered by the defendant, he may obtain judgment by filing a request in the relevant practice form.

(10) Judgment under paragraph (9) will be for an amount to be decided by the court and costs.

#### Commencement Information

197 Rule 14.7 in force at 26.4.1999, see [Signature](#)

### Allocation of claims in relation to outstanding matters **E+W**

14.8 Where the court enters judgment under rule 14.6 or 14.7 for an amount to be decided by the court it will—

- (a) give any directions it considers appropriate; and
- (b) if it considers it appropriate, allocate the case.



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**Commencement Information**

**I98** [Rule 14.8](#) in force at 26.4.1999, see [Signature](#)

**Request for time to pay** **E+W**

**14.9.**—(1) A defendant who makes an admission under rules 14.4, 14.5 or 14.7 (admission relating to a claim for a specified amount of money or offering to pay a specified amount of money) may make a request for time to pay.

(2) A request for time to pay is a proposal about the date of payment or a proposal to pay by instalments at the times and rate specified in the request.

(3) The defendant's request for time to pay must be served or filed (as the case may be) with his admission.

(4) If the claimant accepts the defendant's request, he may obtain judgment by filing a request in the relevant practice form.

(5) On receipt of the request for judgment, the court will enter judgment.

(6) Judgment will be—

- (a) where rule 14.4 applies, for the amount of the claim (less any payments made) and costs;
- (b) where rule 14.5 applies, for the amount admitted (less any payments made) and costs; or
- (c) where rule 14.7 applies, for the amount offered by the defendant (less any payments made) and costs; and

(in all cases) will be for payment at the time and rate specified in the defendant's request for time to pay.

(Rule 14.10 sets out the procedure to be followed if the claimant does not accept the defendant's request for time to pay)

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**Commencement Information**

**I99** [Rule 14.9](#) in force at 26.4.1999, see [Signature](#)

**Determination of rate of payment** **E+W**

**14.10.**—(1) This rule applies where the defendant makes a request for time to pay under rule 14.9.

(2) If the claimant does not accept the defendant's proposals for payment, he must file a notice in the relevant practice form.

(3) Where the defendant's admission was served direct on the claimant, a copy of the admission and the request for time to pay must be filed with the claimant's notice.

(4) When the court receives the claimant's notice, it will enter judgment for the amount admitted (less any payments made) to be paid at the time and rate of payment determined by the court.

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**Commencement Information**

**I100** [Rule 14.10](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
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### Determination of rate of payment by court officer **E+W**

**14.11.**—(1) A court officer may exercise the powers of the court under rule 14.10(4) where the amount outstanding (including costs) is not more than £50,000.

(2) Where a court officer is to determine the time and rate of payment, he must do so without a hearing.

#### Commencement Information

**I101** [Rule 14.11](#) in force at 26.4.1999, see [Signature](#)

### Determination of rate of payment by judge **E+W**

**14.12.**—(1) Where a judge is to determine the time and rate of payment, he may do so without a hearing.

(2) Where a judge is to determine the time and rate of payment at a hearing, the proceedings must be transferred automatically to the defendant's home court if—

- (a) the only claim is for a specified amount of money;
- (b) the defendant is an individual;
- (c) the claim has not been transferred to another defendant's home court under rule 13.4 (application to set aside<sup>(GL)</sup> or vary default judgment—procedure) or rule 26.2 (automatic transfer);
- (d) the claim was not started in the defendant's home court; and
- (e) the claim was not started in a specialist list.

(Rule 2.3 explains which court is a defendant's home court)

(3) If there is to be a hearing to determine the time and rate of payment, the court must give each party at least 7 days' notice of the hearing.

#### Commencement Information

**I102** [Rule 14.12](#) in force at 26.4.1999, see [Signature](#)

### Right of re-determination **E+W**

**14.13.**—(1) Where—

- (a) a court officer has determined the time and rate of payment under rule 14.11; or
- (b) a judge has determined the time and rate of payment under rule 14.12 without a hearing, either party may apply for the decision to be re-determined by a judge.

(2) An application for re-determination must be made within 14 days after service of the determination on the applicant.

(3) Where an application for re-determination is made, the proceedings must be transferred to the defendant's home court if—

- (a) the only claim (apart from a claim for interest or costs) is for a specified amount of money;
- (b) the defendant is an individual;

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- (c) the claim has not been transferred to another defendant's home court under rule 13.4 (application to set aside<sup>(GL)</sup> or vary default judgment—procedure) or rule 26.2 (automatic transfer);
- (d) the claim was not started in the defendant's home court; and
- (e) the claim was not started in a specialist list.

(Rule 2.3 explains which court is a defendant's home court)

#### Commencement Information

**I103** [Rule 14.13](#) in force at 26.4.1999, see [Signature](#)

### Interest **E+W**

**14.14.**—(1) Judgment under rule 14.4 (admission of whole of claim for specified amount of money) shall include the amount of interest claimed to the date of judgment if—

- (a) the particulars of claim include the details required by rule 16.4;
- (b) where interest is claimed under section 35A of the Supreme Court Act 1981<sup>(17)</sup> or section 69 of the County Courts Act 1984<sup>(18)</sup>, the rate is no higher than the rate of interest payable on judgment debts at the date when the claim form was issued; and
- (c) the claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.

(2) In any case where judgment is entered under rule 14.4 and the conditions in paragraph (1) are not satisfied judgment shall be for an amount of interest to be decided by the court.

(3) Where judgment is entered for an amount of interest to be decided by the court, the court will give directions for the management of the case.

#### Commencement Information

**I104** [Rule 14.14](#) in force at 26.4.1999, see [Signature](#)

## PART 15 **E+W**

### DEFENCE AND REPLY

#### Contents of this Part

Part not to apply where claimant uses Part 8 procedure	Rule 15.1
Filing a defence	Rule 15.2
Consequence of not filing a defence	Rule 15.3
The period for filing a defence	Rule 15.4

<sup>(17)</sup> 1981 c. 54. Section 35A was inserted by the Administration of Justice Act 1982 (c. 53), section 15(1), Schedule 1, Part I.

<sup>(18)</sup> 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), section 125(3), Schedule 18, paragraph 46.

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Agreement extending the period for filing a defence	Rule 15.5
Service of copy of defence	Rule 15.6
Making a counterclaim	Rule 15.7
Reply to defence	Rule 15.8
No statement of case after a reply to be filed without court's permission	Rule 15.9
Claimant's notice where defence is that money claimed has been paid	Rule 15.10
Claim stayed if it is not defended or admitted	Rule 15.11

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### Part not to apply where claimant uses the Part 8 procedure **E+W**

**15.1** This Part does not apply where the claimant uses the procedure set out in Part 8 (alternative procedure for claims).

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#### Commencement Information

**I105** [Rule 15.1](#) in force at 26.4.1999, see [Signature](#)

### Filing a defence **E+W**

**15.2** A defendant who wishes to defend all or part of a claim must file a defence.  
(Part 14 contains further provisions which apply where the defendant admits a claim)

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#### Commencement Information

**I106** [Rule 15.2](#) in force at 26.4.1999, see [Signature](#)

### Consequence of not filing a defence **E+W**

**15.3** If a defendant fails to file a defence, the claimant may obtain default judgment if Part 12 allows it.

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#### Commencement Information

**I107** [Rule 15.3](#) in force at 26.4.1999, see [Signature](#)

### The period for filing a defence **E+W**

- 15.4.**—(1) The general rule is that the period for filing a defence is—
- 14 days after service of the particulars of claim; or
  - if the defendant files an acknowledgment of service under Part 10, 28 days after service of the particulars of claim.

(Rule 7.4 provides for the particulars of claim to be contained in or served with the claim form or served within 14 days of service of the claim form)

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- (2) The general rule is subject to the following rules—
- (a) [<sup>F53</sup>rule 6.23] (which specifies how the period for filing a defence is calculated where the claim form is served out of the jurisdiction);
  - (b) rule 11 (which provides that, where the defendant makes an application disputing the court’s jurisdiction, he need not file a defence before the hearing);
  - (c) rule 24.4(2) (which provides that, if the claimant applies for summary judgment before the defendant has filed a defence, the defendant need not file a defence before the summary judgment hearing); and
  - (d) rule 6.16(4) (which requires the court to specify the period for responding to the particulars of claim when it makes an order under that rule).

**Textual Amendments**

**F53** Words in [rule 15.4\(2\)\(a\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment No. 2\) Rules 2000 \(S.I. 2000/940\)](#), [rules 1, 10](#)

**Commencement Information**

**I108** [Rule 15.4](#) in force at 26.4.1999, see [Signature](#)

**Agreement extending the period for filing a defence** **E+W**

**15.5.—(1)** The defendant and the claimant may agree that the period for filing a defence specified in [rule 15.4](#) shall be extended by up to 28 days.

(2) Where the defendant and the claimant agree to extend the period for filing a defence, the defendant must notify the court in writing.

**Commencement Information**

**I109** [Rule 15.5](#) in force at 26.4.1999, see [Signature](#)

**Service of copy of defence** **E+W**

**15.6** A copy of the defence must be served on every other party.

(Part 16 sets out what a defence must contain)

[<sup>F54</sup>(The costs practice direction sets out the information about a funding arrangement to be provided with the defence where the defendant intends to seek to recover an additional liability)

(“Funding arrangement” and “additional liability” are defined in [rule 43.2](#))]

**Textual Amendments**

**F54** Words in [rule 15.6](#) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), [rules 1, 7](#) (with [rule 39](#))

**Commencement Information**

**I110** [Rule 15.6](#) in force at 26.4.1999, see [Signature](#)

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## Making a counterclaim **E+W**

15.7 Part 20 applies to a defendant who wishes to make a counterclaim.

### Commencement Information

I111 [Rule 15.7](#) in force at 26.4.1999, see [Signature](#)

## Reply to defence **E+W**

15.8 If a claimant files a reply to the defence, he must—

- (a) file his reply when he files his allocation questionnaire; and
- (b) serve his reply on the other parties at the same time as he files it.

(Rule 26.3(6) requires the parties to file allocation questionnaires and specifies the period for doing so)

(Part 22 requires a reply to be verified by a statement of truth)

### Commencement Information

I112 [Rule 15.8](#) in force at 26.4.1999, see [Signature](#)

## No statement of case after a reply to be filed without court's permission **E+W**

15.9 A party may not file or serve any statement of case after a reply without the permission of the court.

### Commencement Information

I113 [Rule 15.9](#) in force at 26.4.1999, see [Signature](#)

## Claimant's notice where defence is that money claimed has been paid **E+W**

15.10.—(1) Where—

- (a) the only claim (apart from a claim for costs and interest) is for a specified amount of money; and
- (b) the defendant states in his defence that he has paid to the claimant the amount claimed,

the court will send notice to the claimant requiring him to state in writing whether he wishes the proceedings to continue.

(2) When the claimant responds, he must serve a copy of his response on the defendant.

(3) If the claimant fails to respond under this rule within 28 days after service of the court's notice on him the claim shall be stayed<sup>(GL)</sup>.

(4) Where a claim is stayed under this rule any party may apply for the stay<sup>(GL)</sup> to be lifted.

(If the claimant files notice under this rule that he wishes the proceedings to continue, the procedure which then follows is set out in Part 26)

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**Commencement Information**

**I114** [Rule 15.10](#) in force at 26.4.1999, see [Signature](#)

**Claim stayed if it is not defended or admitted** **E+W**

**15.11.**—(1) Where—

- (a) at least 6 months have expired since the end of the period for filing a defence specified in rule 15.4;
- (b) no defendant has served or filed an admission or filed a defence or counterclaim; and
- (c) the claimant has not entered or applied for judgment under Part 12 (default judgment), or Part 24 (summary judgment),

the claim shall be stayed<sup>(GL)</sup>.

- (2) Where a claim is stayed<sup>(GL)</sup> under this rule any party may apply for the stay to be lifted.

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**Commencement Information**

**I115** [Rule 15.11](#) in force at 26.4.1999, see [Signature](#)

**PART 16** **E+W**

**STATEMENTS OF CASE**

**Contents of this Part**

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Part not to apply where claimant uses Part 8 procedure	Rule 16.1
Contents of the claim form	Rule 16.2
Statement of value to be included in the claim form	Rule 16.3
Contents of the particulars of claim	Rule 16.4
Contents of defence	Rule 16.5
Defence of set-off	Rule 16.6
Reply to defence	Rule 16.7
Court's power to dispense with statements of case	Rule 16.8

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**Part not to apply where claimant uses Part 8 procedure** **E+W**

**16.1** This Part does not apply where the claimant uses the procedure set out in Part 8 (alternative procedure for claims).

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
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### Commencement Information

**I116** Rule 16.1 in force at 26.4.1999, see [Signature](#)

### Contents of the claim form **E+W**

**16.2.**—(1) The claim form must—

- (a) contain a concise statement of the nature of the claim;
- (b) specify the remedy which the claimant seeks;
- (c) where the claimant is making a claim for money, contain a statement of value in accordance with rule 16.3; and
- (d) contain such other matters as may be set out in a practice direction.

(2) If the particulars of claim specified in rule 16.4 are not contained in or are not served with the claim form, the claimant must state on the claim form that the particulars of claim will follow.

(3) If the claimant is claiming in a representative capacity, the claim form must state what that capacity is.

(4) If the defendant is sued in a representative capacity, the claim form must state what that capacity is.

(5) The court may grant any remedy to which the claimant is entitled even if that remedy is not specified in the claim form.

(Part 22 requires a claim form to be verified by a statement of truth)

[<sup>F55</sup>(The costs practice direction sets out the information about a funding arrangement to be provided with the statement of case where the defendant intends to seek to recover an additional liability)

(“Funding arrangement” and “additional liability” are defined in rule 43.2)]

### Textual Amendments

**F55** Words in rule 16.2 inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, 8 (with rule 39)

### Commencement Information

**I117** Rule 16.2 in force at 26.4.1999, see [Signature](#)

### Statement of value to be included in the claim form **E+W**

**16.3.**—(1) This rule applies where the claimant is making a claim for money.

(2) The claimant must, in the claim form, state—

- (a) the amount of money which he is claiming;
- (b) that he expects to recover—
  - (i) not more than £5,000;
  - (ii) more than £5,000 but not more than £15,000; or
  - (iii) more than £15,000; or
- (c) that he cannot say how much he expects to recover.



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(3) In a claim for personal injuries, the claimant must also state in the claim form whether the amount which he expects to recover as general damages for pain, suffering and loss of amenity is—

- (a) not more than £1,000; or
- (b) more than £1,000.

[<sup>F56</sup>(4) In a claim which includes a claim by a tenant of residential premises against his landlord where the tenant is seeking an order requiring the landlord to carry out repairs or other work to the premises, the claimant must also state in the claim form—

- (a) whether the estimated costs of those repairs or other work is—
  - (i) not more than £1000; or
  - (ii) more than £1000; and
- (b) whether the financial value of any other claim for damages is—
  - (i) not more than £1000; or
  - (ii) more than £1000.]

(5) If the claim form is to be issued in the High Court it must, where this rule applies—

- (a) state that the claimant expects to recover more than £15,000;
- (b) state that some other enactment provides that the claim may be commenced only in the High Court and specify that enactment;
- (c) if the claim is a claim for personal injuries state that the claimant expects to recover £50,000 or more; or
- (d) state that the claim is to be in one of the specialist High Court lists and state which list.

(6) When calculating how much he expects to recover, the claimant must disregard any possibility—

- (a) that he may recover—
  - (i) interest;
  - (ii) costs;
- (b) that the court may make a finding of contributory negligence against him;
- (c) that the defendant may make a counterclaim or that the defence may include a set-off; or
- (d) that the defendant may be liable to pay an amount of money which the court awards to the claimant to the Secretary of State for Social Security under section 6 of the Social Security (Recovery of Benefits) Act 1997(19).

(7) The statement of value in the claim form does not limit the power of the court to give judgment for the amount which it finds the claimant is entitled to.

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**Textual Amendments**

**F56** Rule 16.3(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 6

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**Commencement Information**

**I118** Rule 16.3 in force at 26.4.1999, see [Signature](#)

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## Contents of the particulars of claim **E+W**

**16.4.**—(1) Particulars of claim must include—

- (a) a concise statement of the facts on which the claimant relies;
- (b) if the claimant is seeking interest, a statement to that effect and the details set out in paragraph (2);
- (c) if the claimant is seeking aggravated damages<sup>(GL)</sup> or exemplary damages<sup>(GL)</sup>, a statement to that effect and his grounds for claiming them;
- (d) if the claimant is seeking provisional damages, a statement to that effect and his grounds for claiming them; and
- (e) such other matters as may be set out in a practice direction.

(2) If the claimant is seeking interest he must—

- (a) state whether he is doing so—
  - (i) under the terms of a contract;
  - (ii) under an enactment and if so which; or
  - (iii) on some other basis and if so what that basis is; and
- (b) if the claim is for a specified amount of money, state—
  - (i) the percentage rate at which interest is claimed;
  - (ii) the date from which it is claimed;
  - (iii) the date to which it is calculated, which must not be later than the date on which the claim form is issued;
  - (iv) the total amount of interest claimed to the date of calculation; and
  - (v) the daily rate at which interest accrues after that date.

(Part 22 requires particulars of claim to be verified by a statement of truth)

### Commencement Information

**I119** [Rule 16.4](#) in force at 26.4.1999, see [Signature](#)

## Contents of defence **E+W**

**16.5.**—(1) In his defence, the defendant must state—

- (a) which of the allegations in the particulars of claim he denies;
- (b) which allegations he is unable to admit or deny, but which he requires the claimant to prove; and
- (c) which allegations he admits.

(2) Where the defendant denies an allegation—

- (a) he must state his reasons for doing so; and
- (b) if he intends to put forward a different version of events from that given by the claimant, he must state his own version.

(3) A defendant who—

- (a) fails to deal with an allegation; but
- (b) has set out in his defence the nature of his case in relation to the issue to which that allegation is relevant,

shall be taken to require that allegation to be proved.

(4) Where the claim includes a money claim, a defendant shall be taken to require that any allegation relating to the amount of money claimed be proved unless he expressly admits the allegation.

(5) Subject to paragraphs (3) and (4), a defendant who fails to deal with an allegation shall be taken to admit that allegation.

(6) If the defendant disputes the claimant's statement of value under rule 16.3 he must—

- (a) state why he disputes it; and
- (b) if he is able, give his own statement of the value of the claim.

(7) If the defendant is defending in a representative capacity, he must state what that capacity is.

(8) If the defendant has not filed an acknowledgment of service under Part 10, he must give an address for service.

(Part 22 requires a defence to be verified by a statement of truth)

(Rule 6.5 provides that an address for service must be within the jurisdiction)

**Commencement Information**

**I120** [Rule 16.5](#) in force at 26.4.1999, see [Signature](#)

**Defence of set-off** **E+W**

**16.6** Where a defendant—

- (a) contends he is entitled to money from the claimant; and
- (b) relies on this as a defence to the whole or part of the claim,

the contention may be included in the defence and set off against the claim, whether or not it is also a Part 20 claim.

**Commencement Information**

**I121** [Rule 16.6](#) in force at 26.4.1999, see [Signature](#)

**Reply to defence** **E+W**

**16.7.**—(1) A claimant who does not file a reply to the defence shall not be taken to admit the matters raised in the defence.

(2) A claimant who—

- (a) files a reply to a defence; but
- (b) fails to deal with a matter raised in the defence,

shall be taken to require that matter to be proved.

(Part 22 requires a reply to be verified by a statement of truth)

**Commencement Information**

**I122** [Rule 16.7](#) in force at 26.4.1999, see [Signature](#)

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## Court's power to dispense with statements of case **E+W**

16.8 If a claim form has been—

- (a) issued in accordance with rule 7.2; and
- (b) served in accordance with rule 7.5,

the court may make an order that the claim will continue without any other statement of case.

### Commencement Information

**I123** Rule 16.8 in force at 26.4.1999, see [Signature](#)

## PART 17 **E+W**

### AMENDMENTS TO STATEMENTS OF CASE

#### Contents of this Part

Amendments to statements of case	Rule 17.1
Power of court to disallow amendments made without permission	Rule 17.2
Amendments to statements of case with the permission of the court	Rule 17.3
Amendments to statements of case after the end of a relevant limitation period	Rule 17.4

## Amendments to statements of case **E+W**

17.1.—(1) A party may amend his statement of case at any time before it has been served on any other party.

- (2) If his statement of case has been served, a party may amend it only—
  - (a) with the written consent of all the other parties; or
  - (b) with the permission of the court.

[<sup>F57</sup>(3) If a statement of case has been served, an application to amend it by removing, adding or substituting a party must be made in accordance with rule 19.4.]

<sup>F58</sup> ...

(Part 22 requires amendments to a statement of case to be verified by a statement of truth unless the court orders otherwise)

### Textual Amendments

**F57** Rule 17.1(3) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **7(a)**

**F58** Words in rule 17.1 omitted (2.5.2000) by virtue of [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **7(b)**

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**Commencement Information**

**I124** [Rule 17.1](#) in force at 26.4.1999, see [Signature](#)

**Power of court to disallow amendments made without permission** **E+W**

**17.2.**—(1) If a party has amended his statement of case where permission of the court was not required, the court may disallow the amendment.

(2) A party may apply to the court for an order under paragraph (1) within 14 days of service of a copy of the amended statement of case on him.

**Commencement Information**

**I125** [Rule 17.2](#) in force at 26.4.1999, see [Signature](#)

**Amendments to statements of case with the permission of the court** **E+W**

**17.3.**—(1) Where the court gives permission for a party to amend his statement of case, it may give directions as to—

- (a) amendments to be made to any other statement of case; and
- (b) service of any amended statement of case.

(2) The power of the court to give permission under this rule is subject to—

- (a) rule 19.1 (change of parties—general);
- (b) rule 19.4 (special provisions about adding or substituting parties after the end of a relevant limitation period<sup>(GL)</sup>); and
- (c) rule 17.4 (amendments of statement of case after the end of a relevant limitation period).

**Commencement Information**

**I126** [Rule 17.3](#) in force at 26.4.1999, see [Signature](#)

**Amendments to statements of case after the end of a relevant limitation period** **E+W**

**17.4.**—(1) This rule applies where—

- (a) a party applies to amend his statement of case in one of the ways mentioned in this rule; and
- (b) a period of limitation has expired under—

- (i) the Limitation Act 1980<sup>(20)</sup>;
- (ii) the Foreign Limitation Periods Act 1984<sup>(21)</sup>; [<sup>F59</sup>or]

[<sup>F60</sup>(iii) any other enactment which allows such an amendment, or under which such an amendment is allowed.]

(2) The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings.

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<sup>(20)</sup> 1980 c. 58.

<sup>(21)</sup> 1984 c. 16.

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(3) The court may allow an amendment to correct a mistake as to the name of a party, but only where the mistake was genuine and not one which would cause reasonable doubt as to the identity of the party in question.

(4) The court may allow an amendment to alter the capacity in which a party claims if the new capacity is one which that party had when the proceedings started or has since acquired.

( [F61]Rule 19.5] specifies the circumstances in which the court may allow a new party to be added or substituted after the end of a relevant limitation period<sup>(GL)</sup>)

#### Textual Amendments

- F59** Word in rule 17.4(1)(b)(ii) inserted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **7(1)(a)**
- F60** Rule 17.4(1)(b)(iii) substituted for rule 17.4(1)(b)(iii)(iv) (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **7(1)(b)**
- F61** Words in rule 17.4 substituted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **7(2)**

#### Commencement Information

- I127** [Rule 17.4](#) in force at 26.4.1999, see [Signature](#)

## PART 18 **E+W**

### FURTHER INFORMATION

#### Contents of this Part

Obtaining further information	Rule 18.1
Restriction on the use of further information	Rule 18.2

#### Obtaining further information **E+W**

**18.1.**—(1) The court may at any time order a party to—

- (a) clarify any matter which is in dispute in the proceedings; or
- (b) give additional information in relation to any such matter,

whether or not the matter is contained or referred to in a statement of case.

(2) Paragraph (1) is subject to any rule of law to the contrary.

(3) Where the court makes an order under paragraph (1), the party against whom it is made must—

- (a) file his response; and
- (b) serve it on the other parties,

within the time specified by the court.

(Part 22 requires a response to be verified by a statement of truth)

[F62(Part 53 (defamation) restricts requirements for providing further information about sources of information in defamation claims)]

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#### Textual Amendments

**F62** Words in rule 18.1 inserted (28.2.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(a), **8**

#### Commencement Information

**I128** Rule 18.1 in force at 26.4.1999, see [Signature](#)

### Restriction on the use of further information **E+W**

**18.2** The court may direct that information provided by a party to another party (whether given voluntarily or following an order made under rule 18.1) must not be used for any purpose except for that of the proceedings in which it is given.

#### Commencement Information

**I129** [Rule 18.2](#) in force at 26.4.1999, see [Signature](#)

## [<sup>F63</sup>PART 19 **E+W**

### PARTIES AND GROUP LITIGATION

#### Textual Amendments

**F63** Pt. 19 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 2](#)

#### Contents of this Part

Parties—general	Rule 19.1
<b>I ADDITION AND SUBSTITUTION OF PARTIES</b>	Rule 19.2
Change of parties—general	
Provisions applicable where two or more persons are jointly entitled to a remedy	Rule 19.3
Procedure for adding and substituting parties	Rule 19.4
Special provisions about adding or substituting parties after the end of a relevant limitation period	Rule 19.5
<b>II REPRESENTATIVE PARTIES</b>	Rule 19.6
Representative parties with same interest	
Representation of interested persons who cannot be ascertained etc.	Rule 19.7

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Death	Rule 19.8
Derivative claims	Rule 19.9
<b>III GROUP LITIGATION</b>	Rule 19.10
Definition	
Group Litigation Order	Rule 19.11
Effect of the GLO	Rule 19.12
Case management	Rule 19.13
Removal from the register	Rule 19.14
Test claims	Rule 19.15

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### **Parties—general** E+W

**19.1** Any number of claimants or defendants may be joined as parties to a claim.

### ***1 ADDITION AND SUBSTITUTION OF PARTIES***

### **Change of parties—general** E+W

**19.2.**—(1) This rule applies where a party is to be added or substituted except where the case falls within rule 19.5 (special provisions about changing parties after the end of a relevant limitation period<sup>(gl)</sup>).

(2) The court may order a person to be added as a new party if—

- (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
- (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.

(3) The court may order any person to cease to be a party if it is not desirable for that person to be party to the proceedings.

(4) The court may order a new party to be substituted for an existing one if—

- (a) the existing party's interest or liability has passed to the new party; and
- (b) it is desirable to substitute the new party so that the court can resolve the matters in dispute in the proceedings.

### **Provisions applicable where two or more persons are jointly entitled to a remedy** E+W

**19.3.**—(1) Where a claimant claims a remedy to which some other person is jointly entitled with him, all persons jointly entitled to the remedy must be parties unless the court orders otherwise.

(2) If any person does not agree to be a claimant, he must be made a defendant, unless the court orders otherwise.

(3) This rule does not apply in probate proceedings.



## Procedure for adding and substituting parties **E+W**

**19.4.**—(1) The court’s permission is required to remove, add or substitute a party, unless the claim form has not been served.

(2) An application for permission under paragraph (1) may be made by—

- (a) an existing party; or
- (b) a person who wishes to become a party.

(3) An application for an order under rule 19.2(4) (substitution of a new party where existing party’s interest or liability has passed)—

- (a) may be made without notice; and
- (b) must be supported by evidence.

(4) Nobody may be added or substituted as a claimant unless—

- (a) he has given his consent in writing; and
- (b) that consent has been filed with the court.

(5) An order for the removal, addition or substitution of a party must be served on—

- (a) all parties to the proceedings; and
- (b) any other person affected by the order.

(6) When the court makes an order for the removal, addition or substitution of a party, it may give consequential directions about—

- (a) filing and serving the claim form on any new defendant;
- (b) serving relevant documents on the new party; and
- (c) the management of the proceedings.

### **[<sup>F64</sup>Human Rights**

#### **Textual Amendments**

**F64** Rule 19.4A and cross-heading inserted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, 8

#### **19.4A Section 4 of the Human Rights Act 1998**

(1) The court may not make a declaration of incompatibility in accordance with section 4 of the Human Rights Act 1998 unless 21 days' notice, or such other period of notice as the court directs, has been given to the Crown.

(2) Where notice has been given to the Crown a Minister, or other person permitted by that Act, shall be joined as a party on giving notice to the court.

(Only courts specified in section 4 of the Human Rights Act 1998 can make a declaration of incompatibility)

#### **Section 9 of the Human Rights Act 1998**

(3) Where a claim is made under that Act for damages in respect of a judicial act—

- (a) that claim must be set out in the statement of case or the appeal notice; and
- (b) notice must be given to the Crown.

(4) Where paragraph (3) applies and the appropriate person has not applied to be joined as a party within 21 days, or such other period as the court directs, after the notice is served, the court may join the appropriate person as a party.

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(A practice direction makes provision for these notices)]

#### Textual Amendments

**F64** Rule 19.4A and cross-heading inserted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, 8

### Special provisions about adding or substituting parties after the end of a relevant limitation period **E+W**

**19.5.**—(1) This rule applies to a change of parties after the end of a period of limitation under—

- (a) the Limitation Act 1980;
- (b) the Foreign Limitation Periods Act 1984; [<sup>F65</sup>or]
- [<sup>F66</sup>(c) any other enactment which allows such a change, or under which such a change is allowed.]

(2) The court may add or substitute a party only if—

- (a) the relevant limitation period<sup>(gl)</sup> was current when the proceedings were started; and
- (b) the addition or substitution is necessary.

(3) The addition or substitution of a party is necessary only if the court is satisfied that—

- (a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;
- (b) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant; or
- (c) the original party has died or had a bankruptcy order made against him and his interest or liability has passed to the new party.

(4) In addition, in a claim for personal injuries the court may add or substitute a party where it directs that—

- (a) (i) section 11 (special time limit for claims for personal injuries); or
- (ii) section 12 (special time limit for claims under fatal accidents legislation), of the Limitation Act 1980 shall not apply to the claim by or against the new party; or
- (b) the issue of whether those sections apply shall be determined at trial.

(Rule 17.4 deals with other changes after the end of a relevant limitation period<sup>(gl)</sup>)

#### Textual Amendments

**F65** Word in rule 19.5(1)(b) inserted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), 8(a)

**F66** Rule 19.5(1)(c) substituted for rule 19.5(1)(c)(d) (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), 8(b)

### [<sup>F67</sup>Special rules about parties in claims for wrongful interference with goods **E+W**

**19.5A.**—(1) A claimant in a claim for wrongful interference with goods must, in the particulars of claim, state the name and address of every person who, to his knowledge, has or claims an interest in the goods and who is not a party to the claim.

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(2) A defendant to a claim for wrongful interference with goods may apply for a direction that another person be made a party to the claim to establish whether the other person—

- (a) has a better right to the goods than the claimant; or
- (b) has a claim which might render the defendant doubly liable under section 7 of the Torts (Interference with Goods) Act 1977.

(3) Where the person referred to in paragraph (2) fails to attend the hearing of the application, or comply with any directions, the court may order that he is deprived of any claim against the defendant in respect of the goods.

(Rule 3.1(3) provides that the court may make an order subject to conditions)

(4) The application notice must be served on all parties and on the person referred to in paragraph (2).]

**Textual Amendments**

**F67** Rule 19.5A inserted (26.3.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(a), 9

## ***II REPRESENTATIVE PARTIES***

### **Representative parties with same interest** **E+W**

**19.6.**—(1) Where more than one person has the same interest in a claim—

- (a) the claim may be begun; or
- (b) the court may order that the claim be continued,

by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.

(2) The court may direct that a person may not act as a representative.

(3) Any party may apply to the court for an order under paragraph (2).

(4) Unless the court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule—

- (a) is binding on all persons represented in the claim; but
- (b) may only be enforced by or against a person who is not a party to the claim with the permission of the court.

(5) This rule does not apply to a claim to which rule 19.7 applies.

### **Representation of interested persons who cannot be ascertained etc.** **E+W**

**19.7.**—(1) This rule applies to claims about—

- (a) the estate of a deceased person;
- (b) property subject to a trust; or
- (c) the meaning of a document, including a statute.

(2) The court may make an order appointing a person to represent any other person or persons in the claim where the person or persons to be represented—

- (a) are unborn;
- (b) cannot be found;

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- (c) cannot easily be ascertained; or
- (d) are a class of persons who have the same interest in a claim and—
  - (i) one or more members of that class are within sub-paragraphs (a), (b) or (c); or
  - (ii) to appoint a representative would further the overriding objective.
- (3) An application for an order under paragraph (2)—
  - (a) may be made by—
    - (i) any person who seeks to be appointed under the order; or
    - (ii) any party to the claim; and
  - (b) may be made at any time before or after the claim has started.
- (4) An application notice for an order under paragraph (2) must be served on—
  - (a) all parties to the claim, if the claim has started;
  - (b) the person sought to be appointed, if that person is not the applicant or a party to the claim; and
  - (c) any other person as directed by the court.
- (5) The court’s approval is required to settle a claim in which a party is acting as a representative under this rule.
- (6) The court may approve a settlement where it is satisfied that the settlement is for the benefit of all the represented persons.
- (7) Unless the court otherwise directs, any judgment or order given in a claim in which a party is acting as a representative under this rule—
  - (a) is binding on all persons represented in the claim; but
  - (b) may only be enforced by or against a person who is not a party to the claim with the permission of the court.

## Death **E+W**

- 19.8.**—(1) Where a person who had an interest in a claim has died and that person has no personal representative the court may order—
- (a) the claim to proceed in the absence of a person representing the estate of the deceased; or
  - (b) a person to be appointed to represent the estate of the deceased.
- (2) Where a defendant against whom a claim could have been brought has died and—
- (a) a grant of probate or administration has been made, the claim must be brought against the persons who are the personal representatives of the deceased;
  - (b) a grant of probate or administration has not been made—
    - (i) the claim must be brought against “the estate of” the deceased; and
    - (ii) the claimant must apply to the court for an order appointing a person to represent the estate of the deceased in the claim.
- (3) A claim shall be treated as having been brought against “the estate of” the deceased in accordance with paragraph (2)(b)(i) where—
- (a) the claim is brought against the “personal representatives” of the deceased but a grant of probate or administration has not been made; or
  - (b) the person against whom the claim was brought was dead when the claim was started.
- (4) Before making an order under this rule, the court may direct notice of the application to be given to any other person with an interest in the claim.

(5) Where an order has been made under paragraphs (1) or (2)(b)(ii) any judgment or order made or given in the claim is binding on the estate of the deceased.

**[<sup>F68</sup>Power to make judgments binding on non-parties E+W]**

**19.8A.**—(1) This rule applies to any claim in the High Court relating to—

- (a) the estate of a deceased person; or
- (b) property subject to a trust.

(2) The court may at any time direct that notice of the claim be served on a person who is not a party but who will or may be affected by any judgment made in the claim.

(3) An application under this rule—

- (a) may be made without notice; and
- (b) must be supported by written evidence which includes the reasons why the person to be served should be bound by the judgment in the claim.

(4) Unless the court orders otherwise, the notice of the claim under this rule must be—

- (a) in the form in the relevant practice direction;
- (b) issued by the court; and
- (c) accompanied by—
  - (i) a copy of the claim form;
  - (ii) all other statements of case served in the claim; and
  - (iii) a form of acknowledgment of service.

(5) If a person served with notice of the claim files an acknowledgment of service within 14 days he will become a party to the claim.

(6) If a person served with notice of the claim does not acknowledge service of the notice he will be bound by any judgment given in the claim as if he were a party.

(7) If, after service of the notice of the claim on a person, the claim form is amended so as substantially to alter the relief claimed the court may direct that a judgment shall not bind that person unless a further notice, together with a copy of the amended claim form, is served on him.

(8) The following rules of Part 10 (acknowledgment of service) apply—

- (a) rule 10.4; and
- (b) rule 10.5, subject to the modification that references to the defendant are to be read as references to the person served with the notice of the claim.

(9) A notice under this rule is issued on the date entered on the notice by the court.]

**Textual Amendments**

**F68** Rule 19.8A inserted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **10**

**Derivative Claims E+W**

**19.9.**—(1) This rule applies where a company, other incorporated body or trade union is alleged to be entitled to claim a remedy and a claim is made by one or more members of the company, body or trade union for it to be given that remedy (a “derivative claim”).

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(2) The company, body or trade union for whose benefit a remedy is sought must be a defendant to the claim.

(3) After the claim form has been issued the claimant must apply to the court for permission to continue the claim and may not take any other step in the proceedings except—

- (a) as provided by paragraph (5); or
- (b) where the court gives permission.

(4) An application in accordance with paragraph (3) must be supported by written evidence.

(5) The—

- (a) claim form;
- (b) application notice; and
- (c) written evidence in support of the application,

must be served on the defendant within the period within which the claim form must be served and, in any event, at least 14 days before the court is to deal with the application.

(6) If the court gives the claimant permission to continue the claim, the time within which the defence must be filed is 14 days after the date on which the permission is given or such period as the court may specify.

(7) The court may order the company, body or trade union to indemnify the claimant against any liability in respect of costs incurred in the claim.

### **III GROUP LITIGATION**

#### **Definition** E+W

**19.10** A Group Litigation Order (“GLO”) means an order made under rule 19.11 to provide for the case management of claims which give rise to common or related issues of fact or law (the “GLO issues”).

#### **Group Litigation Order** E+W

**19.11.**—(1) The court may make a GLO where there are or are likely to be a number of claims giving rise to the GLO issues.

(The practice direction provides the procedure for applying for a GLO)

(2) A GLO must—

- (a) contain directions about the establishment of a register (the “group register”) on which the claims managed under the GLO will be entered;
- (b) specify the GLO issues which will identify the claims to be managed as a group under the GLO; and
- (c) specify the court (the “management court”) which will manage the claims on the group register.

(3) A GLO may—

- (a) in relation to claims which raise one or more of the GLO issues—
  - (i) direct their transfer to the management court;
  - (ii) order their stay <sup>(g)</sup> until further order; and
  - (iii) direct their entry on the group register;

- (b) direct that from a specified date claims which raise one or more of the GLO issues should be started in the management court and entered on the group register; and
- (c) give directions for publicising the GLO.

### **Effect of the GLO** **E+W**

**19.12.**—(1) Where a judgment or order is given or made in a claim on the group register in relation to one or more GLO issues—

- (a) that judgment or order is binding on the parties to all other claims that are on the group register at the time the judgment is given or the order is made unless the court orders otherwise; and
- (b) the court may give directions as to the extent to which that judgment or order is binding on the parties to any claim which is subsequently entered on the group register.

(2) Unless paragraph (3) applies, any party who is adversely affected by a judgment or order which is binding on him may seek permission to appeal the order.

(3) A party to a claim which was entered on the group register after a judgment or order which is binding on him was given or made may not—

- (a) apply for the judgment or order to be set aside<sup>(gl)</sup>, varied or stayed<sup>(gl)</sup>; or
- (b) appeal the judgment or order,

but may apply to the court for an order that the judgment or order is not binding on him.

(4) Unless the court orders otherwise, disclosure of any document relating to the GLO issues by a party to a claim on the group register is disclosure of that document to all parties to claims—

- (a) on the group register; and
- (b) which are subsequently entered on the group register.

### **Case management** **E+W**

**19.13** Directions given by the management court may include directions—

- (a) varying the GLO issues;
- (b) providing for one or more claims on the group register to proceed as test claims;
- (c) appointing the solicitor of one or more parties to be the lead solicitor for the claimants or defendants;
- (d) specifying the details to be included in a statement of case in order to show that the criteria for entry of the claim on the group register have been met;
- (e) specifying a date after which no claim may be added to the group register unless the court gives permission; and
- (f) for the entry of any particular claim which meets one or more of the GLO issues on the group register.

(Part 3 contains general provisions about the case management powers of the court)

### **Removal from the register** **E+W**

**19.14.**—(1) A party to a claim entered on the group register may apply to the management court for the claim to be removed from the register.

(2) If the management court orders the claim to be removed from the register it may give directions about the future management of the claim.

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## Test claims **E+W**

**19.15.**—(1) Where a direction has been given for a claim on the group register to proceed as a test claim and that claim is settled, the management court may order that another claim on the group register be substituted as the test claim.

(2) Where an order is made under paragraph (1), any order made in the test claim before the date of substitution is binding on the substituted claim unless the court orders otherwise.]

## PART 20 **E+W**

### COUNTERCLAIMS AND OTHER ADDITIONAL CLAIMS

#### Contents of this Part

Purpose of Part 20	Rule 20.1
Meaning of “Part 20 claim”	Rule 20.2
Part 20 claim to be treated as a claim for the purposes of the Rules	Rule 20.3
Defendant’s counterclaim against the claimant	Rule 20.4
Counterclaim against a person other than the claimant	Rule 20.5
Defendant’s claim for contribution or indemnity from co-defendant	Rule 20.6
Procedure for making any other Part 20 claim	Rule 20.7
Service of a Part 20 claim form	Rule 20.8
Matters relevant to question of whether a Part 20 claim should be separate from main claim	Rule 20.9
Effect of service of a Part 20 claim	Rule 20.10
Special provisions relating to default judgment on a Part 20 claim other than a counterclaim or a contribution or indemnity notice	Rule 20.11
Procedural steps on service of a Part 20 claim form on a non-party	Rule 20.12
Case management where there is a defence to a Part 20 claim form	Rule 20.13

## Purpose of Part 20 **E+W**

**20.1** The purpose of Part 20 is to enable Part 20 claims to be managed in the most convenient and effective manner.

### Commencement Information

**1130** Rule 20.1 in force at 26.4.1999, see [Signature](#)



*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

## Meaning of “Part 20 claim” **E+W**

**20.2.**—(1) A Part 20 claim is any claim other than a claim by a claimant against a defendant and includes—

- (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
  - (b) a claim by a defendant against any person (whether or not already a party) for contribution<sup>(GL)</sup> or indemnity<sup>(GL)</sup> or some other remedy; and
  - (c) where a Part 20 claim has been made against a person who is not already a party, any claim made by that person against any other person (whether or not already a party).
- (2) In this Part “Part 20 claimant” means a person who makes a Part 20 claim.

### Commencement Information

**I131** Rule 20.2 in force at 26.4.1999, see [Signature](#)

## Part 20 claim to be treated as a claim for the purposes of the Rules **E+W**

**20.3.**—(1) A Part 20 claim shall be treated as if it were a claim for the purposes of these Rules, except as provided by this Part.

(2) The following rules do not apply to Part 20 claims—

- (a) rules 7.5 and 7.6 (time within which a claim form may be served);
- (b) rule 16.3(5) (statement of value where claim to be issued in the High Court); and
- (c) Part 26 (Case management—preliminary stage).

[<sup>F69</sup>(3) Part 12 (default judgment) applies to a Part 20 claim only if it is a counterclaim.]

[<sup>F70</sup>(4) With the exception of—

- (a) rules 14.1(1) and 14.1(2) (which provide that a party may admit the truth of another party’s case in writing); and
- (b) rule 14.3(1) (admission by notice in writing—application for judgment),

which apply to all Part 20 claims, Part 14 (admissions) applies to a Part 20 claim only if it is a counterclaim.]

[<sup>F71</sup>(Rule 12.3(2) sets out how to obtain judgment in default of defence where the Part 20 claim is a counterclaim against the claimant, and rule 20.11 makes special provision for default judgment in some categories of Part 20 claims)]

### Textual Amendments

**F69** Rule 20.3(3) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **10(a)**

**F70** Rule 20.3(4) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **10(b)**

**F71** Words in rule 20.3 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **10(c)**

### Commencement Information

**I132** Rule 20.3 in force at 26.4.1999, see [Signature](#)

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

### Defendant's counterclaim against the claimant **E+W**

**20.4.**—(1) A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim.

- (2) A defendant may make a counterclaim against a claimant—
- (a) without the court's permission if he files it with his defence; or
  - (b) at any other time with the court's permission.

(Part 15 makes provision for a defence to a claim and applies to a defence to a counterclaim by virtue of rule 20.3)

(3) Part 10 (acknowledgment of service) does not apply to a claimant who wishes to defend a counterclaim.

#### Commencement Information

**I133** [Rule 20.4](#) in force at 26.4.1999, see [Signature](#)

### Counterclaim against a person other than the claimant **E+W**

**20.5.**—(1) A defendant who wishes to counterclaim against a person other than the claimant must apply to the court for an order that that person be added as defendant to the counterclaim.

(2) An application for an order under paragraph (1) may be made without notice unless the court directs otherwise.

(3) Where the court makes an order under paragraph (1), it will give directions as to the management of the case.

#### Commencement Information

**I134** [Rule 20.5](#) in force at 26.4.1999, see [Signature](#)

### Defendant's claim for contribution or indemnity from co-defendant **E+W**

**20.6** A defendant who has filed an acknowledgment of service or a defence may make a Part 20 claim for contribution<sup>(GL)</sup> or indemnity<sup>(GL)</sup> against another defendant by—

- (a) filing a notice containing a statement of the nature and grounds of his claim; and
- (b) serving that notice on the other defendant.

#### Commencement Information

**I135** [Rule 20.6](#) in force at 26.4.1999, see [Signature](#)

### Procedure for making any other Part 20 claim **E+W**

**20.7.**—(1) This rule applies to any Part 20 claim except—

- (a) a counterclaim; and
  - (b) a claim for contribution<sup>(GL)</sup> or indemnity<sup>(GL)</sup> made in accordance with rule 20.6.
- (2) A Part 20 claim is made when the court issues a Part 20 claim form.

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- (3) A defendant may make a Part 20 claim—
  - (a) without the court’s permission if the Part 20 claim is issued before or at the same time as he files his defence;
  - (b) at any other time with the court’s permission.

(Rule 15.4 sets out the period for filing a defence)

- (4) Particulars of a Part 20 claim must be contained in or served with the Part 20 claim form.
- (5) An application for permission to make a Part 20 claim may be made without notice, unless the court directs otherwise.

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**Commencement Information**

**I136** [Rule 20.7](#) in force at 26.4.1999, see [Signature](#)

**Service of a Part 20 claim form** **E+W**

**20.8.**—(1) Where a Part 20 claim may be made without the court’s permission, the Part 20 claim form must—

- (a) in the case of a counterclaim, be served on every other party when a copy of the defence is served;
- (b) in the case of any other Part 20 claim, be served on the person against whom it is made within 14 days after the date on which the party making the Part 20 claim files his defence.

(2) Paragraph (1) does not apply to a claim for contribution<sup>(GL)</sup> or indemnity<sup>(GL)</sup> made in accordance with rule 20.6.

(3) Where the court gives permission to make a Part 20 claim it will at the same time give directions as to the service of the Part 20 claim.

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**Commencement Information**

**I137** [Rule 20.8](#) in force at 26.4.1999, see [Signature](#)

**Matters relevant to question of whether a Part 20 claim should be separate from main claim** **E+W**

**20.9.**—(1) This rule applies where the court is considering whether to—

- (a) permit a Part 20 claim to be made;
- (b) dismiss a Part 20 claim; or
- (c) require a Part 20 claim to be dealt with separately from the claim by the claimant against the defendant.

(Rule 3.1(2)(e) and (j) deal respectively with the court’s power to order that part of proceedings be dealt with as separate proceedings and to decide the order in which issues are to be tried)

(2) The matters to which the court may have regard include—

- (a) the connection between the Part 20 claim and the claim made by the claimant against the defendant;
- (b) whether the Part 20 claimant is seeking substantially the same remedy which some other party is claiming from him; and

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- (c) whether the Part 20 claimant wants the court to decide any question connected with the subject matter of the proceedings—
- (i) not only between existing parties but also between existing parties and a person not already a party; or
  - (ii) against an existing party not only in a capacity in which he is already a party but also in some further capacity.

#### Commencement Information

**I138** [Rule 20.9](#) in force at 26.4.1999, see [Signature](#)

#### Effect of service of a Part 20 claim **E+W**

**20.10.**—(1) A person on whom a Part 20 claim is served becomes a party to the proceedings if he is not a party already.

(2) When a Part 20 claim is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the Part 20 claim.

#### Commencement Information

**I139** [Rule 20.10](#) in force at 26.4.1999, see [Signature](#)

#### Special provisions relating to default judgment on a Part 20 claim other than a counterclaim or a contribution or indemnity notice **E+W**

**20.11.**—(1) This rule applies if—

- (a) the Part 20 claim is not—
  - (i) a counterclaim; or
  - (ii) a claim by a defendant for contribution<sup>(GL)</sup> or indemnity<sup>(GL)</sup> against another defendant under rule 20.6; and
- (b) the party against whom a Part 20 claim is made fails to file an acknowledgment of service or defence in respect of the Part 20 claim.

(2) The party against whom the Part 20 claim is made—

- (a) is deemed to admit the Part 20 claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the Part 20 claim;
- (b) subject to paragraph (3), if default judgment under Part 12 is given against the Part 20 claimant, the Part 20 claimant may obtain judgment in respect of the Part 20 claim by filing a request in the relevant practice form.

(3) A Part 20 claimant may not enter judgment under paragraph (2)(b) without the court's permission if—

- (a) he has not satisfied the default judgment which has been given against him; or
- (b) he wishes to obtain judgment for any remedy other than a contribution<sup>(GL)</sup> or indemnity<sup>(GL)</sup>.

(4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.

(5) The court may at any time set aside<sup>(GL)</sup> or vary a judgment entered under paragraph (2)(b).

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**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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**Commencement Information**

**I140** [Rule 20.11](#) in force at 26.4.1999, see [Signature](#)

**Procedural steps on service of a Part 20 claim form on a non-party** **E+W**

**20.12.**—(1) Where a Part 20 claim form is served on a person who is not already a party it must be accompanied by—

- (a) a form for defending the claim;
  - (b) a form for admitting the claim;
  - (c) a form for acknowledging service; and
  - (d) a copy of—
    - (i) every statement of case which has already been served in the proceedings; and
    - (ii) such other documents as the court may direct.
- (2) A copy of the Part 20 claim form must be served on every existing party.

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**Commencement Information**

**I141** [Rule 20.12](#) in force at 26.4.1999, see [Signature](#)

**Case management where there is a defence to a Part 20 claim form** **E+W**

**20.13.**—(1) Where a defence is filed to a Part 20 claim the court must consider the future conduct of the proceedings and give appropriate directions.

(2) In giving directions under paragraph (1) the court must ensure that, so far as practicable, the Part 20 claim and the main claim are managed together.

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**Commencement Information**

**I142** [Rule 20.13](#) in force at 26.4.1999, see [Signature](#)

**PART 21** **E+W**

**CHILDREN AND PATIENTS**

**Contents of this Part**

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Requirement for litigation friend in proceedings by or against children and patients	Rule 21.2
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Compromise etc. by or on behalf of child or patient	Rule 21.10
Control of money recovered by or on behalf of child or patient	Rule 21.11
Appointment of guardian of child's estate	Rule 21.12

### Scope of this Part **E+W**

**21.1.**—(1) This Part—

- (a) contains special provisions which apply in proceedings involving children and patients; and
- (b) sets out how a person becomes a litigation friend.

(2) In this Part—

- (a) “child” means a person under 18; and
- (b) “patient” means a person who by reason of mental disorder within the meaning of the Mental Health Act 1983(24) is incapable of managing and administering his own affairs.

(Rule 6.6 contains provisions about the service of documents on children and patients)

(Rule 48.5 deals with costs where money is payable by or to a child or patient)

#### Commencement Information

**1143** Rule 21.1 in force at 26.4.1999, see [Signature](#)

### Requirement for litigation friend in proceedings by or against children and patients **E+W**

**21.2.**—(1) A patient must have a litigation friend to conduct proceedings on his behalf.

(2) A child must have a litigation friend to conduct proceedings on his behalf unless the court makes an order under paragraph (3).

(3) The court may make an order permitting the child to conduct proceedings without a litigation friend.

(4) An application for an order under paragraph (3)—

- (a) may be made by the child;

- (b) if the child already has a litigation friend, must be made on notice to the litigation friend; and
  - (c) if the child has no litigation friend, may be made without notice.
- (5) Where—
- (a) the court has made an order under paragraph (3); and
  - (b) it subsequently appears to the court that it is desirable for a litigation friend to conduct the proceedings on behalf of the child, the court may appoint a person to be the child's litigation friend.

**Commencement Information**

**I144** [Rule 21.2](#) in force at 26.4.1999, see [Signature](#)

**Stage of proceedings at which a litigation friend becomes necessary** **E+W**

- 21.3.**—(1) This rule does not apply where the court has made an order under rule 21.2(3).
- (2) A person may not, without the permission of the court—
- (a) make an application against a child or patient before proceedings have started; or
  - (b) take any step in proceedings except—
    - (i) issuing and serving a claim form; or
    - (ii) applying for the appointment of a litigation friend under rule 21.6, until the child or patient has a litigation friend.
- (3) If a party becomes a patient during proceedings, no party may take any step in the proceedings without the permission of the court until the patient has a litigation friend.
- (4) Any step taken before a child or patient has a litigation friend shall be of no effect unless the court otherwise orders.

**Commencement Information**

**I145** [Rule 21.3](#) in force at 26.4.1999, see [Signature](#)

**Who may be a litigation friend without a court order** **E+W**

- 21.4.**—(1) This rule does not apply if the court has appointed a person to be a litigation friend.
- (2) A person authorised under Part VII of the Mental Health Act 1983 to conduct legal proceedings in the name of a patient or on his behalf is entitled to be the litigation friend of the patient in any proceedings to which his authority extends.
- (3) If nobody has been appointed by the court or, in the case of a patient, authorised under Part VII, a person may act as a litigation friend if he—
- (a) can fairly and competently conduct proceedings on behalf of the child or patient;
  - (b) has no interest adverse to that of the child or patient; and
  - (c) where the child or patient is a claimant, undertakes to pay any costs which the child or patient may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the child or patient.

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#### Commencement Information

**I146** Rule 21.4 in force at 26.4.1999, see [Signature](#)

#### How a person becomes a litigation friend without a court order **E+W**

**21.5.**—(1) If the court has not appointed a litigation friend, a person who wishes to act as a litigation friend must follow the procedure set out in this rule.

(2) A person authorised under Part VII of the Mental Health Act 1983 must file an official copy<sup>(GL)</sup> of the order or other document which constitutes his authorisation to act.

(3) Any other person must file a certificate of suitability stating that he satisfies the conditions specified in rule 21.4(3).

(4) A person who is to act as a litigation friend for a claimant must file—

- (a) the authorisation; or
- (b) the certificate of suitability,

at the time when the claim is made.

(5) A person who is to act as a litigation friend for a defendant must file—

- (a) the authorisation; or
- (b) the certificate of suitability,

at the time when he first takes a step in the proceedings on behalf of the defendant.

(6) The litigation friend must—

- (a) serve the certificate of suitability on every person on whom, in accordance with rule 6.6 (service on parent, guardian etc.), the claim form should be served; and
- (b) file a certificate of service when he files the certificate of suitability.

(Rule 6.10 sets out the details to be contained in a certificate of service)

#### Commencement Information

**I147** Rule 21.5 in force at 26.4.1999, see [Signature](#)

#### How a person becomes a litigation friend by court order **E+W**

**21.6.**—(1) The court may make an order appointing a litigation friend.

(2) An application for an order appointing a litigation friend may be made by—

- (a) a person who wishes to be the litigation friend; or
- (b) a party.

(3) Where—

- (a) a person makes a claim against a child or patient;
- (b) the child or patient has no litigation friend;
- (c) the court has not made an order under rule 21.2(3) (order that a child can act without a litigation friend); and
- (d) either—

- (i) someone who is not entitled to be a litigation friend files a defence; or



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(ii) the claimant wishes to take some step in the proceedings,  
the claimant must apply to the court for an order appointing a litigation friend for the child or patient.

(4) An application for an order appointing a litigation friend must be supported by evidence.

(5) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 21.4(3).

**Commencement Information**

**I148** [Rule 21.6](#) in force at 26.4.1999, see [Signature](#)

**Court's power to change litigation friend and to prevent person acting as litigation friend** **E**

**+W**

**21.7.**—(1) The court may—

- (a) direct that a person may not act as a litigation friend;
- (b) terminate a litigation friend's appointment;
- (c) appoint a new litigation friend in substitution for an existing one.

(2) An application for an order under paragraph (1) must be supported by evidence.

(3) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 21.4(3).

**Commencement Information**

**I149** [Rule 21.7](#) in force at 26.4.1999, see [Signature](#)

**Appointment of litigation friend by court order—supplementary** **E+W**

**21.8.**—(1) An application for an order under rule 21.6 or 21.7 must be served on every person on whom, in accordance with rule 6.6 (service on parent, guardian etc.), the claim form should be served.

(2) Where an application for an order under rule 21.6 is in respect of a patient, the application must also be served on the patient unless the court orders otherwise.

(3) An application for an order under rule 21.7 must also be served on—

- (a) the person who is the litigation friend, or who is purporting to act as the litigation friend, when the application is made; and
- (b) the person who it is proposed should be the litigation friend, if he is not the applicant.

(4) On an application for an order under rule 21.6 or 21.7, the court may appoint the person proposed or any other person who complies with the conditions specified in rule 21.4(3).

**Commencement Information**

**I150** [Rule 21.8](#) in force at 26.4.1999, see [Signature](#)

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### Procedure where appointment of litigation friend ceases **E+W**

**21.9.**—(1) When a child who is not a patient reaches the age of 18, a litigation friend's appointment ceases.

(2) When a party ceases to be a patient, the litigation friend's appointment continues until it is ended by a court order.

(3) An application for an order under paragraph (2) may be made by—

- (a) the former patient;
- (b) the litigation friend; or
- (c) a party.

(4) The child or patient in respect of whom the appointment to act has ceased must serve notice on the other parties—

- (a) stating that the appointment of his litigation friend to act has ceased;
- (b) giving his address for service; and
- (c) stating whether or not he intends to carry on the proceedings.

(5) If he does not do so within 28 days after the day on which the appointment of the litigation friend ceases the court may, on application, strike out<sup>(GL)</sup> any claim or defence brought by him.

(6) The liability of a litigation friend for costs continues until—

- (a) the person in respect of whom his appointment to act has ceased serves the notice referred to in paragraph (4); or
- (b) the litigation friend serves notice on the parties that his appointment to act has ceased.

#### Commencement Information

**I151** [Rule 21.9](#) in force at 26.4.1999, see [Signature](#)

### Compromise etc. by or on behalf of child or patient **E+W**

**21.10.**—(1) Where a claim is made—

- (a) by or on behalf of a child or patient; or
- (b) against a child or patient,

no settlement, compromise or payment and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of or against the child or patient, without the approval of the court.

(2) Where—

- (a) before proceedings in which a claim is made by or on behalf of, or against a child or patient (whether alone or with any other person) are begun, an agreement is reached for the settlement of the claim; and
- (b) the sole purpose of proceedings on that claim is to obtain the approval of the court to a settlement or compromise of the claim,

the claim must—

- (i) be made using the procedure set out in Part 8 (alternative procedure for claims); and
- (ii) include a request to the court for approval of the settlement or compromise.

(Rule 48.5 contains provisions about costs where money is payable to a child or patient)

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**Commencement Information**

**I152** [Rule 21.10](#) in force at 26.4.1999, see [Signature](#)

**Control of money recovered by or on behalf of child or patient** **E+W**

**21.11.**—(1) Where in any proceedings—

- (a) money is recovered by or on behalf of or for the benefit of a child or patient; or
- (b) money paid into court is accepted by or on behalf of a child or patient, the money shall be dealt with in accordance with directions given by the court under this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall be wholly or partly paid into court and invested or otherwise dealt with.

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**Commencement Information**

**I153** [Rule 21.11](#) in force at 26.4.1999, see [Signature](#)

**Appointment of guardian of child's estate** **E+W**

**21.12.**—(1) The court may appoint the Official Solicitor to be a guardian of a child's estate where—

- (a) money is paid into court on behalf of the child in accordance with directions given under rule 21.11 (control of money received by a child or patient);
- (b) the Criminal Injuries Compensation Board or the Criminal Injuries Compensation Authority notifies the court that it has made or intends to make an award to the child;
- (c) a court or tribunal outside England and Wales notifies the court that it has ordered or intends to order that money be paid to the child;
- (d) the child is absolutely entitled to the proceeds of a pension fund; or
- (e) in any other case, such an appointment seems desirable to the court.

(2) The court may not appoint the Official Solicitor under this rule unless—

- (a) the persons with parental responsibility (within the meaning of section 3 of the Children Act 1989(25)) agree; or
- (b) the court considers that their agreement can be dispensed with.

(3) The Official Solicitor's appointment may continue only until the child reaches 18.

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**Commencement Information**

**I154** [Rule 21.12](#) in force at 26.4.1999, see [Signature](#)

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## PART 22 E+W

### STATEMENTS OF TRUTH

#### Contents of this Part

Documents to be verified by a statement of truth	Rule 22.1
Failure to verify a statement of case	Rule 22.2
Failure to verify a witness statement	Rule 22.3
Power of the court to require a document to be verified	Rule 22.4

#### Documents to be verified by a statement of truth E+W

**22.1.**—<sup>[F72]</sup>(1) The following documents must be verified by a statement of truth—

- (a) a statement of case;
- (b) a response complying with an order under rule 18.1 to provide further information;
- (c) a witness statement;
- (d) an acknowledgement of service in a claim begun by way of the Part 8 procedure; and
- (e) a certificate stating the reasons for bringing a possession claim or a landlord and tenant claim in the High Court in accordance with rules 55.3(2) and 56.2(2).]

(2) Where a statement of case is amended, the amendments must be verified by a statement of truth unless the court orders otherwise.

(Part 17 provides for amendments to statements of case)

(3) If an applicant wishes to rely on matters set out in his application notice as evidence, the application notice must be verified by a statement of truth.

(4) Subject to paragraph (5), a statement of truth is a statement that—

- (a) the party putting forward the document; or
- (b) in the case of a witness statement, the maker of the witness statement,

believes the facts stated in the document are true.

(5) If a party is conducting proceedings with a litigation friend, the statement of truth in—

- (a) a statement of case;
- (b) a response; or
- (c) an application notice,

is a statement that the litigation friend believes the facts stated in the document being verified are true.

(6) The statement of truth must be signed by—

- (a) in the case of a statement of case, a response or an application—
  - (i) the party or litigation friend; or
  - (ii) the legal representative on behalf of the party or litigation friend; and
- (b) in the case of a witness statement, the maker of the statement.

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(7) A statement of truth which is not contained in the document which it verifies, must clearly identify that document.

- (8) A statement of truth in a statement of case may be made by—
- (a) a person who is not a party; or
  - (b) by two parties jointly,
- where this is permitted by a relevant practice direction.

**Textual Amendments**

**F72** Rule 22.1(1) substituted (15.10.2001) by [The Civil Procedure \(Amendment No. 3\) Rules 2001 \(S.I. 2001/1769\)](#), rules 1(b), 4

**Commencement Information**

**I155** Rule 22.1 in force at 26.4.1999, see [Signature](#)

**Failure to verify a statement of case** **E+W**

- 22.2.**—(1) If a party fails to verify his statement of case by a statement of truth—
- (a) the statement of case shall remain effective unless struck out; but
  - (b) the party may not rely on the statement of case as evidence of any of the matters set out in it.
- (2) The court may strike out<sup>(GL)</sup> a statement of case which is not verified by a statement of truth.
- (3) Any party may apply for an order under paragraph (2).

**Commencement Information**

**I156** Rule 22.2 in force at 26.4.1999, see [Signature](#)

**Failure to verify a witness statement** **E+W**

**22.3** If the maker of a witness statement fails to verify the witness statement by a statement of truth the court may direct that it shall not be admissible as evidence.

**Commencement Information**

**I157** Rule 22.3 in force at 26.4.1999, see [Signature](#)

**Power of the court to require a document to be verified** **E+W**

- 22.4.**—(1) The court may order a person who has failed to verify a document in accordance with rule 22.1 to verify the document.
- (2) Any party may apply for an order under paragraph (1).

**Commencement Information**

**I158** Rule 22.4 in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

## PART 23 **E+W**

### GENERAL RULES ABOUT APPLICATIONS FOR COURT ORDERS

#### Contents of this Part

Meaning of “application notice” and “respondent”	Rule 23.1
Where to make an application	Rule 23.2
Application notice to be filed	Rule 23.3
Notice of an application	Rule 23.4
Time when an application is made	Rule 23.5
What an application notice must include	Rule 23.6
Service of a copy of an application notice	Rule 23.7
Applications which may be dealt with without a hearing	Rule 23.8
Service of application where application made without notice	Rule 23.9
Application to set aside or vary order made without notice	Rule 23.10
Power of the court to proceed in the absence of a party	Rule 23.11

#### Meaning of “application notice” and “respondent” **E+W**

**23.1** In this Part—

“application notice” means a document in which the applicant states his intention to seek a court order; and

“respondent” means—

- (a) the person against whom the order is sought; and
- (b) such other person as the court may direct.

#### Commencement Information

**I159** Rule 23.1 in force at 26.4.1999, see [Signature](#)

#### Where to make an application **E+W**

**23.2.**—(1) The general rule is that an application must be made to the court where the claim was started.

(2) If a claim has been transferred to another court since it was started, an application must be made to the court to which the claim has been transferred.

(3) If the parties have been notified of a fixed date for the trial, an application must be made to the court where the trial is to take place.

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(4) If an application is made before a claim has been started, it must be made to the court where it is likely that the claim to which the application relates will be started unless there is good reason to make the application to a different court.

(5) If an application is made after proceedings to enforce judgment have begun, it must be made to any court which is dealing with the enforcement of the judgment unless any rule or practice direction provides otherwise.

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**Commencement Information**

**I160** Rule 23.2 in force at 26.4.1999, see [Signature](#)

**Application notice to be filed** **E+W**

**23.3.**—(1) The general rule is that an applicant must file an application notice.

(2) An applicant may make an application without filing an application notice if—

- (a) this is permitted by a rule or practice direction; or
- (b) the court dispenses with the requirement for an application notice.

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**Commencement Information**

**I161** Rule 23.3 in force at 26.4.1999, see [Signature](#)

**Notice of an application** **E+W**

**23.4.**—(1) The general rule is that a copy of the application notice must be served on each respondent.

(2) An application may be made without serving a copy of the application notice if this is permitted by—

- (a) a rule;
- (b) a practice direction; or
- (c) a court order.

(Rule 23.7 deals with service of a copy of the application notice)

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**Commencement Information**

**I162** Rule 23.4 in force at 26.4.1999, see [Signature](#)

**Time when an application is made** **E+W**

**23.5** Where an application must be made within a specified time, it is so made if the application notice is received by the court within that time.

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**Commencement Information**

**I163** Rule 23.5 in force at 26.4.1999, see [Signature](#)

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## What an application notice must include **E+W**

**23.6** An application notice must state—

- (a) what order the applicant is seeking; and
- (b) briefly, why the applicant is seeking the order.

(Part 22 requires an application notice to be verified by a statement of truth if the applicant wishes to rely on matters set out in his application notice as evidence)

### Commencement Information

**I164** [Rule 23.6](#) in force at 26.4.1999, see [Signature](#)

## Service of a copy of an application notice **E+W**

**23.7.**—(1) A copy of the application notice—

- (a) must be served as soon as practicable after it is filed; and
- (b) except where another time limit is specified in these Rules or a practice direction, must in any event be served at least 3 days before the court is to deal with the application.

(2) If a copy of the application notice is to be served by the court, the applicant must, when he files the application notice, file a copy of any written evidence in support.

(3) When a copy of an application notice is served it must be accompanied by—

- (a) a copy of any written evidence in support; and
- (b) a copy of any draft order which the applicant has attached to his application.

(4) If—

- (a) an application notice is served; but
- (b) the period of notice is shorter than the period required by these Rules or a practice direction,

the court may direct that, in the circumstances of the case, sufficient notice has been given and hear the application.

(5) This rule does not require written evidence—

- (a) to be filed if it has already been filed; or
- (b) to be served on a party on whom it has already been served.

(Part 6 contains the general rules about service of documents including who must serve a copy of the application notice)

### Commencement Information

**I165** [Rule 23.7](#) in force at 26.4.1999, see [Signature](#)

## Applications which may be dealt with without a hearing **E+W**

**23.8** The court may deal with an application without a hearing if—

- (a) the parties agree as to the terms of the order sought;
- (b) the parties agree that the court should dispose of the application without a hearing, or
- (c) the court does not consider that a hearing would be appropriate.



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**Commencement Information**

**I166** [Rule 23.8](#) in force at 26.4.1999, see [Signature](#)

**Service of application where application made without notice** **E+W**

**23.9.**—(1) This rule applies where the court has disposed of an application which it permitted to be made without service of a copy of the application notice.

(2) Where the court makes an order, whether granting or dismissing the application, a copy of the application notice and any evidence in support must, unless the court orders otherwise, be served with the order on any party or other person—

- (a) against whom the order was made; and
- (b) against whom the order was sought.

(3) The order must contain a statement of the right to make an application to set aside<sup>(GL)</sup> or vary the order under rule 23.10.

**Commencement Information**

**I167** [Rule 23.9](#) in force at 26.4.1999, see [Signature](#)

**Application to set aside or vary order made without notice** **E+W**

**23.10.**—<sup>[F73]</sup>(1) A person who was not served with a copy of the application notice before an order was made under rule 23.9 may apply to have the order set aside<sup>(gl)</sup> or varied.]

(2) An application under this rule must be made within 7 days after the date on which the order was served on the person making the application.

**Textual Amendments**

**F73** [Rule 23.10\(1\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [11](#)

**Commencement Information**

**I168** [Rule 23.10](#) in force at 26.4.1999, see [Signature](#)

**Power of the court to proceed in the absence of a party** **E+W**

**23.11.**—(1) Where the applicant or any respondent fails to attend the hearing of an application, the court may proceed in his absence.

(2) Where—

- (a) the applicant or any respondent fails to attend the hearing of an application; and
- (b) the court makes an order at the hearing,

the court may, on application or of its own initiative, re-list the application.

(Part 40 deals with service of orders)

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

### Commencement Information

**I169** Rule 23.11 in force at 26.4.1999, see [Signature](#)

## PART 24 **E+W**

### SUMMARY JUDGMENT

#### Contents of this Part

Scope of this Part	Rule 24.1
Grounds for summary judgment	Rule 24.2
Types of proceedings in which summary judgment is available	Rule 24.3
Procedure Rule 24.4	Rule 24.5
Evidence for the purposes of a summary judgment hearing	
Court's powers when it determines a summary judgment application	Rule 24.6

#### Scope of this Part **E+W**

**24.1** This Part sets out a procedure by which the court may decide a claim or a particular issue without a trial.

[<sup>F74</sup>(Part 53 makes special provision about summary disposal of defamation claims in accordance with the Defamation Act 1996)]

#### Textual Amendments

**F74** Words in rule 24.1 inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **12(a)**

#### Commencement Information

**I170** [Rule 24.1](#) in force at 26.4.1999, see [Signature](#)

#### Grounds for summary judgment **E+W**

**24.2** The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if—

- (a) it considers that—
  - (i) that claimant has no real prospect of succeeding on the claim or issue; or
  - (ii) that defendant has no real prospect of successfully defending the claim or issue; and
- (b) there is no other [<sup>F75</sup>compelling] reason why the case or issue should be disposed of at a trial.

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(Rule 3.4 makes provision for the court to strike out<sup>(GL)</sup> a statement of case or part of a statement of case if it appears that it discloses no reasonable grounds for bringing or defending a claim)

**Textual Amendments**

**F75** Word in rule 24.2(b) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **9** (with rule 39)

**Commencement Information**

**I171** [Rule 24.2](#) in force at 26.4.1999, see [Signature](#)

**Types of proceedings in which summary judgment is available** **E+W**

- 24.3.**—(1) The court may give summary judgment against a claimant in any type of proceedings.  
(2) The court may give summary judgment against a defendant in any type of proceedings except—
- <sup>F76</sup>(a) proceedings for possession of residential premises against—
    - (i) a mortgagor; or
    - (ii) a tenant or person holding over after the end of his tenancy, whose occupancy is protected within the meaning of the Rent Act 1977, or the Housing Act 1988; and
  - (b) proceedings for an admiralty claim in rem<sup>F77</sup>.<sup>F78</sup>...
  - <sup>F79</sup>(c) .....

**Textual Amendments**

**F76** [Rule 24.3\(2\)\(a\)](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **7(a)**  
**F77** [Rule 24.3\(2\)\(b\)](#): full stop substituted for semicolon (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **9(a)**  
**F78** Word in [rule 24.3\(2\)\(b\)](#) omitted (2.10.2000) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **9(a)**  
**F79** [Rule 24.3\(2\)\(c\)](#) omitted (2.10.2000) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **9(b)**

**Commencement Information**

**I172** [Rule 24.3](#) in force at 26.4.1999, see [Signature](#)

**Procedure** **E+W**

- 24.4.**—(1) A claimant may not apply for summary judgment until the defendant against whom the application is made has filed—
- (a) an acknowledgement of service; or
  - (b) a defence,
    - unless—
    - (i) the court gives permission; or
    - (ii) a practice direction provides otherwise.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
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(Rule 10.3 sets out the period for filing an acknowledgment of service and rule 15.4 the period for filing a defence)

(2) If a claimant applies for summary judgment before a defendant against whom the application is made has filed a defence, that defendant need not file a defence before the hearing.

(3) Where a summary judgment hearing is fixed, the respondent (or the parties where the hearing is fixed of the court's own initiative) must be given at least 14 days' notice of—

- (a) the date fixed for the hearing; and
- (b) the issues which it is proposed that the court will decide at the hearing.

[<sup>F80</sup>(4) A practice direction may provide for a different period of notice to be given.]

(Part 23 contains the general rules about how to make an application)

(Rule 3.3 applies where the court exercises its powers of its own initiative)

#### Textual Amendments

**F80** Rule 24.4(4) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **12(b)**

#### Commencement Information

**I173** Rule 24.4 in force at 26.4.1999, see [Signature](#)

### Evidence for the purposes of a summary judgment hearing **E+W**

**24.5.**—(1) If the respondent to an application for summary judgment wishes to rely on written evidence at the hearing, he must—

- (a) file the written evidence; and
- (b) serve copies on every other party to the application, at least 7 days before the summary judgment hearing.

(2) If the applicant wishes to rely on written evidence in reply, he must—

- (a) file the written evidence; and
- (b) serve a copy on the respondent,

at least 3 days before the summary judgment hearing.

(3) Where a summary judgment hearing is fixed by the court of its own initiative—

- (a) any party who wishes to rely on written evidence at the hearing must—
  - (i) file the written evidence; and
  - (ii) unless the court orders otherwise, serve copies on every other party to the proceedings,

at least 7 days before the date of the hearing;

- (b) any party who wishes to rely on written evidence at the hearing in reply to any other party's written evidence must—

- (i) file the written evidence in reply; and
- (ii) unless the court orders otherwise serve copies on every other party to the proceedings,

at least 3 days before the date of the hearing.

(4) This rule does not require written evidence—

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- (a) to be filed if it has already been filed; or
- (b) to be served on a party on whom it has already been served.

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**Commencement Information**

**I174** [Rule 24.5](#) in force at 26.4.1999, see [Signature](#)

**Court's powers when it determines a summary judgment application** **E+W**

**24.6** When the court determines a summary judgment application it may—

- (a) give directions as to the filing and service of a defence;
- (b) give further directions about the management of the case.

(Rule 3.1(3) provides that the court may attach conditions when it makes an order)

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**Commencement Information**

**I175** [Rule 24.6](#) in force at 26.4.1999, see [Signature](#)

**PART 25** **E+W**

**[<sup>F81</sup>INTERIM REMEDIES AND SECURITY FOR COSTS]**

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**Textual Amendments**

**F81** [Pt. 25](#) heading substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **13(1)**

**[<sup>F82</sup>Contents of this Part**

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**I INTERIM REMEDIES**

Orders for interim remedies	Rule 25.1
Time when an order for an interim may be made	Rule 25.2
How to apply for an interim remedy	Rule 25.3
Application for an interim remedy where there is no related claim	Rule 25.4
Inspection of property before commencement or against a non-party	Rule 25.5
Interim payments—general procedure	Rule 25.6
Interim payments—conditions to be satisfied and matters to be taken into account	Rule 25.7

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
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Powers of the court where it has made an order for interim payment	Rule 25.8
Restriction on disclosure of an interim payment	Rule 25.9
Interim injunction to cease if claim stayed	Rule 25.10
Interim injunction to cease after 14 days if claim struck out	Rule 25.11
<b>II SECURITY FOR COSTS</b>	Rule 25.12
Security for costs	
Conditions to be satisfied	Rule 25.13
Security for costs other than from the claimant	Rule 25.14
Security for costs of appeal]	Rule 25.15

### **[<sup>F83</sup> I INTERIM REMEDIES]**

#### **Textual Amendments**

**F83** Pt. 25 Section 1 heading inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), 13(2), [Sch. 3 Pt. 1](#)

#### **Orders for interim remedies** **E+W**

- 25.1.**—(1) The court may grant the following interim remedies—
- (a) an interim injunction<sup>(GL)</sup>;
  - (b) an interim declaration;
  - (c) an order—
    - (i) for the detention, custody or preservation of relevant property;
    - (ii) for the inspection of relevant property;
    - (iii) for the taking of a sample of relevant property;
    - (iv) for the carrying out of an experiment on or with relevant property;
    - (v) for the sale of relevant property which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and
    - (vi) for the payment of income from relevant property until a claim is decided;
  - (d) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (c);
  - (e) an order under section 4 of the Torts (Interference with Goods) Act 1977<sup>(26)</sup> to deliver up goods;
  - (f) an order (referred to as a “freezing injunction<sup>(GL)</sup>”)—
    - (i) restraining a party from removing from the jurisdiction assets located there; or

<sup>(26)</sup> 1977 c. 32; section 4 was amended by the Supreme Court Act 1981 (c. 54), section 152(1), Schedule 5; by the County Courts Act 1984 (c. 28), section 148(1), Schedule 2, Part V, paragraph 64 and by [S.I. 1980/397 \(N13\)](#).

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- (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;
- (g) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction<sup>(GL)</sup>;
- (h) an order (referred to as a “search order”) under section 7 of the Civil Procedure Act 1997<sup>(27)</sup> (order requiring a party to admit another party to premises for the purpose of preserving evidence etc.);
- (i) an order under section 33 of the Supreme Court Act 1981<sup>(28)</sup> or section 52 of the County Courts Act 1984<sup>(29)</sup> (order for disclosure of documents or inspection of property before a claim has been made);
- (j) an order under section 34 of the Supreme Court Act 1981<sup>(30)</sup> or section 53 of the County Courts Act 1984<sup>(31)</sup> (order in certain proceedings for disclosure of documents or inspection of property against a non-party);
- (k) an order (referred to as an order for interim payment) under rule 25.6 for payment by a defendant on account of any damages, debt or other sum (except costs) which the court may hold the defendant liable to pay;
- (l) an order for a specified fund to be paid into court or otherwise secured, where there is a dispute over a party’s right to the fund;
- (m) an order permitting a party seeking to recover personal property to pay money into court pending the outcome of the proceedings and directing that, if he does so, the property shall be given up to him; and
- (n) an order directing a party to prepare and file accounts relating to the dispute.

(Rule 34.2 provides for the court to issue a witness summons requiring a witness to produce documents to the court at the hearing or on such date as the court may direct)

(2) In paragraph (1)(c) and (g), “relevant property” means property (including land) which is the subject of a claim or as to which any question may arise on a claim.

(3) The fact that a particular kind of interim remedy is not listed in paragraph (1) does not affect any power that the court may have to grant that remedy.

(4) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.

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**Commencement Information**

**I176** [Rule 25.1](#) in force at 26.4.1999, see [Signature](#)

**Time when an order for an interim remedy may be made** **E+W**

**25.2.**—(1) An order for an interim remedy may be made at any time, including—

- (a) before proceedings are started; and

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(27) 1997 c. 12.

(28) 1981 c. 54. Section 33 was amended by [S.I. 1998/ 2940](#).

(29) 1984 c. 28. Section 52 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 43 and by [S.I. 1998/2940](#).

(30) 1981 c. 54. Section 34 was amended by [S.I. 1998/ 2940](#).

(31) 1984 c. 28. Section 53 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 44 and by [S.I. 1998/2940](#).

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(b) after judgment has been given.

(Rule 7.2 provides that proceedings are started when the court issues a claim form)

(2) However—

- (a) paragraph (1) is subject to any rule, practice direction or other enactment which provides otherwise;
- (b) the court may grant an interim remedy before a claim has been made only if—
  - (i) the matter is urgent; or
  - (ii) it is otherwise desirable to do so in the interests of justice; and
- (c) unless the court otherwise orders, a defendant may not apply for any of the orders listed in rule 25.1(1) before he has filed either an acknowledgement of service or a defence.

(Part 10 provides for filing an acknowledgment of service and Part 15 for filing a defence)

(3) Where the court grants an interim remedy before a claim has been commenced, it may give directions requiring a claim to be commenced.

(4) In particular, the court need not direct that a claim be commenced where the application is made under section 33 of the Supreme Court Act 1981 or section 52 of the County Courts Act 1984 (order for disclosure, inspection etc. before commencement of a claim).

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**Commencement Information**

**I177** [Rule 25.2](#) in force at 26.4.1999, see [Signature](#)

**How to apply for an interim remedy** **E+W**

**25.3.**—(1) The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.

(2) An application for an interim remedy must be supported by evidence, unless the court orders otherwise.

(3) If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given.

(Part 3 lists general powers of the court)

(Part 23 contains general rules about making an application)

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**Commencement Information**

**I178** [Rule 25.3](#) in force at 26.4.1999, see [Signature](#)

**Application for an interim remedy where there is no related claim** **E+W**

**25.4.**—(1) This rule applies where a party wishes to apply for an interim remedy but—

- (a) the remedy is sought in relation to proceedings which are taking place, or will take place, outside the jurisdiction; or
- (b) the application is made under section 33 of the Supreme Court Act 1981 or section 52 of the County Courts Act 1984 (order for disclosure, inspection etc. before commencement) before a claim has been commenced.



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(2) An application under this rule must be made in accordance with the general rules about applications contained in Part 23.

(The following provisions are also relevant—

- Rule 25.5 (inspection of property before commencement or against a non-party)
- Rule 31.16 (orders for disclosure of documents before proceedings start)
- Rule 31.17 (orders for disclosure of documents against a person not a party))

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**Commencement Information**

**I179** [Rule 25.4](#) in force at 26.4.1999, see [Signature](#)

**Inspection of property before commencement or against a non-party** **E+W**

**25.5.**—(1) This rule applies where a person makes an application under—

- (a) section 33(1) of the Supreme Court Act 1981 or section 52(1) of the County Courts Act 1984 (inspection etc. of property before commencement);
- (b) section 34(3) of the Supreme Court Act 1981 or section 53(3) of the County Courts Act 1984 (inspection etc. of property against a non-party).

(2) The evidence in support of such an application must show, if practicable by reference to any statement of case prepared in relation to the proceedings or anticipated proceedings, that the property—

- (a) is or may become the subject matter of such proceedings; or
- (b) is relevant to the issues that will arise in relation to such proceedings.

(3) A copy of the application notice and a copy of the evidence in support must be served on—

- (a) the person against whom the order is sought; and
- (b) in relation to an application under section 34(3) of the Supreme Court Act 1981 or section 53(3) of the County Courts Act 1984, every party to the proceedings other than the applicant.

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**Commencement Information**

**I180** [Rule 25.5](#) in force at 26.4.1999, see [Signature](#)

**Interim payments—general procedure** **E+W**

**25.6.**—(1) The claimant may not apply for an order for an interim payment before the end of the period for filing an acknowledgement of service applicable to the defendant against whom the application is made.

(Rule 10.3 sets out the period for filing an acknowledgement of service)

(Rule 25.1(1)(k) defines an interim payment)

**25.6.**—(2) The claimant may make more than one application for an order for an interim payment.

(3) A copy of an application notice for an order for an interim payment must—

- (a) be served at least 14 days before the hearing of the application; and
- (b) be supported by evidence.

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**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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(4) If the respondent to an application for an order for an interim payment wishes to rely on written evidence at the hearing, he must—

- (a) file the written evidence; and
- (b) serve copies on every other party to the application,

at least 7 days before the hearing of the application.

(5) If the applicant wishes to rely on written evidence in reply, he must—

- (a) file the written evidence; and
  - (b) serve a copy on the respondent,
- at least 3 days before the hearing of the application.

(6) This rule does not require written evidence—

- (a) to be filed if it has already been filed; or
- (b) to be served on a party on whom it has already been served.

(7) The court may order an interim payment in one sum or in instalments.

(Part 23 contains general rules about applications)

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#### Commencement Information

**1181** Rule 25.6 in force at 26.4.1999, see [Signature](#)

### Interim payments—conditions to be satisfied and matters to be taken into account **E+W**

**25.7.**—(1) The court may make an order for an interim payment only if—

- (a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;
- (b) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (other than costs) to be assessed;
- (c) except where paragraph (3) applies, it is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking an order for an interim payment; or
- (d) the following conditions are satisfied—
  - (i) the claimant is seeking an order for possession of land (whether or not any other order is also sought); and
  - (ii) the court is satisfied that, if the case went to trial, the defendant would be held liable (even if the claim for possession fails) to pay the claimant a sum of money for the defendant's occupation and use of the land while the claim for possession was pending.

(2) In addition, in a claim for personal injuries the court may make an order for an interim payment of damages only if—

- (a) the defendant is insured in respect of the claim;
- (b) the defendant's liability will be met by—
  - (i) an insurer under section 151 of the Road Traffic Act 1988<sup>(32)</sup>; or

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<sup>(32)</sup> 1988 c. 52. Section 151 was amended by the Road Traffic Act 1991 (c. 40), section 83, Schedule 8.

- (ii) an insurer acting under the Motor Insurers Bureau Agreement, or the Motor Insurers Bureau where it is acting itself; or
  - (c) the defendant is a public body.
- (3) In a claim for personal injuries where there are two or more defendants, the court may make an order for the interim payment of damages against any defendant if—
- (a) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for substantial damages against at least one of the defendants (even if the court has not yet determined which of them is liable); and
  - (b) paragraph (2) is satisfied in relation to each of the defendants.
- (4) The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.
- (5) The court must take into account—
- (a) contributory negligence; and
  - (b) any relevant set-off or counterclaim.

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#### **Commencement Information**

**I182** [Rule 25.7](#) in force at 26.4.1999, see [Signature](#)

#### **Powers of court where it has made an order for interim payment** **E+W**

**25.8.**—(1) Where a defendant has been ordered to make an interim payment, or has in fact made an interim payment (whether voluntarily or under an order), the court may make an order to adjust the interim payment.

- (2) The court may in particular—
  - (a) order all or part of the interim payment to be repaid;
  - (b) vary or discharge the order for the interim payment;
  - (c) order a defendant to reimburse, either wholly or partly, another defendant who has made an interim payment.
- (3) The court may make an order under paragraph (2)(c) only if—
  - (a) the defendant to be reimbursed made the interim payment in relation to a claim in respect of which he has made a claim against the other defendant for a contribution<sup>(GL)</sup>, indemnity<sup>(GL)</sup> or other remedy; and
  - (b) where the claim or part to which the interim payment relates has not been discontinued or disposed of, the circumstances are such that the court could make an order for interim payment under rule 25.7.
- (4) The court may make an order under this rule without an application by any party if it makes the order when it disposes of the claim or any part of it.
- (5) Where—
  - (a) a defendant has made an interim payment; and
  - (b) the amount of the payment is more than his total liability under the final judgment or order,the court may award him interest on the overpaid amount from the date when he made the interim payment.

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*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

#### Commencement Information

**I183** [Rule 25.8](#) in force at 26.4.1999, see [Signature](#)

#### Restriction on disclosure of an interim payment **E+W**

**25.9** The fact that a defendant has made an interim payment, whether voluntarily or by court order, shall not be disclosed to the trial judge until all questions of liability and the amount of money to be awarded have been decided unless the defendant agrees.

#### Commencement Information

**I184** [Rule 25.9](#) in force at 26.4.1999, see [Signature](#)

#### Interim injunction to cease if claim is stayed **E+W**

**25.10** If—

- (a) the court has granted an interim injunction<sup>(GL)</sup>; and
- (b) the claim is stayed<sup>(GL)</sup> other than by agreement between the parties, the interim injunction<sup>(GL)</sup> shall be set aside<sup>(GL)</sup> unless the court orders that it should continue to have effect even though the claim is stayed.

#### Commencement Information

**I185** [Rule 25.10](#) in force at 26.4.1999, see [Signature](#)

#### [<sup>F84</sup>Interim injunction to cease after 14 days if claim struck out **E+W**

**25.11.—(1)** If—

- (a) the court has granted an interim injunction<sup>(GL)</sup>; and
- (b) the claim is struck out under rule 3.7 (sanction for non-payment of certain fees),

the interim injunction shall cease to have effect 14 days after the date that the claim is struck out unless paragraph (2) applies.

(2) If the claimant applies to reinstate the claim before the interim injunction ceases to have effect under paragraph (1), the injunction shall continue until the hearing of the application unless the court orders otherwise.]

#### Textual Amendments

**F84** [Rule 25.11](#) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **8(b)**

## *r*<sup>F85</sup> II SECURITY FOR COSTS

### Textual Amendments

**F85** Pt. 25 Section 2 inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 3 Pt. 2](#)

### Security for costs **E+W**

**25.12.**—(1) A defendant to any claim may apply under this Section of this Part for security for his costs of the proceedings.

(Part 3 provides for the court to order payment of sums into court in other circumstances. Rule 20.3 provides for this Section of this Part to apply to Part 20 claims)

- (2) An application for security for costs must be supported by written evidence.
- (3) Where the court makes an order for security for costs, it will—
  - (a) determine the amount of security; and
  - (b) direct—
    - (i) the manner in which; and
    - (ii) the time within which the security must be given.

### Conditions to be satisfied **E+W**

- 25.13.**—(1) The court may make an order for security for costs under rule 25.12 if—
- (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
  - (b)
    - (i) one or more of the conditions in paragraph (2) applies, or
    - (ii) an enactment permits the court to require security for costs.
- (2) The conditions are—
- (a) the claimant is an individual—
    - (i) who is ordinarily resident out of the jurisdiction; and
    - (ii) is not a person against whom a claim can be enforced under the Brussels Conventions or the Lugano Convention, as defined by section 1(1) of the Civil Jurisdiction and Judgments Act 1982;
  - (b) the claimant is a company or other incorporated body—
    - (i) which is ordinarily resident out of the jurisdiction; and
    - (ii) is not a body against whom a claim can be enforced under the Brussels Conventions or the Lugano Convention;
  - (c) the claimant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
  - (d) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
  - (e) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;

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- (f) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 19, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;
- (g) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

(Rule 3.4 allows the court to strike out a statement of case and Part 24 for it to give summary judgment)

### Security for costs other than from the claimant **E+W**

**25.14.**—(1) The defendant may seek an order against someone other than the claimant, and the court may make an order for security for costs against that person if—

- (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
- (b) one or more of the conditions in paragraph (2) applies.

(2) The conditions are that the person—

- (a) has assigned the right to the claim to the claimant with a view to avoiding the possibility of a costs order being made against him; or
- (b) has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover in the proceedings; and

is a person against whom a costs order may be made.

(Rule 48.2 makes provision for costs orders against non-parties)

### Security for costs of an appeal **E+W**

**25.15.**—(1) The court may order security for costs of an appeal against—

- (a) an appellant;
- (b) a respondent who also appeals,

on the same grounds as it may order security for costs against a claimant under this Part.

(2) The court may also make an order under paragraph (1) where the appellant, or the respondent who also appeals, is a limited company and there is reason to believe it will be unable to pay the costs of the other parties to the appeal should its appeal be unsuccessful.]

## PART 26 **E+W**

### CASE MANAGEMENT—PRELIMINARY STAGE

#### Contents of this Part

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Scope of this Part	Rule 26.1
Automatic transfer	Rule 26.2
Allocation questionnaire	Rule 26.3
Stay to allow for settlement of the case	Rule 26.4
Allocation	Rule 26.5
Scope of each track	Rule 26.6

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
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General rule for allocation	Rule 26.7
Matters relevant to allocation to a track	Rule 26.8
Notice of allocation	Rule 26.9
Re-allocation	Rule 26.10

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### Scope of this Part **E+W**

**26.1.**—(1) This Part provides for—

- (a) the automatic transfer of some defended cases between courts; and
- (b) the allocation of defended cases to case management tracks.

(2) There are three tracks—

- (a) the small claims track;
- (b) the fast track; and
- (c) the multi-track.

(Rule 26.6 sets out the normal scope of each track. Part 27 makes provision for the small claims track. Part 28 makes provision for the fast track. Part 29 makes provision for the multi-track)

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#### Commencement Information

**1186** Rule 26.1 in force at 26.4.1999, see [Signature](#)

### Automatic transfer **E+W**

**26.2.**—(1) This rule applies to proceedings where—

- (a) the claim is for a specified amount of money;
- (b) the claim was commenced in a court which is not the defendant’s home court;
- (c) the claim has not been transferred to another defendant’s home court under rule 13.4 (application to set aside<sup>(GL)</sup> or vary default judgment—procedure) or rule 14.12 (admission—de termination of rate of payment by judge); and
- (d) the defendant is an individual.

(2) This rule does not apply where the claim was commenced in a specialist list<sup>(GL)</sup>.

(3) Where this rule applies, the court will transfer the proceedings to the defendant’s home court when a defence is filed, unless paragraph (4) applies.

(Rule 2.3 defines “defendant’s home court”)

(4) Where the claimant notifies the court under rule 15.10 or rule 14.5 that he wishes the proceedings to continue, the court will transfer the proceedings to the defendant’s home court when it receives that notification from the claimant.

(Rule 15.10 deals with a claimant’s notice where the defence is that money claimed has been paid)

(Rule 14.5 sets out the procedure where the defendant admits part of a claim for a specified amount of money)

(5) Where—

- (a) the claim is against two or more defendants with different home courts; and
- (b) the defendant whose defence is filed first is an individual,

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proceedings are to be transferred under this rule to the home court of that defendant.

(6) The time when a claim is automatically transferred under this rule may be varied by a practice direction in respect of claims issued by the Production Centre.

(Rule 7.10 makes provision for the Production Centre)

#### Commencement Information

**I187** [Rule 26.2](#) in force at 26.4.1999, see [Signature](#)

#### Allocation questionnaire **E+W**

**26.3.**—(1) When a defendant files a defence the court will serve an allocation questionnaire on each party unless—

- (a) rule 15.10 or rule 14.5 applies; or
- (b) the court dispenses with the need for a questionnaire.

(2) Where there are two or more defendants and at least one of them files a defence, the court will serve the allocation questionnaire under paragraph (1)—

- (a) when all the defendants have filed a defence; or
- (b) when the period for the filing of the last defence has expired,

whichever is the sooner.

(Rule 15.4 specifies the period for filing a defence)

(3) Where proceedings are automatically transferred to the defendant's home court under rule 26.2, the court in which the proceedings have been commenced will serve an allocation questionnaire before the proceedings are transferred.

(4) Where—

- (a) rule 15.10 or rule 14.5 applies; and
- (b) the proceedings are not automatically transferred to the defendant's home court under rule 26.2,

the court will serve an allocation questionnaire on each party when the claimant files a notice indicating that he wishes the proceedings to continue.

(5) The court may, on the application of the claimant, serve an allocation questionnaire earlier than it would otherwise serve it under this rule.

(6) Each party must file the completed allocation questionnaire no later than the date specified in it, which shall be at least 14 days after the date when it is deemed to be served on the party in question.

(7) The time when the court serves an allocation questionnaire under this rule may be varied by a practice direction in respect of claims issued by the Production Centre.

(Rule 7.10 makes provision for the Production Centre)

(Rule 6.7 specifies when a document is deemed to be served)

#### Commencement Information

**I188** [Rule 26.3](#) in force at 26.4.1999, see [Signature](#)



## Stay to allow for settlement of the case **E+W**

**26.4.**—(1) A party may, when filing the completed allocation questionnaire, make a written request for the proceedings to be stayed<sup>(GL)</sup> while the parties try to settle the case by alternative dispute resolution<sup>(GL)</sup> or other means.

(2) Where—

(a) all parties request a stay<sup>(GL)</sup> under paragraph (1); or

(b) the court, of its own initiative, considers that such a stay would be appropriate,

the court will direct that the proceedings be stayed for one month.

(3) The court may extend the stay<sup>(GL)</sup> until such date or for such specified period as it considers appropriate.

(4) Where the court stays<sup>(GL)</sup> the proceedings under this rule, the claimant must tell the court if a settlement is reached.

(5) If the claimant does not tell the court by the end of the period of the stay<sup>(GL)</sup> that a settlement has been reached, the court will give such directions as to the management of the case as it considers appropriate.

### Commencement Information

**I189** Rule 26.4 in force at 26.4.1999, see [Signature](#)

## Allocation **E+W**

**26.5.**—(1) The court will allocate the claim to a track—

(a) when every defendant has filed an allocation questionnaire, or

(b) when the period for filing the allocation questionnaires has expired,

whichever is the sooner, unless it has—

(i) stayed<sup>(GL)</sup> the proceedings under rule 26.4; or

(ii) dispensed with the need for allocation questionnaires.

(Rules 12.7 and 14.8 provide for the court to allocate a claim to a track where the claimant obtains default judgment on request or judgment on admission for an amount to be decided by the court)

(2) If the court has stayed<sup>(GL)</sup> the proceedings under rule 26.4, it will allocate the claim to a track at the end of the period of the stay.

(3) Before deciding the track to which to allocate proceedings or deciding whether to give directions for an allocation hearing to be fixed, the court may order a party to provide further information about his case.

(4) The court may hold an allocation hearing if it thinks it is necessary.

(5) If a party fails to file an allocation questionnaire, the court may give any direction it considers appropriate.

### Commencement Information

**I190** Rule 26.5 in force at 26.4.1999, see [Signature](#)

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## Scope of each track **E+W**

**26.6.**—(1) The small claims track is the normal track for—

- (a) any claim for personal injuries where—
  - (i) the financial value of the claim is not more than £5,000; and
  - (ii) the financial value of any claim for damages for personal injuries is not more than £1,000;
- (b) any claim which includes a claim by a tenant of residential premises against his landlord where—
  - (i) the tenant is seeking an order requiring the landlord to carry out repairs or other work to the premises (whether or not the tenant is also seeking some other remedy);
  - (ii) the cost of the repairs or other work to the premises is estimated to be not more than £1,000; and
  - (iii) the financial value of any other claim for damages is not more than £1,000.

(Rule 2.3 defines “claim for personal injuries” as proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person’s death)

(2) For the purposes of paragraph (1) “damages for personal injuries” means damages claimed as compensation for pain, suffering and loss of amenity and does not include any other damages which are claimed.

(3) Subject to paragraph (1), the small claims track is the normal track for any claim which has a financial value of not more than £5,000.

(Rule 26.7(4) provides that the court will not allocate to the small claims track certain claims in respect of harassment or unlawful eviction)

(4) Subject to paragraph (5), the fast track is the normal track for any claim—

- (a) for which the small claims track is not the normal track; and
- (b) which has a financial value of not more than £15,000.

(5) The fast track is the normal track for the claims referred to in paragraph (4) only if the court considers that—

- (a) the trial is likely to last for no longer than one day; and
- (b) oral expert evidence at trial will be limited to—
  - (i) one expert per party in relation to any expert field; and
  - (ii) expert evidence in two expert fields.

(6) The multi-track is the normal track for any claim for which the small claims track or the fast track is not the normal track.

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### Commencement Information

**I191** [Rule 26.6](#) in force at 26.4.1999, see [Signature](#)

## General rule for allocation **E+W**

**26.7.**—(1) In considering whether to allocate a claim to the normal track for that claim under rule 26.6, the court will have regard to the matters mentioned in rule 26.8(1).

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(2) The court will allocate a claim which has no financial value to the track which it considers most suitable having regard to the matters mentioned in rule 26.8(1).

(3) The court will not allocate proceedings to a track if the financial value of [<sup>F86</sup>the] claim <sup>F87</sup> ..., assessed by the court under rule 26.8, exceeds the limit for that track unless all the parties consent to the allocation of the claim to that track.

(4) The court will not allocate a claim to the small claims track, if it includes a claim by a tenant of residential premises against his landlord for a remedy in respect of harassment or unlawful eviction.

#### Textual Amendments

**F86** Word in rule 26.7(3) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **14(a)**

**F87** Words in rule 26.7(3) omitted (2.5.2000) by virtue of [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **14(b)**

#### Commencement Information

**I192** [Rule 26.7](#) in force at 26.4.1999, see [Signature](#)

### Matters relevant to allocation to a track **E+W**

**26.8.**—(1) When deciding the track for a claim, the matters to which the court shall have regard include—

- (a) the financial value, if any, of the claim;
  - (b) the nature of the remedy sought;
  - (c) the likely complexity of the facts, law or evidence;
  - (d) the number of parties or likely parties;
  - (e) the value of any counterclaim or other Part 20 claim and the complexity of any matters relating to it;
  - (f) the amount of oral evidence which may be required;
  - (g) the importance of the claim to persons who are not parties to the proceedings;
  - (h) the views expressed by the parties; and
  - (i) the circumstances of the parties.
- (2) It is for the court to assess the financial value of a claim and in doing so it will disregard—
- (a) any amount not in dispute;
  - (b) any claim for interest;
  - (c) costs; and
  - (d) any contributory negligence.
- (3) Where—
- (a) two or more claimants have started a claim against the same defendant using the same claim form; and
  - (b) each claimant has a claim against the defendant separate from the other claimants,

the court will consider the claim of each claimant separately when it assesses financial value under paragraph (1).

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#### Commencement Information

**I193** [Rule 26.8](#) in force at 26.4.1999, see [Signature](#)

#### Notice of allocation **E+W**

**26.9.**—(1) When it has allocated a claim to a track, the court will serve notice of allocation on every party.

(2) When the court serves notice of allocation on a party, it will also serve—

- (a) a copy of the allocation questionnaires filed by the other parties; and
- (b) a copy of any further information provided by another party about his case (whether by order or not).

(Rule 26.5 provides that the court may, before allocating proceedings, order a party to provide further information about his case)

#### Commencement Information

**I194** [Rule 26.9](#) in force at 26.4.1999, see [Signature](#)

#### Re-allocation **E+W**

**26.10** The court may subsequently re-allocate a claim to a different track.

#### Commencement Information

**I195** [Rule 26.10](#) in force at 26.4.1999, see [Signature](#)

#### <sup>F88</sup> Trial with a jury **E+W**

**26.11** An application for a claim to be tried with a jury must be made within 28 days of service of the defence.

(Section 69 of the Supreme Court Act 1981 and section 66 of the County Courts Act 1984 specify when a claim may be tried with a jury)]

#### Textual Amendments

**F88** [Rule 26.11](#) inserted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **10**

## PART 27 **E+W**

### THE SMALL CLAIMS TRACK

#### Contents of this Part

Scope of this Part

Rule 27.1

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Extent to which other Parts apply	Rule 27.2
Court's power to grant a final remedy	Rule 27.3
Preparation for the hearing	Rule 27.4
Experts	Rule 27.5
Preliminary hearing	Rule 27.6
Power of court to add to, vary or revoke directions	Rule 27.7
Conduct of the hearing	Rule 27.8
Non-attendance of parties at a final hearing	Rule 27.9
Disposal without a hearing	Rule 27.10
Setting judgment aside and re-hearing	Rule 27.11
Right of appeal under Part 27	Rule 27.12
Procedure for making an appeal	Rule 27.13
Costs on the small claims track	Rule 27.14
Claim re-allocated from the small claims track to another track	Rule 27.15

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### Scope of this Part **E+W**

**27.1.**—(1) This Part—

- (a) sets out the special procedure for dealing with claims which have been allocated to the small claims track under Part 26; and
- (b) limits the amount of costs that can be recovered in respect of a claim which has been allocated to the small claims track.

(Rule 27.14 deals with costs on the small claims track)

(2) A claim being dealt with under this Part is called a small claim.

(Rule 26.6 provides for the scope of the small claims track. A claim for a remedy for harassment or unlawful eviction relating, in either case, to residential premises shall not be allocated to the small claims track whatever the financial value of the claim.

Otherwise, the small claims track will be the normal track for—

- any claim which has a financial value of not more than £5,000 subject to the special provisions about claims for personal injuries and housing disrepair claims;
- any claim for personal injuries which has a financial value of not more than £5,000 where the claim for damages for personal injuries is not more than £1,000; and
- any claim which includes a claim by a tenant of residential premises against his landlord for repairs or other work to the premises where the estimated cost of the repairs or other work is not more than £1,000 and the financial value of any claim for damages in respect of those repairs or other work is not more than £1,000)

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#### Commencement Information

**1196** [Rule 27.1](#) in force at 26.4.1999, see [Signature](#)

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

### Extent to which other Parts apply **E+W**

**27.2.**—(1) The following Parts of these Rules do not apply to small claims—

- (a) Part 25 (interim remedies) except as it relates to interim injunctions<sup>(GL)</sup>;
- (b) Part 31 (disclosure and inspection);
- (c) Part 32 (evidence) except rule 32.1 (power of court to control evidence);
- (d) Part 33 (miscellaneous rules about evidence);
- (e) Part 35 (experts and assessors) except rules 35.1 (duty to restrict expert evidence), 35.3 (experts—overriding duty to the court) [<sup>F89</sup>, 35.7 (court’s power to direct that evidence is to be given by single joint expert)] and 35.8 (instructions to a single joint expert);
- (f) Part 18 (further information);
- (g) Part 36 (offers to settle and payments into court); and
- (h) Part 39 (hearings) except rule 39.2 (general rule—hearing to be in public).

(2) The other Parts of these Rules apply to small claims except to the extent that a rule limits such application.

#### Textual Amendments

**F89** Words in [rule 27.2\(1\)\(e\)](#) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [15](#)

#### Commencement Information

**I197** [Rule 27.2](#) in force at 26.4.1999, see [Signature](#)

### Court’s power to grant a final remedy **E+W**

**27.3** The court may grant any final remedy in relation to a small claim which it could grant if the proceedings were on the fast track or the multi-track.

#### Commencement Information

**I198** [Rule 27.3](#) in force at 26.4.1999, see [Signature](#)

### Preparation for the hearing **E+W**

**27.4.**—(1) After allocation the court will—

- (a) give standard directions and fix a date for the final hearing;
- (b) give special directions and fix a date for the final hearing;
- (c) give special directions and direct that the court will consider what further directions are to be given no later than 28 days after the date the special directions were given;
- (d) fix a date for a preliminary hearing under [rule 27.6](#); or
- (e) give notice that it proposes to deal with the claim without a hearing under [rule 27.10](#) and invite the parties to notify the court by a specified date if they agree the proposal.

(2) The court will—

- (a) give the parties at least 21 days’ notice of the date fixed for the final hearing, unless the parties agree to accept less notice; and

- (b) inform them of the amount of time allowed for the final hearing.
- (3) In this rule
  - (a) “standard directions” means—
    - (i) a direction that each party shall, at least 14 days before the date fixed for the final hearing, file and serve on every other party copies of all documents (including any expert’s report) on which he intends to rely at the hearing; and
    - (ii) any other standard directions set out in the relevant practice direction; and
  - (b) “special directions” means directions given in addition to or instead of the standard directions.

**Commencement Information**

**I199** [Rule 27.4](#) in force at 26.4.1999, see [Signature](#)

**Experts** **E+W**

**27.5** No expert may give evidence, whether written or oral, at a hearing without the permission of the court.

(Rule 27.14(3)(d) provides for the payment of an expert’s fees)

**Commencement Information**

**I200** [Rule 27.5](#) in force at 26.4.1999, see [Signature](#)

**Preliminary hearing** **E+W**

- 27.6.**—(1) The court may hold a preliminary hearing for the consideration of the claim, but only—
- (a) where—
    - (i) it considers that special directions, as defined in rule 27.4, are needed to ensure a fair hearing; and
    - (ii) it appears necessary for a party to attend at court to ensure that he understands what he must do to comply with the special directions; or
  - (b) to enable it to dispose of the claim on the basis that one or other of the parties has no real prospect of success at a final hearing; or
  - (c) to enable it to strike out<sup>(GL)</sup> a statement of case or part of a statement of case on the basis that the statement of case, or the part to be struck out, discloses no reasonable grounds for bringing or defending the claim.
- (2) When considering whether or not to hold a preliminary hearing, the court must have regard to the desirability of limiting the expense to the parties of attending court.
- (3) Where the court decides to hold a preliminary hearing, it will give the parties at least 14 days’ notice of the date of the hearing.
- (4) The court may treat the preliminary hearing as the final hearing of the claim if all the parties agree.
- (5) At or after the preliminary hearing the court will—
- (a) fix the date of the final hearing (if it has not been fixed already) and give the parties at least 21 days’ notice of the date fixed unless the parties agree to accept less notice;

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*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

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- (b) inform them of the amount of time allowed for the final hearing; and
- (c) give any appropriate directions.

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**Commencement Information**

**I201** [Rule 27.6](#) in force at 26.4.1999, see [Signature](#)

**Power of court to add to, vary or revoke directions** **E+W**

**27.7** The court may add to, vary or revoke directions.

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**Commencement Information**

**I202** [Rule 27.7](#) in force at 26.4.1999, see [Signature](#)

**Conduct of the hearing** **E+W**

- 27.8.**—(1) The court may adopt any method of proceeding at a hearing that it considers to be fair.
- (2) Hearings will be informal.
  - (3) The strict rules of evidence do not apply.
  - (4) The court need not take evidence on oath.
  - (5) The court may limit cross-examination<sup>(GL)</sup>.
  - (6) The court must give reasons for its decision.

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**Commencement Information**

**I203** [Rule 27.8](#) in force at 26.4.1999, see [Signature](#)

**Non-attendance of parties at a final hearing** **E+W**

- 27.9.**—(1) If a party who does not attend a final hearing—
- (a) has given the court written notice at least 7 days before the date of the hearing that he will not attend; and
  - (b) has, in that notice, requested the court to decide the claim in his absence,
- the court will take into account that party's statement of case and any other documents he has filed when it decides the claim.
- (2) If a claimant does not—
    - (a) attend the hearing; and
    - (b) give the notice referred to in paragraph (1)the court may strike out<sup>(GL)</sup> the claim.
  - (3) If—
    - (a) a defendant does not
      - (i) attend the hearing; or
      - (ii) give the notice referred to in paragraph (1); and



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(b) the claimant either—

(i) does attend the hearing; or

(ii) gives the notice referred to in paragraph (1),

the court may decide the claim on the basis of the evidence of the claimant alone.

(4) If neither party attends or gives the notice referred to in paragraph (1), the court may strike out<sup>(GL)</sup> the claim and any defence and counterclaim.

**Commencement Information**

**I204** [Rule 27.9](#) in force at 26.4.1999, see [Signature](#)

**Disposal without a hearing** **E+W**

**27.10** The court may, if all parties agree, deal with the claim without a hearing.

**Commencement Information**

**I205** [Rule 27.10](#) in force at 26.4.1999, see [Signature](#)

**Setting judgment aside and re-hearing** **E+W**

**27.11.**—(1) A party—

(a) who was neither present nor represented at the hearing of the claim; and

(b) who has not given written notice to the court under rule 27.9(1),

may apply for an order that a judgment under this Part shall be set aside<sup>(GL)</sup> and the claim re-heard.

(2) A party who applies for an order setting aside a judgment under this rule must make the application not more than 14 days after the day on which notice of the judgment was served on him.

(3) The court may grant an application under paragraph (2) only if the applicant—

(a) had a good reason for not attending or being represented at the hearing or giving written notice to the court under rule 27.9(1); and

(b) has a reasonable prospect of success at the hearing.

(4) If a judgment is set aside<sup>(GL)</sup>—

(a) the court must fix a new hearing for the claim; and

(b) the hearing may take place immediately after the hearing of the application to set the judgment aside and may be dealt with by the judge who set aside<sup>(GL)</sup> the judgment.

(5) A party may not apply to set aside<sup>(GL)</sup> a judgment under this rule if the court dealt with the claim without a hearing under rule 27.10.

**Commencement Information**

**I206** [Rule 27.11](#) in force at 26.4.1999, see [Signature](#)

**Right of appeal under Part 27** **E+W**

<sup>F90</sup>**27.12** .....

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

**Textual Amendments**

**F90** Rule 27.12 revoked (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **11** (with rule 29)

**Procedure for making an appeal** **E+W**

<sup>F91</sup>**27.13** .....

**Textual Amendments**

**F91** Rule 27.13 revoked (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **11** (with rule 29)

**Costs on the small claims track** **E+W**

**27.14.**—(1) This rule applies to any case which has been allocated to the small claims track unless paragraph (5) applies.

(Rules 44.9 and 44.11 make provision in relation to orders for costs made before a claim has been allocated to the small claims track)

(2) The court may not order a party to pay a sum to another party in respect of that other party’s costs except—

- [<sup>F92</sup>(a) the fixed costs attributable to issuing the claim which—
  - (i) are payable under Part 45; or
  - (ii) would be payable under Part 45 if that Part applied to the claim;]
- (b) in proceedings which included a claim for an injunction<sup>(GL)</sup> or an order for specific performance a sum not exceeding the amount specified in the relevant practice direction for legal advice and assistance relating to that claim;
- (c) costs assessed by the summary procedure in relation to an appeal <sup>F93</sup>...; and
- (d) such further costs as the court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably.

(3) The court may also order a party to pay all or part of—

- (a) any court fees paid by another party;
- (b) expenses which a party or witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing;
- (c) a sum not exceeding the amount specified in the relevant practice direction for any loss of earnings by a party or witness due to attending a hearing or to staying away from home for the purpose of attending a hearing; and
- (d) a sum not exceeding the amount specified in the relevant practice direction for an expert’s fees.

(4) The limits on costs imposed by this rule also apply to any fee or reward for acting on behalf of a party to the proceedings charged by a person exercising a right of audience by virtue of an order under section 11 of the Courts and Legal Services Act 1990**(33)** (a lay representative).

(33) 1990 c. 41.

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(5) Where—

(a) the financial value of a claim exceeds the limit for the small claims track; but

(b) the claim has been allocated to the small claims track in accordance with rule 26.7(3),

the claim shall be treated, for the purposes of costs, as if it were proceeding on the fast track except that trial costs shall be in the discretion of the court and shall not exceed the amount set out for the value of the claim in rule 46.2 (amount of fast track trial costs).

(Rule 26.7(3) allows the parties to consent to a claim being allocated to a track where the financial value of the claim exceeds the limit for that track)

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#### Textual Amendments

**F92** Rule 27.14(2)(a) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **9**

**F93** Words in rule 27.14(2)(c) omitted (2.10.2000) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **12**

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#### Commencement Information

**I207** Rule 27.14 in force at 26.4.1999, see [Signature](#)

### Claim re-allocated from the small claims track to another track **E+W**

**27.15** Where a claim is allocated to the small claims track and subsequently re-allocated to another track, rule 27.14 (costs on the small claims track) will cease to apply after the claim has been re-allocated and the fast track or multi-track costs rules will apply from the date of re-allocation.

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#### Commencement Information

**I208** Rule 27.15 in force at 26.4.1999, see [Signature](#)

## PART 28 **E+W**

### THE FAST TRACK

#### Contents of this Part

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Scope of this Part	Rule 28.1
General provisions	Rule 28.2
Directions	Rule 28.3
Variation of case management timetable	Rule 28.4
Listing questionnaire	Rule 28.5
Fixing or confirming the trial date and giving directions	Rule 28.6
Conduct of trial	Rule 28.7

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

## Scope of this Part **E+W**

**28.1** This Part contains general provisions about management of cases allocated to the fast track and applies only to cases allocated to that track.

(Part 27 sets out the procedure for claims allocated to the small claims track)

(Part 29 sets out the procedure for claims allocated to the multi-track)

### Commencement Information

**I209** [Rule 28.1](#) in force at 26.4.1999, see [Signature](#)

## General provisions **E+W**

**28.2.**—(1) When it allocates a case to the fast track, the court will give directions for the management of the case and set a timetable for the steps to be taken between the giving of the directions and the trial.

(2) When it gives directions, the court will—

(a) fix the trial date; or

(b) fix a period, not exceeding 3 weeks, within which the trial is to take place.

(3) The trial date or trial period will be specified in the notice of allocation.

(4) The standard period between the giving of directions and the trial will be not more than 30 weeks.

(5) The court's power to award trial costs is limited in accordance with Part 46.

### Commencement Information

**I210** [Rule 28.2](#) in force at 26.4.1999, see [Signature](#)

## Directions **E+W**

**28.3.**—(1) The matters to be dealt with by directions under rule 28.2(1) include—

(a) disclosure of documents;

(b) service of witness statements; and

(c) expert evidence.

(2) If the court decides not to direct standard disclosure, it may—

(a) direct that no disclosure take place; or

(b) specify the documents or the classes of documents which the parties must disclose.

(Rule 31.6 explains what is meant by standard disclosure)

(Rule 26.6(5) deals with limitations in relation to expert evidence and the likely length of trial in fast track cases)

### Commencement Information

**I211** [Rule 28.3](#) in force at 26.4.1999, see [Signature](#)

### Variation of case management timetable **E+W**

**28.4.**—(1) A party must apply to the court if he wishes to vary the date which the court has fixed for—

- (a) the return of a listing questionnaire under rule 28.5;
- (b) the trial; or
- (c) the trial period.

(2) Any date set by the court or these Rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

(Rule 2.11 allows the parties to vary a date by written agreement except where the rules provide otherwise or the court orders otherwise)

#### Commencement Information

**I212** [Rule 28.4](#) in force at 26.4.1999, see [Signature](#)

### Listing questionnaire **E+W**

**28.5.**—(1) The court will send the parties a listing questionnaire for completion and return by the date specified in the notice of allocation unless it considers that the claim can be listed for trial without the need for a listing questionnaire.

(2) The date specified for filing a listing questionnaire will not be more than 8 weeks before the trial date or the beginning of the trial period.

(3) If—

- (a) a party fails to file the completed questionnaire by the date specified;
- (b) a party has failed to give all the information requested by the listing questionnaire; or
- (c) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete preparation of the case for trial,

the court may fix a listing hearing or give such other directions as it thinks appropriate.

#### Commencement Information

**I213** [Rule 28.5](#) in force at 26.4.1999, see [Signature](#)

### Fixing or confirming the trial date and giving directions **E+W**

**28.6.**—(1) As soon as practicable after the date specified for filing a completed listing questionnaire the court will—

- (a) fix the date for the trial (or, if it has already done so, confirm that date);
- (b) give any directions for the trial, including a trial timetable, which it considers appropriate; and
- (c) specify any further steps that need to be taken before trial.

(2) The court will give the parties at least 3 weeks' notice of the date of the trial unless, in exceptional circumstances, the court directs that shorter notice will be given.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

#### Commencement Information

**I214** [Rule 28.6](#) in force at 26.4.1999, see [Signature](#)

#### Conduct of trial **E+W**

**28.7** Unless the trial judge otherwise directs, the trial will be conducted in accordance with any order previously made.

#### Commencement Information

**I215** [Rule 28.7](#) in force at 26.4.1999, see [Signature](#)

## PART 29 **E+W**

### THE MULTI-TRACK

#### Modifications etc. (not altering text)

**C6** [Pt. 29](#) excluded (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, [6.33\(2\)](#)

#### Contents of this Part

Scope of this Part	Rule 29.1
Case management	Rule 29.2
Case management conference and pre-trial review	Rule 29.3
Steps taken by the parties	Rule 29.4
Variation of case management timetable	Rule 29.5
Listing questionnaire	Rule 29.6
Pre-trial review	Rule 29.7
Setting a trial timetable and fixing or confirming the trial date or week	Rule 29.8
Conduct of the trial	Rule 29.9

#### Scope of this Part **E+W**

**29.1** This Part contains general provisions about management of cases allocated to the multi-track and applies only to cases allocated to that track.

(Part 27 sets out the procedure for claims allocated to the small claims track)

(Part 28 sets out the procedure for claims allocated to the fast track)

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

**Commencement Information**

I216 [Rule 29.1](#) in force at 26.4.1999, see [Signature](#)

**Case management** **E+W**

- 29.2.**—(1) When it allocates a case to the multi-track, the court will—
- (a) give directions for the management of the case and set a timetable for the steps to be taken between the giving of directions and the trial; or
  - (b) fix—
    - (i) a case management conference; or
    - (ii) a pre-trial review,or both, and give such other directions relating to the management of the case as it sees fit.
- (2) The court will fix the trial date or the period in which the trial is to take place as soon as practicable.
- (3) When the court fixes the trial date or the trial period under paragraph (2), it will—
- (a) give notice to the parties of the date or period; and
  - (b) specify the date by which the parties must file a listing questionnaire.

**Commencement Information**

I217 [Rule 29.2](#) in force at 26.4.1999, see [Signature](#)

**Case management conference and pre-trial review** **E+W**

- 29.3.**—(1) The court may fix—
- (a) a case management conference; or
  - (b) a pre-trial review,
- at any time after the claim has been allocated.
- (2) If a party has a legal representative, a representative—
- (a) familiar with the case; and
  - (b) with sufficient authority to deal with any issues that are likely to arise, must attend case management conferences and pre-trial reviews.
- (Rule 3.1(2)(c) provides that the court may require a party to attend the court)

**Commencement Information**

I218 [Rule 29.3](#) in force at 26.4.1999, see [Signature](#)

**Steps taken by the parties** **E+W**

- 29.4** If—
- (a) the parties agree proposals for the management of the proceedings (including a proposed trial date or period in which the trial is to take place); and

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(b) the court considers that the proposals are suitable,  
it may approve them without a hearing and give directions in the terms proposed.

#### Commencement Information

I219 Rule 29.4 in force at 26.4.1999, see [Signature](#)

#### Variation of case management timetable **E+W**

**29.5.**—(1) A party must apply to the court if he wishes to vary the date which the court has fixed for—

- (a) a case management conference;
- (b) a pre-trial review;
- (c) the return of a listing questionnaire under rule 29.6;
- (d) the trial; or
- (e) the trial period.

(2) Any date set by the court or these Rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

(Rule 2.11 allows the parties to vary a date by written agreement except where the rules provide otherwise or the court orders otherwise)

#### Commencement Information

I220 Rule 29.5 in force at 26.4.1999, see [Signature](#)

#### Listing questionnaire **E+W**

**29.6.**—(1) The court will send the parties a listing questionnaire for completion and return by the date specified in directions given under rule 29.2(3) unless it considers that the claim can be listed for trial without the need for a listing questionnaire.

- (2) Each party must file the completed listing questionnaire by the date specified by the court.
- (3) If—
  - (a) a party fails to file the completed questionnaire by the date specified;
  - (b) a party has failed to give all the information requested by the listing questionnaire; or
  - (c) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete preparation of the case for trial,

the court may fix a date for a listing hearing or give such other directions as it thinks appropriate.

#### Commencement Information

I221 Rule 29.6 in force at 26.4.1999, see [Signature](#)

#### Pre-trial review **E+W**

**29.7** If, on receipt of the parties' listing questionnaires, the court decides—



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- (a) to hold a pre-trial review; or
- (b) to cancel a pre-trial review which has already been fixed,

it will serve notice of its decision at least 7 days before the date fixed for the hearing or, as the case may be, the cancelled hearing.

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**Commencement Information**

**I222** [Rule 29.7](#) in force at 26.4.1999, see [Signature](#)

**Setting a trial timetable and fixing or confirming the trial date or week** **E+W**

**29.8** As soon as practicable after—

- (a) each party has filed a completed listing questionnaire;
- (b) the court has held a listing hearing under rule 29.6(3); or
- (c) the court has held a pre-trial review under rule 29.7,

the court will—

- (i) set a timetable for the trial unless a timetable has already been fixed, or the court considers that it would be inappropriate to do so;
- (ii) fix the date for the trial or the week within which the trial is to begin (or, if it has already done so, confirm that date); and
- (iii) notify the parties of the trial timetable (where one is fixed under this rule) and the date or trial period.

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**Commencement Information**

**I223** [Rule 29.8](#) in force at 26.4.1999, see [Signature](#)

**Conduct of trial** **E+W**

**29.9** Unless the trial judge otherwise directs, the trial will be conducted in accordance with any order previously made.

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**Commencement Information**

**I224** [Rule 29.9](#) in force at 26.4.1999, see [Signature](#)

**PART 30** **E+W**

**TRANSFER**

**Contents of this Part**

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Scope of this Part	Rule 30.1
Transfer between county courts and within the High Court	Rule 30.2

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Criteria for a transfer order	Rule 30.3
Procedure	Rule 30.4
Transfer between Divisions and to and from a specialist list	Rule 30.5
Power to specify place where hearings are to be held	Rule 30.6
Transfer of control of money in court	Rule 30.7
Certiorari or prohibition	Rule 30.8

### Scope of this Part **E+W**

**30.1** This Part deals with the transfer of proceedings between county courts, between the High Court and the county courts and within the High Court.

(Rule 26.2 provides for automatic transfer in certain cases)

#### Commencement Information

**I225** Rule 30.1 in force at 26.4.1999, see [Signature](#)

### Transfer between county courts and within the High Court **E+W**

**30.2.**—(1) A county court may order proceedings before that court, or any part of them (such as a counterclaim or an application made in the proceedings), to be transferred to another county court if it is satisfied that—

- (a) an order should be made having regard to the criteria in rule 30.3; or
- (b) proceedings for
  - (i) the detailed assessment of costs; or
  - (ii) the enforcement of a judgment or order,
 could be more conveniently or fairly taken in that other county court.

(2) If proceedings have been started in the wrong county court, a judge of the county court may order that the proceedings—

- (a) be transferred to the county court in which they ought to have been started;
- (b) continue in the county court in which they have been started; or
- (c) be struck out.

(3) An application for an order under paragraph (1) or (2) must be made to the county court where the claim is proceeding.

(4) The High Court may, having regard to the criteria in rule 30.3, order proceedings in the Royal Courts of Justice or a district registry, or any part of such proceedings (such as a counterclaim or an application made in the proceedings), to be transferred—

- (a) from the Royal Courts of Justice to a district registry; or
- (b) from a district registry to the Royal Courts of Justice or to another district registry.

(5) A district registry may order proceedings before it for the detailed assessment of costs to be transferred to another district registry if it is satisfied that the proceedings could be more conveniently or fairly taken in that other district registry.

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(6) An application for an order under paragraph (4) or (5) must, if the claim is proceeding in a district registry, be made to that registry.

(7) Where some enactment, other than these Rules, requires proceedings to be started in a particular county court, neither paragraphs (1) nor (2) give the court power to order proceedings to be transferred to a county court which is not the court in which they should have been started or to order them to continue in the wrong court.

(8) Probate proceedings may only be transferred under paragraph (4) to the Chancery Division at the Royal Courts of Justice or to one of the Chancery district registries.

#### Commencement Information

**I226** Rule 30.2 in force at 26.4.1999, see [Signature](#)

#### Criteria for a transfer order **E+W**

**30.3.**—(1) Paragraph (2) sets out the matters to which the court must have regard when considering whether to make an order under—

- (a) s.40(2), 41(1) or 42(2) of the County Courts Act 1984<sup>(34)</sup> (transfer between the High Court and a county court);
- (b) rule 30.2(1) (transfer between county courts); or
- (c) rule 30.2(4) (transfer between the Royal Courts of Justice and the district registries).

(2) The matters to which the court must have regard include—

- (a) the financial value of the claim and the amount in dispute, if different;
- (b) whether it would be more convenient or fair for hearings (including the trial) to be held in some other court;
- (c) the availability of a judge specialising in the type of claim in question;
- (d) whether the facts, legal issues, remedies or procedures involved are simple or complex;
- (e) the importance of the outcome of the claim to the public in general;
- (f) the facilities available at the court where the claim is being dealt with and whether they may be inadequate because of any disabilities of a party or potential witness<sup>[F94];</sup>
- <sup>[F95]</sup>(g) whether the making of a declaration of incompatibility under section 4 of the Human Rights Act 1998 has arisen or may arise.]

#### Textual Amendments

**F94** Rule 30.3(2)(f): semicolon substituted for full stop (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **13(a)**

**F95** Rule 30.3(2)(g) inserted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **13(b)**

#### Commencement Information

**I227** Rule 30.3 in force at 26.4.1999, see [Signature](#)

<sup>(34)</sup> 1984 c. 28. Section 40 was substituted by section 2(1) of the Courts and Legal Services Act 1990 (c. 41). Section 41 was amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), Schedule 1, paragraph 31 and by section 2(2) of the Courts and Legal Services Act 1990. Section 42 was substituted by section 2(3) of the Courts and Legal Services Act 1990.

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**Procedure** **E+W**

**30.4.**—(1) Where the court orders proceedings to be transferred, the court from which they are to be transferred must give notice of the transfer to all the parties.

(2) An order made before the transfer of the proceedings shall not be affected by the order to transfer.

.....  
**Commencement Information**  
**I228** [Rule 30.4](#) in force at 26.4.1999, see [Signature](#)

**Transfer between Divisions and to and from a specialist list** **E+W**

**30.5.**—(1) The High Court may order proceedings in any Division of the High Court to be transferred to another Division.

(2) The court may order proceedings to be transferred to or from a specialist list.

(3) An application for the transfer of proceedings to or from a specialist list must be made to a judge dealing with claims in that list.

.....  
**Commencement Information**  
**I229** [Rule 30.5](#) in force at 26.4.1999, see [Signature](#)

**Power to specify place where hearings are to be held** **E+W**

**30.6** The court may specify the place (for instance, a particular county court) where the trial or some other hearing in any proceedings is to be held and may do so without ordering the proceedings to be transferred.

.....  
**Commencement Information**  
**I230** [Rule 30.6](#) in force at 26.4.1999, see [Signature](#)

**Transfer of control of money in court** **E+W**

**30.7** The court may order that control of any money held by it under rule 21.11 (control of money recovered by or on behalf of a child or patient) be transferred to another court if that court would be more convenient.

.....  
**Commencement Information**  
**I231** [Rule 30.7](#) in force at 26.4.1999, see [Signature](#)

**Certiorari or prohibition** **E+W**

<sup>F96</sup>**30.8** .....

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*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

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**Textual Amendments**

**F96** Rule 30.8 revoked (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, 14

**PART 31** **E+W**

**DISCLOSURE AND INSPECTION OF DOCUMENTS**

**Contents of this Part**

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Right of inspection of a disclosed document	Rule 31.3
Meaning of document	Rule 31.4
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Standard disclosure—what documents are to be disclosed	Rule 31.6
Duty of search	Rule 31.7
Duty of disclosure limited to documents which are or have been in a party’s control	Rule 31.8
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Procedure for standard disclosure	Rule 31.10
Duty of disclosure continues during proceedings	Rule 31.11
Specific disclosure or inspection	Rule 31.12
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Consequence of failure to disclose documents or permit inspection	Rule 31.21
Subsequent use of disclosed documents	Rule 31.22

### Scope of this Part **E+W**

- 31.1.**—(1) This Part sets out rules about the disclosure and inspection of documents.  
(2) This Part applies to all claims except a claim on the small claims track.

#### Commencement Information

**I232** [Rule 31.1](#) in force at 26.4.1999, see [Signature](#)

### Meaning of disclosure **E+W**

- 31.2** A party discloses a document by stating that the document exists or has existed.

#### Commencement Information

**I233** [Rule 31.2](#) in force at 26.4.1999, see [Signature](#)

### Right of inspection of a disclosed document **E+W**

**31.3.**—(1) A party to whom a document has been disclosed has a right to inspect that document except where—

- the document is no longer in the control of the party who disclosed it;
- the party disclosing the document has a right or a duty to withhold inspection of it; or
- paragraph (2) applies.

(Rule 31.8 sets out when a document is in the control of a party)

(Rule 31.19 sets out the procedure for claiming a right or duty to withhold inspection)

**31.3.**—(2) Where a party considers that it would be disproportionate to the issues in the case to permit inspection of documents within a category or class of document disclosed under rule 31.6(b) —

- he is not required to permit inspection of documents within that category or class; but
- he must state in his disclosure statement that inspection of those documents will not be permitted on the grounds that to do so would be disproportionate.

(Rule 31.6 provides for standard disclosure)

(Rule 31.10 makes provision for a disclosure statement)

(Rule 31.12 provides for a party to apply for an order for specific inspection of documents)

#### Commencement Information

**I234** [Rule 31.3](#) in force at 26.4.1999, see [Signature](#)

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*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

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## Meaning of document **E+W**

**31.4** In this Part—

“document” means anything in which information of any description is recorded; and  
“copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

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### Commencement Information

**I235** [Rule 31.4](#) in force at 26.4.1999, see [Signature](#)

## Disclosure limited to standard disclosure **E+W**

**31.5.**—(1) An order to give disclosure is an order to give standard disclosure unless the court directs otherwise.

(2) The court may dispense with or limit standard disclosure.

(3) The parties may agree in writing to dispense with or to limit standard disclosure.

(The court may make an order requiring standard disclosure under rule 28.3 which deals with directions in relation to cases on the fast track and under rule 29.2 which deals with case management in relation to cases on the multi-track)

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### Commencement Information

**I236** [Rule 31.5](#) in force at 26.4.1999, see [Signature](#)

## Standard disclosure—what documents are to be disclosed **E+W**

**31.6** Standard disclosure requires a party to disclose only—

- (a) the documents on which he relies; and
- (b) the documents which—
  - (i) adversely affect his own case;
  - (ii) adversely affect another party’s case; or
  - (iii) support another party’s case; and
- (c) the documents which he is required to disclose by a relevant practice direction.

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### Commencement Information

**I237** [Rule 31.6](#) in force at 26.4.1999, see [Signature](#)

## Duty of search **E+W**

**31.7.**—(1) When giving standard disclosure, a party is required to make a reasonable search for documents falling within rule 31.6(b) or (c).

(2) The factors relevant in deciding the reasonableness of a search include the following—

- (a) the number of documents involved;
- (b) the nature and complexity of the proceedings;

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- (c) the ease and expense of retrieval of any particular document; and
- (d) the significance of any document which is likely to be located during the search.

(3) Where a party has not searched for a category or class of document on the grounds that to do so would be unreasonable, he must state this in his disclosure statement and identify the category or class of document.

(Rule 31.10 makes provision for a disclosure statement)

#### Commencement Information

**I238** Rule 31.7 in force at 26.4.1999, see [Signature](#)

### Duty of disclosure limited to documents which are or have been in party's control **E+W**

**31.8.**—(1) A party's duty to disclose documents is limited to documents which are or have been in his control.

- (2) For this purpose a party has or has had a document in his control if—
  - (a) it is or was in his physical possession;
  - (b) he has or has had a right to possession of it; or
  - (c) he has or has had a right to inspect or take copies of it.

#### Commencement Information

**I239** Rule 31.8 in force at 26.4.1999, see [Signature](#)

### Disclosure of copies **E+W**

- 31.9.**—(1) A party need not disclose more than one copy of a document.
- (2) A copy of a document that contains a modification, obliteration or other marking or feature—
  - (a) on which a party intends to rely; or
  - (b) which adversely affects his own case or another party's case or supports another party's case;

shall be treated as a separate document.

(Rule 31.4 sets out the meaning of a copy of a document)

#### Commencement Information

**I240** Rule 31.9 in force at 26.4.1999, see [Signature](#)

### Procedure for standard disclosure **E+W**

- 31.10.**—(1) The procedure for standard disclosure is as follows.
- (2) Each party must make and serve on every other party, a list of documents in the relevant practice form.
- (3) The list must identify the documents in a convenient order and manner and as concisely as possible.



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- (4) The list must indicate—
- (a) those documents in respect of which the party claims a right or duty to withhold inspection; and
  - (b) (i) those documents which are no longer in the party's control; and  
(ii) what has happened to those documents.
- (Rule 31.19 (3) and (4) require a statement in the list of documents relating to any documents inspection of which a person claims he has a right or duty to withhold)
- (5) The list must include a disclosure statement.
- (6) A disclosure statement is a statement made by the party disclosing the documents—
- (a) setting out the extent of the search that has been made to locate documents which he is required to disclose;
  - (b) certifying that he understands the duty to disclose documents; and
  - (c) certifying that to the best of his knowledge he has carried out that duty.
- (7) Where the party making the disclosure statement is a company, firm, association or other organisation, the statement must also—
- (a) identify the person making the statement; and
  - (b) explain why he is considered an appropriate person to make the statement.
- (8) The parties may agree in writing—
- (a) to disclose documents without making a list; and
  - (b) to disclose documents without the disclosing party making a disclosure statement.
- (9) A disclosure statement may be made by a person who is not a party where this is permitted by a relevant practice direction.

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**Commencement Information**

**I241** [Rule 31.10](#) in force at 26.4.1999, see [Signature](#)

**Duty of disclosure continues during proceedings** **E+W**

- 31.11.**—(1) Any duty of disclosure continues until the proceedings are concluded.
- (2) If documents to which that duty extends come to a party's notice at any time during the proceedings, he must immediately notify every other party.

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**Commencement Information**

**I242** [Rule 31.11](#) in force at 26.4.1999, see [Signature](#)

**Specific disclosure or inspection** **E+W**

- 31.12.**—(1) The court may make an order for specific disclosure or specific inspection.
- (2) An order for specific disclosure is an order that a party must do one or more of the following things—
- (a) disclose documents or classes of documents specified in the order;
  - (b) carry out a search to the extent stated in the order;

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(c) disclose any documents located as a result of that search.

(3) An order for specific inspection is an order that a party permit inspection of a document referred to in rule 31.3(2).

(Rule 31.3(2) allows a party to state in his disclosure statement that he will not permit inspection of a document on the grounds that it would be disproportionate to do so)

#### Commencement Information

I243 [Rule 31.12](#) in force at 26.4.1999, see [Signature](#)

#### Disclosure in stages **E+W**

**31.13** The parties may agree in writing, or the court may direct, that disclosure or inspection or both shall take place in stages.

#### Commencement Information

I244 [Rule 31.13](#) in force at 26.4.1999, see [Signature](#)

#### Documents referred to in statements of case etc. **E+W**

**31.14** A party may inspect a document mentioned in—

- (a) a statement of case;
- (b) a witness statement;
- (c) a witness summary;
- (d) an affidavit<sup>(GL)</sup>; or
- (e) subject to rule 35.10(4), an expert's report.

(Rule 35.10(4) makes provision in relation to instructions referred to in an expert's report)

#### Commencement Information

I245 [Rule 31.14](#) in force at 26.4.1999, see [Signature](#)

#### Inspection and copying of documents **E+W**

**31.15** Where a party has a right to inspect a document—

- (a) that party must give the party who disclosed the document written notice of his wish to inspect it;
- (b) the party who disclosed the document must permit inspection not more than 7 days after the date on which he received the notice; and
- (c) that party may request a copy of the document and, if he also undertakes to pay reasonable copying costs, the party who disclosed the document must supply him with a copy not more than 7 days after the date on which he received the request.

(Rule 31.3 and 31.14 deal with the right of a party to inspect a document)

**Commencement Information**

**I246** Rule 31.15 in force at 26.4.1999, see [Signature](#)

**Disclosure before proceedings start** **E+W**

**31.16.**—(1) This rule applies where an application is made to the court under any Act for disclosure before proceedings have started(**35**).

- (2) The application must be supported by evidence.
- (3) The court may make an order under this rule only where—
  - (a) the respondent is likely to be a party to subsequent proceedings;
  - (b) the applicant is also likely to be a party to those proceedings;
  - (c) if proceedings had started, the respondent’s duty by way of standard disclosure, set out in rule 31.6, would extend to the documents or classes of documents of which the applicant seeks disclosure; and
  - (d) disclosure before proceedings have started is desirable in order to—
    - (i) dispose fairly of the anticipated proceedings;
    - (ii) assist the dispute to be resolved without proceedings; or
    - (iii) save costs.
- (4) An order under this rule must—
  - (a) specify the documents or the classes of documents which the respondent must disclose; and
  - (b) require him, when making disclosure, to specify any of those documents—
    - (i) which are no longer in his control; or
    - (ii) in respect of which he claims a right or duty to withhold inspection.
- (5) Such an order may—
  - (a) require the respondent to indicate what has happened to any documents which are no longer in his control; and
  - (b) specify the time and place for disclosure and inspection.

**Commencement Information**

**I247** Rule 31.16 in force at 26.4.1999, see [Signature](#)

**Orders for disclosure against a person not a party** **E+W**

**31.17.**—(1) This rule applies where an application is made to the court under any Act for disclosure by a person who is not a party to the proceedings(**36**).

- (2) The application must be supported by evidence.
- (3) The court may make an order under this rule only where—

(35) An application for disclosure before proceedings have started is permitted under section 33 of the Supreme Court Act 1981(c. 54) or section 52 of the County Courts Act 1984 (c. 28).

(36) An application for disclosure against a person who is not a party to proceedings is permitted under section 34 of the Supreme Court Act 1981(c. 54) or section 53 of the County Courts Act 1984 (c. 28).

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- (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
  - (b) disclosure is necessary in order to dispose fairly of the claim or to save costs.
- (4) An order under this rule must—
- (a) specify the documents or the classes of documents which the respondent must disclose; and
  - (b) require the respondent, when making disclosure, to specify any of those documents—
    - (i) which are no longer in his control; or
    - (ii) in respect of which he claims a right or duty to withhold inspection.
- (5) Such an order may—
- (a) require the respondent to indicate what has happened to any documents which are no longer in his control; and
  - (b) specify the time and place for disclosure and inspection.

#### Commencement Information

**I248** [Rule 31.17](#) in force at 26.4.1999, see [Signature](#)

#### Rules not to limit other powers of the court to order disclosure **E+W**

- 31.18** Rules 31.16 and 31.17 do not limit any other power which the court may have to order—
- (a) disclosure before proceedings have started; and
  - (b) disclosure against a person who is not a party to proceedings.

#### Commencement Information

**I249** [Rule 31.18](#) in force at 26.4.1999, see [Signature](#)

#### Claim to withhold inspection or disclosure of a document **E+W**

- 31.19.**—(1) A person may apply, without notice, for an order permitting him to withhold disclosure of a document on the ground that disclosure would damage the public interest.
- (2) Unless the court orders otherwise, an order of the court under paragraph (1)—
- (a) must not be served on any other person; and
  - (b) must not be open to inspection by any person.
- (3) A person who wishes to claim that he has a right or a duty to withhold inspection of a document, or part of a document, must state in writing—
- (a) that he has such a right or duty; and
  - (b) the grounds on which he claims that right or duty.
- (4) The statement referred to in paragraph (3) must be made—
- (a) in the list in which the document is disclosed; or
  - (b) if there is no list, to the person wishing to inspect the document.
- (5) A party may apply to the court to decide whether a claim made under paragraph (3) should be upheld.

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(6) For the purpose of deciding an application under paragraph (1) (application to withhold disclosure) or paragraph (3) (claim to withhold inspection) the court may—

- (a) require the person seeking to withhold disclosure or inspection of a document to produce that document to the court; and
- (b) invite any person, whether or not a party, to make representations.

(7) An application under paragraph (1) or paragraph (5) must be supported by evidence.

(8) This Part does not affect any rule of law which permits or requires a document to be withheld from disclosure or inspection on the ground that its disclosure or inspection would damage the public interest.

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**Commencement Information**

**I250** [Rule 31.19](#) in force at 26.4.1999, see [Signature](#)

**Restriction on use of a privileged document inspection of which has been inadvertently allowed** **E+W**

**31.20** Where a party inadvertently allows a privileged<sup>(GL)</sup> document to be inspected, the party who has inspected the document may use it or its contents only with the permission of the court.

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**Commencement Information**

**I251** [Rule 31.20](#) in force at 26.4.1999, see [Signature](#)

**Consequence of failure to disclose documents or permit inspection** **E+W**

**31.21** A party may not rely on any document which he fails to disclose or in respect of which he fails to permit inspection unless the court gives permission.

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**Commencement Information**

**I252** [Rule 31.21](#) in force at 26.4.1999, see [Signature](#)

**Subsequent use of disclosed documents** **E+W**

**31.22.**—(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where—

- (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;
- (b) the court gives permission; or
- (c) the party who disclosed the document and the person to whom the document belongs agree.

(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public.

(3) An application for such an order may be made—

- (a) by a party; or
- (b) by any person to whom the document belongs.

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### Commencement Information

**I253** Rule 31.22 in force at 26.4.1999, see [Signature](#)

### [<sup>F97</sup>False, disclosure statements **E+W**

**31.23.**—(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false disclosure statement, without an honest belief in its truth.

(2) Proceedings under this rule may be brought only—

- (a) by the Attorney General; or
- (b) with the permission of the court.]

### Textual Amendments

**F97** Rule 31.23 inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **16**

## PART 32 **E+W**

### EVIDENCE

#### Contents of this Part

Power of court to control evidence	Rule 32.1
Evidence of witnesses—general rule	Rule 32.2
Evidence by video link or other means	Rule 32.3
Requirement to serve witness statements for use at trial	Rule 32.4
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Affidavit evidence	Rule 32.15
Form of affidavit	Rule 32.16
Affidavit made outside the jurisdiction	Rule 32.17
Notice to admit facts	Rule 32.18
Notice to admit or produce documents	Rule 32.19

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### Power of court to control evidence **E+W**

- 32.1.**—(1) The court may control the evidence by giving directions as to—
- (a) the issues on which it requires evidence;
  - (b) the nature of the evidence which it requires to decide those issues; and
  - (c) the way in which the evidence is to be placed before the court.
- (2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.
- (3) The court may limit cross-examination<sup>(GL)</sup>.

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#### Commencement Information

**I254** [Rule 32.1](#) in force at 26.4.1999, see [Signature](#)

### Evidence of witnesses—general rule **E+W**

- 32.2.**—(1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved—
- (a) at trial, by their oral evidence given in public; and
  - (b) at any other hearing, by their evidence in writing.
- (2) This is subject—
- (a) to any provision to the contrary contained in these Rules or elsewhere; or
  - (b) to any order of the court.

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#### Commencement Information

**I255** [Rule 32.2](#) in force at 26.4.1999, see [Signature](#)

### Evidence by video link or other means **E+W**

- 32.3** The court may allow a witness to give evidence through a video link or by other means.

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#### Commencement Information

**I256** [Rule 32.3](#) in force at 26.4.1999, see [Signature](#)

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### Requirement to serve witness statements for use at trial **E+W**

**32.4.**—(1) A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally.

(2) The court will order a party to serve on the other parties any witness statement of the oral evidence which the party serving the statement intends to rely on in relation to any issues of fact to be decided at the trial.

(3) The court may give directions as to—

- (a) the order in which witness statements are to be served; and
- (b) whether or not the witness statements are to be filed.

#### Commencement Information

**I257** [Rule 32.4](#) in force at 26.4.1999, see [Signature](#)

### Use at trial of witness statements which have been served **E+W**

**32.5.**—(1) If—

- (a) a party has served a witness statement; and
- (b) he wishes to rely at trial on the evidence of the witness who made the statement,

he must call the witness to give oral evidence unless the court orders otherwise or he puts the statement in as hearsay evidence.

(Part 33 contains provisions about hearsay evidence)

(2) Where a witness is called to give oral evidence under paragraph (1), his witness statement shall stand as his evidence in chief<sup>(GL)</sup> unless the court orders otherwise.

(3) A witness giving oral evidence at trial may with the permission of the court—

- (a) amplify his witness statement; and
- (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.

(4) The court will give permission under paragraph (3) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement.

(5) If a party who has served a witness statement does not—

- (a) call the witness to give evidence at trial; or
- (b) put the witness statement in as hearsay evidence,

any other party may put the witness statement in as hearsay evidence.

#### Commencement Information

**I258** [Rule 32.5](#) in force at 26.4.1999, see [Signature](#)

### Evidence in proceedings other than at trial **E+W**

**32.6.**—(1) Subject to paragraph (2), the general rule is that evidence at hearings other than the trial is to be by witness statement unless the court, a practice direction or any other enactment requires otherwise.



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*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

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- (2) At hearings other than the trial, a party may <sup>F98</sup>... rely on the matters set out in—
- (a) his statement of case; or
  - (b) his application notice,

if the statement of case or application notice is verified by a statement of truth.

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**Textual Amendments**

**F98** Words in [rule 32.6\(2\)](#) omitted (2.5.2000) by virtue of [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [17](#)

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**Commencement Information**

**I259** [Rule 32.6](#) in force at 26.4.1999, see [Signature](#)

**Order for cross-examination** **E+W**

**32.7.**—(1) Where, at a hearing other than the trial, evidence is given in writing, any party may apply to the court for permission to cross-examine the person giving the evidence.

(2) If the court gives permission under paragraph (1) but the person in question does not attend as required by the order, his evidence may not be used unless the court gives permission.

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**Commencement Information**

**I260** [Rule 32.7](#) in force at 26.4.1999, see [Signature](#)

**Form of witness statement** **E+W**

**32.8** A witness statement must comply with the requirements set out in the relevant practice direction.

(Part 22 requires a witness statement to be verified by a statement of truth)

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**Commencement Information**

**I261** [Rule 32.8](#) in force at 26.4.1999, see [Signature](#)

**Witness summaries** **E+W**

**32.9.**—(1) A party who—

- (a) is required to serve a witness statement for use at trial; but
- (b) is unable to obtain one,

may apply, without notice, for permission to serve a witness summary instead.

(2) A witness summary is a summary of—

- (a) the evidence, if known, which would otherwise be included in a witness statement; or
- (b) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness.

(3) Unless the court orders otherwise, a witness summary must include the name and address of the intended witness.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

(4) Unless the court orders otherwise, a witness summary must be served within the period in which a witness statement would have had to be served.

(5) Where a party serves a witness summary, so far as practicable rules 32.4 (requirement to serve witness statements for use at trial), 32.5(3) (amplifying witness statements), and 32.8 (form of witness statement) shall apply to the summary.

**Commencement Information**

**I262** [Rule 32.9](#) in force at 26.4.1999, see [Signature](#)

**Consequence of failure to serve witness statement or summary** **E+W**

**32.10** If a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission.

**Commencement Information**

**I263** [Rule 32.10](#) in force at 26.4.1999, see [Signature](#)

**Cross-examination on a witness statement** **E+W**

**32.11** Where a witness is called to give evidence at trial, he may be cross-examined on his witness statement whether or not the statement or any part of it was referred to during the witness's evidence in chief<sup>(GL)</sup>.

**Commencement Information**

**I264** [Rule 32.11](#) in force at 26.4.1999, see [Signature](#)

**Use of witness statements for other purposes** **E+W**

**32.12.**—(1) Except as provided by this rule, a witness statement may be used only for the purpose of the proceedings in which it is served.

- (2) Paragraph (1) does not apply if and to the extent that—
- (a) the witness gives consent in writing to some other use of it;
  - (b) the court gives permission for some other use; or
  - (c) the witness statement has been put in evidence at a hearing held in public.

**Commencement Information**

**I265** [Rule 32.12](#) in force at 26.4.1999, see [Signature](#)

**Availability of witness statements for inspection** **E+W**

**32.13.**—(1) A witness statement which stands as evidence in chief<sup>(GL)</sup> is open to inspection [<sup>F99</sup>during the course of the trial unless the court otherwise directs].

- (2) Any person may ask for a direction that a witness statement is not open to inspection.

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(3) The court will not make a direction under paragraph (2) unless it is satisfied that a witness statement should not be open to inspection because of—

- (a) the interests of justice;
  - (b) the public interest;
  - (c) the nature of any expert medical evidence in the statement;
  - (d) the nature of any confidential information (including information relating to personal financial matters) in the statement; or
  - (e) the need to protect the interests of any child or patient.
- (4) The court may exclude from inspection words or passages in the statement.

#### Textual Amendments

**F99** Words in [rule 32.13\(1\)](#) substituted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), [rules 1\(a\)](#), [12](#)

#### Commencement Information

**I266** [Rule 32.13](#) in force at 26.4.1999, see [Signature](#)

#### False statements **E+W**

**32.14.**—(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(Part 22 makes provision for a statement of truth)

- (2) Proceedings under this rule may be brought only—
- (a) by the Attorney General; or
  - (b) with the permission of the court.

#### Commencement Information

**I267** [Rule 32.14](#) in force at 26.4.1999, see [Signature](#)

#### Affidavit evidence **E+W**

**32.15.**—(1) Evidence must be given by affidavit<sup>(GL)</sup> instead of or in addition to a witness statement if this is required by the court, a provision contained in any other rule, a practice direction or any other enactment.

(2) Nothing in these Rules prevents a witness giving evidence by affidavit<sup>(GL)</sup> at a hearing other than the trial if he chooses to do so in a case where paragraph (1) does not apply, but the party putting forward the affidavit<sup>(GL)</sup> may not recover the additional cost of making it from any other party unless the court orders otherwise.

#### Commencement Information

**I268** [Rule 32.15](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

## Form of affidavits **E+W**

**32.16** An affidavit<sup>(GL)</sup> must comply with the requirements set out in the relevant practice direction.

### Commencement Information

**I269** [Rule 32.16](#) in force at 26.4.1999, see [Signature](#)

## Affidavit made outside the jurisdiction **E+W**

**32.17** A person may make an affidavit<sup>(GL)</sup> outside the jurisdiction in accordance with—

- (a) this Part; or
- (b) the law of the place where he makes the affidavit<sup>(GL)</sup>.

### Commencement Information

**I270** [Rule 32.17](#) in force at 26.4.1999, see [Signature](#)

## Notice to admit facts **E+W**

**32.18.**—(1) A party may serve notice on another party requiring him to admit the facts, or the part of the case of the serving party, specified in the notice.

(2) A notice to admit facts must be served no later than 21 days before the trial.

(3) Where the other party makes any admission in response to the notice, the admission may be used against him only—

- (a) in the proceedings in which the notice to admit is served; and
- (b) by the party who served the notice.

(4) The court may allow a party to amend or withdraw any admission made by him on such terms as it thinks just.

### Commencement Information

**I271** [Rule 32.18](#) in force at 26.4.1999, see [Signature](#)

## Notice to admit or produce documents **E+W**

**32.19.**—(1) A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial.

(2) A notice to prove a document must be served—

- (a) by the latest date for serving witness statements; or
- (b) within 7 days of disclosure of the document,

whichever is later.

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**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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**Commencement Information**

**I272** [Rule 32.19](#) in force at 26.4.1999, see [Signature](#)

**PART 33** **E+W**

**MISCELLANEOUS RULES ABOUT EVIDENCE**

**Contents of this Part**

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Introductory	Rule 33.1
Notice of intention to rely on hearsay evidence	Rule 33.2
Circumstances in which notice of intention to rely on hearsay evidence is not required	Rule 33.3
Power to call witness for cross-examination on hearsay evidence	Rule 33.4
Credibility	Rule 33.5
Use of plans, photographs and models as evidence	Rule 33.6
Evidence of finding on question of foreign law	Rule 33.7
Evidence of consent of trustee to act	Rule 33.8

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**Introductory** **E+W**

**33.1** In this Part—

- (a) “hearsay” means a statement, made otherwise than by a person while giving oral evidence in proceedings, which is tendered as evidence of the matters stated; and
- (b) references to hearsay include hearsay of whatever degree.

**Commencement Information**

**I273** [Rule 33.1](#) in force at 26.4.1999, see [Signature](#)

**Notice of intention to rely on hearsay evidence** **E+W**

**33.2.**—(1) Where a party intends to rely on hearsay evidence at trial and either—

- (a) that evidence is to be given by a witness giving oral evidence; or
- (b) that evidence is contained in a witness statement of a person who is not being called to give oral evidence;

that party complies with section 2(1)(a) of the Civil Evidence Act 1995<sup>(37)</sup> by serving a witness statement on the other parties in accordance with the court’s order.

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<sup>(37)</sup> 1995 c. 38. Section 2 provides that a party proposing to bring hearsay evidence must notify any other party of that fact and, on request, give particulars of or relating to the evidence.

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(2) Where paragraph (1)(b) applies, the party intending to rely on the hearsay evidence must, when he serves the witness statement—

- (a) inform the other parties that the witness is not being called to give oral evidence; and
- (b) give the reason why the witness will not be called.

(3) In all other cases where a party intends to rely on hearsay evidence at trial, that party complies with section 2(1)(a) of the Civil Evidence Act 1995 by serving a notice on the other parties which—

- (a) identifies the hearsay evidence;
- (b) states that the party serving the notice proposes to rely on the hearsay evidence at trial; and
- (c) gives the reason why the witness will not be called.

(4) The party proposing to rely on the hearsay evidence must—

- (a) serve the notice no later than the latest date for serving witness statements; and
- (b) if the hearsay evidence is to be in a document, supply a copy to any party who requests him to do so.

#### Commencement Information

I274 [Rule 33.2](#) in force at 26.4.1999, see [Signature](#)

### Circumstances in which notice of intention to rely on hearsay evidence is not required **E**

**+W**

**33.3** Section 2(1) of the Civil Evidence Act 1995 (duty to give notice of intention to rely on hearsay evidence) does not apply—

- (a) to evidence at hearings other than trials;
- [<sup>F100</sup>(aa) to an affidavit or witness statement which is to be used at trial but which does not contain hearsay evidence;]
- (b) to a statement which a party to a probate action wishes to put in evidence and which is alleged to have been made by the person whose estate is the subject of the proceedings; or
- (c) where the requirement is excluded by a practice direction.

#### Textual Amendments

**F100** [Rule 33.3\(aa\)](#) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **10**

#### Commencement Information

I275 [Rule 33.3](#) in force at 26.4.1999, see [Signature](#)

### Power to call witness for cross-examination on hearsay evidence **E+W**

**33.4.**—(1) Where a party—

- (a) proposes to rely on hearsay evidence; and
- (b) does not propose to call the person who made the original statement to give oral evidence,

the court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined on the contents of the statement.

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(2) An application for permission to cross-examine under this rule must be made not more than 14 days after the day on which a notice of intention to rely on the hearsay evidence was served on the applicant.

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**Commencement Information**

**I276** [Rule 33.4](#) in force at 26.4.1999, see [Signature](#)

**Credibility** **E+W**

**33.5.**—(1) Where a party—

- (a) proposes to rely on hearsay evidence; but
- (b) does not propose to call the person who made the original statement to give oral evidence; and
- (c) another party wishes to call evidence to attack the credibility of the person who made the statement,

the party who so wishes must give notice of his intention to the party who proposes to give the hearsay statement in evidence.

(2) A party must give notice under paragraph (1) not more than 14 days after the day on which a hearsay notice relating to the hearsay evidence was served on him.

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**Commencement Information**

**I277** [Rule 33.5](#) in force at 26.4.1999, see [Signature](#)

**Use of plans, photographs and models as evidence** **E+W**

**33.6.**—(1) This rule applies to evidence (such as a plan, photograph or model) which is not—

- (a) contained in a witness statement, affidavit<sup>(GL)</sup> or expert's report;
- (b) to be given orally at trial; or
- (c) evidence of which prior notice must be given under rule 33.2.

(2) This rule includes documents which may be received in evidence without further proof under section 9 of the Civil Evidence Act 1995<sup>(38)</sup>.

(3) Unless the court orders otherwise the evidence shall not be receivable at a trial unless the party intending to put it in evidence has given notice to the other parties in accordance with this rule.

(4) Where the party intends to use the evidence as evidence of any fact then, except where paragraph (6) applies, he must give notice not later than the latest date for serving witness statements.

(5) He must give notice at least 21 days before the hearing at which he proposes to put in the evidence, if—

- (a) there are not to be witness statements; or
- (b) he intends to put in the evidence solely in order to disprove an allegation made in a witness statement.

(6) Where the evidence forms part of expert evidence, he must give notice when the expert's report is served on the other party.

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<sup>(38)</sup> Section 9 of the Civil Evidence Act 1995 provides that documents that form part of the records of a business or public authority, as defined in that section, may be received in evidence without further proof.

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(7) Where the evidence is being produced to the court for any reason other than as part of factual or expert evidence, he must give notice at least 21 days before the hearing at which he proposes to put in the evidence.

(8) Where a party has given notice that he intends to put in the evidence, he must give every other party an opportunity to inspect it and to agree to its admission without further proof.

**Commencement Information**

**I278** Rule 33.6 in force at 26.4.1999, see [Signature](#)

**Evidence of finding on question of foreign law** **E+W**

**33.7.**—(1) This rule sets out the procedure which must be followed by a party who intends to put in evidence a finding on a question of foreign law by virtue of section 4(2) of the Civil Evidence Act 1972<sup>(39)</sup>.

(2) He must give any other party notice of his intention.

(3) He must give the notice—

- (a) if there are to be witness statements, not later than the latest date for serving them; or
- (b) otherwise, not less than 21 days before the hearing at which he proposes to put the finding in evidence.

(4) The notice must—

- (a) specify the question on which the finding was made; and
- (b) enclose a copy of a document where it is reported or recorded.

**Commencement Information**

**I279** Rule 33.7 in force at 26.4.1999, see [Signature](#)

**Evidence of consent of trustee to act** **E+W**

**33.8** A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person is evidence of such consent.

**Commencement Information**

**I280** Rule 33.8 in force at 26.4.1999, see [Signature](#)

**[<sup>F101</sup>Human Rights** **E+W**

**33.9.**—(1) This rule applies where a claim is—

- (a) for a remedy under section 7 of the Human Rights Act 1998 in respect of a judicial act which is alleged to have infringed the claimant's Article 5 Convention rights; and
- (b) based on a finding by a court or tribunal that the claimant's Convention rights have been infringed.

(2) The court hearing the claim—

(39) 1972 c. 30.



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- (a) may proceed on the basis of the finding of that other court or tribunal that there has been an infringement but it is not required to do so, and
- (b) may reach its own conclusion in the light of that finding and of the evidence heard by that other court or tribunal.]

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**Textual Amendments**

**F101** Rule 33.9 inserted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, 15

## PART 34 **E+W**

### DEPOSITIONS AND COURT ATTENDANCE BY WITNESSES

#### Contents of this Part

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Scope of this Part	Rule 34.1
Witness summonses	Rule 34.2
Issue of a witness summons	Rule 34.3
Witness summons in aid of inferior court or of tribunal	Rule 34.4
Time for serving a witness summons	Rule 34.5
Who is to serve a witness summons	Rule 34.6
Right of witness to travelling expenses and compensation for loss of time	Rule 34.7
Evidence by deposition	Rule 34.8
Conduct of examination	Rule 34.9
Enforcing attendance of witness	Rule 34.10
Use of deposition at a hearing	Rule 34.11
Restrictions on subsequent use of deposition taken for the purpose of any hearing except the trial	Rule 34.12
Where a person to be examined is out of the jurisdiction—letter of request	Rule 34.13
Fees and expenses of examiner	Rule 34.14
Examiners of the court	Rule 34.15

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#### Scope of this Part **E+W**

**34.1.**—(1) This Part provides—

- (a) for the circumstances in which a person may be required to attend court to give evidence or to produce a document; and

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- (b) for a party to obtain evidence before a hearing to be used at the hearing.
- (2) In this Part, reference to a hearing includes a reference to the trial.

#### Commencement Information

**I281** [Rule 34.1](#) in force at 26.4.1999, see [Signature](#)

#### Witness summonses **E+W**

- 34.2.**—(1) A witness summons is a document issued by the court requiring a witness to—
- (a) attend court to give evidence; or
  - (b) produce documents to the court.
- (2) A witness summons must be in the relevant practice form.
- (3) There must be a separate witness summons for each witness.
- (4) A witness summons may require a witness to produce documents to the court either—
- (a) on the date fixed for a hearing; or
  - (b) on such date as the court may direct.
- (5) The only documents that a summons under this rule can require a person to produce before a hearing are documents which that person could be required to produce at the hearing.

#### Commencement Information

**I282** [Rule 34.2](#) in force at 26.4.1999, see [Signature](#)

#### Issue of a witness summons **E+W**

- 34.3.**—(1) A witness summons is issued on the date entered on the summons by the court.
- (2) A party must obtain permission from the court where he wishes to—
- (a) have a summons issued less than 7 days before the date of the trial;
  - (b) have a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the trial; or
  - (c) have a summons issued for a witness to attend court to give evidence or to produce documents at any hearing except the trial.
- (3) A witness summons must be issued by—
- (a) the court where the case is proceeding; or
  - (b) the court where the hearing in question will be held.
- (4) The court may set aside<sup>(GL)</sup> or vary a witness summons issued under this rule.

#### Commencement Information

**I283** [Rule 34.3](#) in force at 26.4.1999, see [Signature](#)

#### Witness summons in aid of inferior court or of tribunal **E+W**

- 34.4.**—(1) The court may issue a witness summons in aid of an inferior court or of a tribunal.

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(2) The court which issued the witness summons under this rule may set it aside.

(3) In this rule, “inferior court or tribunal” means any court or tribunal that does not have power to issue a witness summons in relation to proceedings before it.

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**Commencement Information**

**I284** [Rule 34.4](#) in force at 26.4.1999, see [Signature](#)

**Time for serving a witness summons** **E+W**

**34.5.**—(1) The general rule is that a witness summons is binding if it is served at least 7 days before the date on which the witness is required to attend before the court or tribunal.

(2) The court may direct that a witness summons shall be binding although it will be served less than 7 days before the date on which the witness is required to attend before the court or tribunal.

(3) A witness summons which is—

- (a) served in accordance with this rule; and
- (b) requires the witness to attend court to give evidence,

is binding until the conclusion of the hearing at which the attendance of the witness is required.

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**Commencement Information**

**I285** [Rule 34.5](#) in force at 26.4.1999, see [Signature](#)

**Who is to serve a witness summons** **E+W**

**34.6.**—(1) A witness summons is to be served by the court unless the party on whose behalf it is issued indicates in writing, when he asks the court to issue the summons, that he wishes to serve it himself.

(2) Where the court is to serve the witness summons, the party on whose behalf it is issued must deposit, in the court office, the money to be paid or offered to the witness under rule 34.7.

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**Commencement Information**

**I286** [Rule 34.6](#) in force at 26.4.1999, see [Signature](#)

**Right of witness to travelling expenses and compensation for loss of time** **E+W**

**34.7** At the time of service of a witness summons the witness must be offered or paid—

- (a) a sum reasonably sufficient to cover his expenses in travelling to and from the court; and
- (b) such sum by way of compensation for loss of time as may be specified in the relevant practice direction.

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**Commencement Information**

**I287** [Rule 34.7](#) in force at 26.4.1999, see [Signature](#)

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## Evidence by deposition **E+W**

**34.8.**—(1) A party may apply for an order for a person to be examined before the hearing takes place.

(2) A person from whom evidence is to be obtained following an order under this rule is referred to as a “deponent” and the evidence is referred to as a “deposition”.

(3) An order under this rule shall be for a deponent to be examined on oath before—

- (a) a judge;
- (b) an examiner of the court; or
- (c) such other person as the court appoints.

(Rule 34.15 makes provision for the appointment of examiners of the court)

(4) The order may require the production of any document which the court considers is necessary for the purposes of the examination.

(5) The order must state the date, time and place of the examination.

(6) At the time of service of the order the deponent must be offered or paid—

- (a) a sum reasonably sufficient to cover his expenses in travelling to and from the place of examination; and
- (b) such sum by way of compensation for loss of time as may be specified in the relevant practice direction.

(7) Where the court makes an order for a deposition to be taken, it may also order the party who obtained the order to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

(Part 32 contains the general rules about witness statements and witness summaries)

### Commencement Information

**I288** [Rule 34.8](#) in force at 26.4.1999, see [Signature](#)

## Conduct of examination **E+W**

**34.9.**—(1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a trial.

(2) If all the parties are present, the examiner may conduct the examination of a person not named in the order for examination if all the parties and the person to be examined consent.

(3) The examiner may conduct the examination in private if he considers it appropriate to do so.

(4) The examiner must ensure that the evidence given by the witness is recorded in full.

(5) The examiner must send a copy of the deposition—

- (a) to the person who obtained the order for the examination of the witness; and
- (b) to the court where the case is proceeding.

(6) The party who obtained the order must send each of the other parties a copy of the deposition which he receives from the examiner.

### Commencement Information

**I289** [Rule 34.9](#) in force at 26.4.1999, see [Signature](#)

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### Enforcing attendance of witness **E+W**

**34.10.**—(1) If a person served with an order to attend before an examiner—

- (a) fails to attend; or
- (b) refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document at the examination,

a certificate of his failure or refusal, signed by the examiner, must be filed by the party requiring the deposition.

(2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring that person to attend or to be sworn or to answer any question or produce any document, as the case may be.

(3) An application for an order under this rule may be made without notice.

(4) The court may order the person against whom an order is made under this rule to pay any costs resulting from his failure or refusal.

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#### Commencement Information

**I290** [Rule 34.10](#) in force at 26.4.1999, see [Signature](#)

### Use of deposition at a hearing **E+W**

**34.11.**—(1) A deposition ordered under rule 34.8 may be given in evidence at a hearing unless the court orders otherwise.

(2) A party intending to put in evidence a deposition at a hearing must serve notice of his intention to do so on every other party.

(3) He must serve the notice at least 21 days before the day fixed for the hearing.

(4) The court may require a deponent to attend the hearing and give evidence orally.

(5) Where a deposition is given in evidence at trial, it shall be treated as if it were a witness statement for the purposes of rule 32.13 (availability of witness statements for inspection).

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#### Commencement Information

**I291** [Rule 34.11](#) in force at 26.4.1999, see [Signature](#)

### Restrictions on subsequent use of deposition taken for the purpose of any hearing except the trial **E+W**

**34.12.**—(1) Where the court orders a party to be examined about his or any other assets for the purpose of any hearing except the trial, the deposition may be used only for the purpose of the proceedings in which the order was made.

(2) However, it may be used for some other purpose—

- (a) by the party who was examined;
- (b) if the party who was examined agrees; or
- (c) if the court gives permission.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

### Commencement Information

**I292** Rule 34.12 in force at 26.4.1999, see [Signature](#)

## Where a person to be examined is out of the jurisdiction—letter of request **E+W**

**34.13.**—(1) Where a party wishes to take a deposition from a person outside the jurisdiction, the High Court may order the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(2) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.

(3) The High Court may make an order under this rule in relation to county court proceedings.

(4) If the government of [<sup>F102</sup>a] country <sup>F103</sup>... allows a person appointed by the High Court to examine a person in that country, the High Court may make an order appointing a special examiner for that purpose.

(5) A person may be examined under this rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.

(6) If the High Court makes an order for the issue of a letter of request, the party who sought the order must file—

- (a) the following documents and, except where paragraph (7) applies, a translation of them—
  - (i) a draft letter of request;
  - (ii) a statement of the issues relevant to the proceedings;
  - (iii) a list of questions or the subject matter of questions to be put to the person to be examined; and
- (b) an undertaking to be responsible for the Secretary of State's expenses.

(7) There is no need to file a translation if—

- (a) English is one of the official languages of the country where the examination is to take place; or
- (b) a practice direction has specified that country as a country where no translation is necessary.

### Textual Amendments

**F102** Word in rule 34.13(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1, 11\(a\)\(i\)](#)

**F103** Words in rule 34.13(4) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1, 11\(a\)\(ii\)](#)

### Commencement Information

**I293** Rule 34.13 in force at 26.4.1999, see [Signature](#)

## Fees and expenses of examiner [<sup>F104</sup>of the court] **E+W**

**34.14.**—[<sup>F105</sup>(1) An examiner of the court may charge a fee for the examination.]

(2) He need not send the deposition to the court unless the fee is paid.

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(3) The examiner's fees and expenses must be paid by the party who obtained the order for examination.

(4) If the fees and expenses due to an examiner are not paid within a reasonable time, he may report that fact to the court.

(5) The court may order the party who obtained the order for examination to deposit in the court office a specified sum in respect of the examiner's fees and, where it does so, the examiner will not be asked to act until the sum has been deposited.

(6) An order under this rule does not affect any decision as to the party who is ultimately to bear the costs of the examination.

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**Textual Amendments**

**F104** Words in [rule 34.14](#) heading inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1, 11\(b\)\(i\)](#)

**F105** [Rule 34.14\(1\)](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1, 11\(b\)\(ii\)](#)

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**Commencement Information**

**I294** [Rule 34.14](#) in force at 26.4.1999, see [Signature](#)

**Examiners of the court** **E+W**

**34.15.**—(1) The Lord Chancellor shall appoint persons to be examiners of the court.

(2) The persons appointed shall be barristers or solicitor-advocates who have been practising for a period of not less than three years.

(3) The Lord Chancellor may revoke an appointment at any time.

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**Commencement Information**

**I295** [Rule 34.15](#) in force at 26.4.1999, see [Signature](#)

**PART 35** **E+W**

**EXPERTS AND ASSESSORS**

**Contents of this Part**

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Duty to restrict expert evidence	Rule 35.1
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Consequence of failure to disclose expert's report	Rule 35.13
Expert's right to ask court for directions	Rule 35.14
Assessors	Rule 35.15

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### Duty to restrict expert evidence **E+W**

**35.1** Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

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#### Commencement Information

**I296** [Rule 35.1](#) in force at 26.4.1999, see [Signature](#)

### Interpretation **E+W**

**35.2** A reference to an "expert" in this Part is a reference to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings.

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#### Commencement Information

**I297** [Rule 35.2](#) in force at 26.4.1999, see [Signature](#)

### Experts—overriding duty to the court **E+W**

**35.3.—(1)** It is the duty of an expert to help the court on the matters within his expertise.

(2) This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

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#### Commencement Information

**I298** [Rule 35.3](#) in force at 26.4.1999, see [Signature](#)

### Court's power to restrict expert evidence **E+W**

**35.4.—(1)** No party may call an expert or put in evidence an expert's report without the court's permission.



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- (2) When a party applies for permission under this rule he must identify—
- (a) the field in which he wishes to rely on expert evidence; and
  - (b) where practicable the expert in that field on whose evidence he wishes to rely.
- (3) If permission is granted under this rule it shall be in relation only to the expert named or the field identified under paragraph (2).
- (4) The court may limit the amount of the expert's fees and expenses that the party who wishes to rely on the expert may recover from any other party.

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**Commencement Information**

**I299** [Rule 35.4](#) in force at 26.4.1999, see [Signature](#)

**General requirement for expert evidence to be given in a written report** **E+W**

- 35.5.**—(1) Expert evidence is to be given in a written report unless the court directs otherwise.
- (2) If a claim is on the fast track, the court will not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.

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**Commencement Information**

**I300** [Rule 35.5](#) in force at 26.4.1999, see [Signature](#)

**Written questions to experts** **E+W**

- 35.6.**—(1) A party may put to—
- (a) an expert instructed by another party; or
  - (b) a single joint expert appointed under rule 35.7,
- written questions about his report.
- (2) Written questions under paragraph (1)—
- (a) may be put once only;
  - (b) must be put within 28 days of service of the expert's report; and
  - (c) must be for the purpose only of clarification of the report,
- unless in any case,
- (i) the court gives permission; or
  - (ii) the other party agrees.
- (3) An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.
- (4) Where—
- (a) a party has put a written question to an expert instructed by another party in accordance with this rule; and
  - (b) the expert does not answer that question,
- the court may make one or both of the following orders in relation to the party who instructed the expert—
- (i) that the party may not rely on the evidence of that expert; or

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(ii) that the party may not recover the fees and expenses of that expert from any other party.

#### Commencement Information

**I301** [Rule 35.6](#) in force at 26.4.1999, see [Signature](#)

### Court's power to direct that evidence is to be given by a single joint expert **E+W**

**35.7.**—(1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by one expert only.

- (2) The parties wishing to submit the expert evidence are called “the instructing parties”.
- (3) Where the instructing parties cannot agree who should be the expert, the court may—
- (a) select the expert from a list prepared or identified by the instructing parties; or
  - (b) direct that the expert be selected in such other manner as the court may direct.

#### Commencement Information

**I302** [Rule 35.7](#) in force at 26.4.1999, see [Signature](#)

### Instructions to a single joint expert **E+W**

**35.8.**—(1) Where the court gives a direction under rule 35.7 for a single joint expert to be used, each instructing party may give instructions to the expert.

(2) When an instructing party gives instructions to the expert he must, at the same time, send a copy of the instructions to the other instructing parties.

- (3) The court may give directions about—
- (a) the payment of the expert's fees and expenses; and
  - (b) any inspection, examination or experiments which the expert wishes to carry out.
- (4) The court may, before an expert is instructed—
- (a) limit the amount that can be paid by way of fees and expenses to the expert; and
  - (b) direct that the instructing parties pay that amount into court.

(5) Unless the court otherwise directs, the instructing parties are jointly and severally liable<sup>(GL)</sup> for the payment of the expert's fees and expenses.

#### Commencement Information

**I303** [Rule 35.8](#) in force at 26.4.1999, see [Signature](#)

### Power of court to direct a party to provide information **E+W**

**35.9** Where a party has access to information which is not reasonably available to the other party, the court may direct the party who has access to the information to—

- (a) prepare and file a document recording the information; and
- (b) serve a copy of that document on the other party.

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**Commencement Information**

**I304** [Rule 35.9](#) in force at 26.4.1999, see [Signature](#)

**Contents of report** **E+W**

**35.10.**—(1) An expert’s report must comply with the requirements set out in the relevant practice direction.

(2) At the end of an expert’s report there must be a statement that—

- (a) the expert understands his duty to the court; and
- (b) he has complied with that duty.

(3) The expert’s report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.

(4) The instructions referred to in paragraph (3) shall not be privileged<sup>(GL)</sup> against disclosure but the court will not, in relation to those instructions—

- (a) order disclosure of any specific document; or
- (b) permit any questioning in court, other than by the party who instructed the expert,

unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under paragraph (3) to be inaccurate or incomplete.

**Commencement Information**

**I305** [Rule 35.10](#) in force at 26.4.1999, see [Signature](#)

**Use by one party of expert’s report disclosed by another** **E+W**

**35.11** Where a party has disclosed an expert’s report, any party may use that expert’s report as evidence at the trial.

**Commencement Information**

**I306** [Rule 35.11](#) in force at 26.4.1999, see [Signature](#)

**Discussions between experts** **E+W**

**35.12.**—(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to—

- (a) identify the issues in the proceedings; and
- (b) where possible, reach agreement on an issue.

(2) The court may specify the issues which the experts must discuss.

(3) The court may direct that following a discussion between the experts they must prepare a statement for the court showing—

- (a) those issues on which they agree; and
- (b) those issues on which they disagree and a summary of their reasons for disagreeing.

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(4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

(5) Where experts reach agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.

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**Commencement Information**

**I307** [Rule 35.12](#) in force at 26.4.1999, see [Signature](#)

**Consequence of failure to disclose expert's report** **E+W**

**35.13** A party who fails to disclose an expert's report may not use the report at the trial or call the expert to give evidence orally unless the court gives permission.

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**Commencement Information**

**I308** [Rule 35.13](#) in force at 26.4.1999, see [Signature](#)

**Expert's right to ask court for directions** **E+W**

**35.14.**—(1) An expert may file a written request for directions to assist him in carrying out his function as an expert.

- (2) An expert may request directions under paragraph (1) without giving notice to any party.
- (3) The court, when it gives directions, may also direct that a party be served with—
- (a) a copy of the directions; and
  - (b) a copy of the request for directions.

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**Commencement Information**

**I309** [Rule 35.14](#) in force at 26.4.1999, see [Signature](#)

**Assessors** **E+W**

**35.15.**—(1) This rule applies where the court appoints one or more persons (an “assessor”) under section 70 of the Supreme Court Act 1981(40) or section 63 of the County Courts Act 1984(41).

(2) The assessor shall assist the court in dealing with a matter in which the assessor has skill and experience.

(3) An assessor shall take such part in the proceedings as the court may direct and in particular the court may—

- (a) direct the assessor to prepare a report for the court on any matter at issue in the proceedings; and
  - (b) direct the assessor to attend the whole or any part of the trial to advise the court on any such matter.
- (4) If the assessor prepares a report for the court before the trial has begun—

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(40) 1981 c. 54.

(41) 1984 c. 28. Section 63 was amended by S.I. 1998/2940.

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- (a) the court will send a copy to each of the parties; and
  - (b) the parties may use it at trial.
- (5) The remuneration to be paid to the assessor for his services shall be determined by the court and shall form part of the costs of the proceedings.
- (6) The court may order any party to deposit in the court office a specified sum in respect of the assessor's fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.
- (7) Paragraphs (5) and (6) do not apply where the remuneration of the assessor is to be paid out of money provided by Parliament.

**Commencement Information**

**I310** [Rule 35.15](#) in force at 26.4.1999, see [Signature](#)

## PART 36 **E+W**

### OFFERS TO SETTLE AND PAYMENTS INTO COURT

#### Contents of this Part

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### Scope of this Part **E+W**

**36.1.**—(1) This Part contains rules about—

- (a) offers to settle and payments into court; and
- (b) the consequences where an offer to settle or payment into court is made in accordance with this Part.

(2) Nothing in this Part prevents a party making an offer to settle in whatever way he chooses, but if that offer is not made in accordance with this Part, it will only have the consequences specified in this Part if the court so orders.

(Part 36 applies to Part 20 claims by virtue of rule 20.3)

#### Commencement Information

**I311** [Rule 36.1](#) in force at 26.4.1999, see [Signature](#)

### Part 36 offers and Part 36 payments—general provisions **E+W**

**36.2.**—(1) An offer made in accordance with the requirements of this Part is called—

- (a) if made by way of a payment into court, “a Part 36 payment”;
- (b) otherwise “a Part 36 offer”.

(Rule 36.3 sets out when an offer has to be made by way of a payment into court)

- (2) The party who makes an offer is the “offeror”.
- (3) The party to whom an offer is made is the “offeree”.

- (4) A Part 36 offer or a Part 36 payment—
- (a) may be made at any time after proceedings have started; and
  - (b) may be made in appeal proceedings.

(5) A Part 36 offer or a Part 36 payment shall not have the consequences set out in this Part while the claim is being dealt with on the small claims track unless the court orders otherwise.

(Part 26 deals with allocation to the small claims track)

(Rule 27.2 provides that Part 36 does not apply to small claims)

**Commencement Information**

**I312** Rule 36.2 in force at 26.4.1999, see [Signature](#)

**A defendant's offer to settle a money claim requires a Part 36 payment** **E+W**

**36.3.**—(1) Subject to rules 36.5(5) and 36.23, an offer by a defendant to settle a money claim will not have the consequences set out in this Part unless it is made by way of a Part 36 payment.

- (2) A Part 36 payment may only be made after proceedings have started.

(Rule 36.5(5) permits a Part 36 offer to be made by reference to an interim payment)

(Rule 36.10 makes provision for an offer to settle a money claim before the commencement of proceedings)

(Rule 36.23 makes provision for where benefit is recoverable under the Social Security

(Recovery of Benefit) Act 1997(42))

**Commencement Information**

**I313** Rule 36.3 in force at 26.4.1999, see [Signature](#)

**Defendant's offer to settle the whole of a claim which includes both a money claim and a non-money claim** **E+W**

**36.4.**—(1) This rule applies where a defendant to a claim which includes both a money claim and a non-money claim wishes—

- (a) to make an offer to settle the whole claim which will have the consequences set out in this Part; and

[<sup>F106</sup>(b) to make a money offer in respect of the money claim and a non-money offer in respect of the non-money claim.]

- (2) The defendant must—

- (a) make a Part 36 payment in relation to the money claim; and
- (b) make a Part 36 offer in relation to the non-money claim.

- (3) The Part 36 payment notice must—

- (a) identify the document which sets out the terms of the Part 36 offer; and
- (b) state that if the claimant gives notice of acceptance of the Part 36 payment he will be treated as also accepting the Part 36 offer.

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(Rule 36.6 makes provision for a Part 36 payment notice)

(4) If the claimant gives notice of acceptance of the Part 36 payment, he shall also be taken as giving notice of acceptance of the Part 36 offer in relation to the non-money claim.

#### Textual Amendments

**F106** Rule 36.4(1)(b) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 12

#### Commencement Information

**I314** Rule 36.4 in force at 26.4.1999, see [Signature](#)

### Form and content of a Part 36 offer **E+W**

**36.5.**—(1) A Part 36 offer must be in writing.

(2) A Part 36 offer may relate to the whole claim or to part of it or to any issue that arises in it.

(3) A Part 36 offer must—

- (a) state whether it relates to the whole of the claim or to part of it or to an issue that arises in it and if so to which part or issue;
- (b) state whether it takes into account any counterclaim; and
- (c) if it is expressed not to be inclusive of interest, give the details relating to interest set out in rule 36.22(2).

(4) A defendant may make a Part 36 offer limited to accepting liability up to a specified proportion.

(5) A Part 36 offer may be made by reference to an interim payment.

(Part 25 contains provisions relating to interim payments)

(6) A Part 36 offer made not less than 21 days before the start of the trial must—

- (a) be expressed to remain open for acceptance for 21 days from the date it is made; and
- (b) provide that after 21 days the offeree may only accept it if—
  - (i) the parties agree the liability for costs; or
  - (ii) the court gives permission.

(7) A Part 36 offer made less than 21 days before the start of the trial must state that the offeree may only accept it if—

- (a) the parties agree the liability for costs; or
- (b) the court gives permission.

(Rule 36.8 makes provision for when a Part 36 offer is treated as being made)

(8) If a Part 36 offer is withdrawn it will not have the consequences set out in this Part.

#### Commencement Information

**I315** Rule 36.5 in force at 26.4.1999, see [Signature](#)



## Notice of a Part 36 payment **E+W**

**36.6.**—(1) A Part 36 payment may relate to the whole claim or part of it or to an issue that arises in it.

(2) A defendant who makes a Part 36 payment must file with the court a notice (“Part 36 payment notice”) which—

- (a) states the amount of the payment;
- (b) states whether the payment relates to the whole claim or to part of it or to any issue that arises in it and if so to which part or issue;
- (c) states whether it takes into account any counterclaim;
- (d) if an interim payment has been made, states that the defendant has taken into account the interim payment; and
- (e) if it is expressed not to be inclusive of interest, gives the details relating to interest set out in rule 36.22(2).

(Rule 25.6 makes provision for an interim payment)

(Rule 36.4 provides for further information to be included where a defendant wishes to settle the whole of a claim which includes a money claim and a non-money claim)

(Rule 36.23 makes provision for extra information to be included in the payment notice in a case where benefit is recoverable under the Social Security (Recovery of Benefit) Act 1997)

**36.6.**—(3) The court will serve the Part 36 payment notice on the offeree unless the offeror informs the court, when the money is paid into court, that [<sup>F107</sup>the offeror will serve the notice].

(4) Where the offeror serves the Part 36 payment notice he must file a certificate of service.

(Rule 6.10 specifies what must be contained in a certificate of service)

(5) A Part 36 payment may be withdrawn [<sup>F108</sup>or reduced] only with the permission of the court.

### Textual Amendments

**F107** Words in rule 36.6(3) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 13

**F108** Words in rule 36.6(5) inserted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, 16

### Commencement Information

**I316** [Rule 36.6](#) in force at 26.4.1999, see [Signature](#)

## Offer to settle a claim for provisional damages **E+W**

**36.7.**—(1) A defendant may make a Part 36 payment in respect of a claim which includes a claim for provisional damages.

(2) Where he does so, the Part 36 payment notice must specify whether or not the defendant is offering to agree to the making of an award of provisional damages.

(3) Where the defendant is offering to agree to the making of an award of provisional damages the payment notice must also state—

- (a) that the sum paid into court is in satisfaction of the claim for damages on the assumption that the injured person will not develop the disease or suffer the type of deterioration specified in the notice;

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- (b) that the offer is subject to the condition that the claimant must make any claim for further damages within a limited period; and
  - (c) what that period is.
- (4) Where a Part 36 payment is—
- (a) made in accordance with paragraph (3); and
  - (b) accepted within the relevant period in rule 36.11,
- the Part 36 payment will have the consequences set out in rule 36.13, unless the court orders otherwise.
- (5) If the claimant accepts the Part 36 payment he must, within 7 days of doing so, apply to the court for an order for an award of provisional damages under rule 41.2.  
(Rule 41.2 provides for an order for an award of provisional damages)
- (6) The money in court may not be paid out until the court has disposed of the application made in accordance with paragraph (5).

.....  
**Commencement Information**  
I317 [Rule 36.7](#) in force at 26.4.1999, see [Signature](#)

**Time when a Part 36 offer or a Part 36 payment is made and accepted** E+W

- 36.8.**—(1) A Part 36 offer is made when received by the offeree.
- (2) A Part 36 payment is made when written notice of the payment into court is served on the offeree.
- (3) An improvement to a Part 36 offer will be effective when its details are received by the offeree.
- (4) An increase in a Part 36 payment will be effective when notice of the increase is served on the offeree.
- (5) A Part 36 offer or Part 36 payment is accepted when notice of its acceptance is received by the offeror.

.....  
**Commencement Information**  
I318 [Rule 36.8](#) in force at 26.4.1999, see [Signature](#)

**Clarification of a Part 36 offer or a Part 36 payment notice** E+W

- 36.9.**—(1) The offeree may, within 7 days of a Part 36 offer or payment being made, request the offeror to clarify the offer or payment notice.
- (2) If the offeror does not give the clarification requested under paragraph (1) within 7 days of receiving the request, the offeree may, unless the trial has started, apply for an order that he does so.
- (3) If the court makes an order under paragraph (2), it must specify the date when the Part 36 offer or Part 36 payment is to be treated as having been made.

.....  
**Commencement Information**  
I319 [Rule 36.9](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

### **Court to take into account offer to settle made before commencement of proceedings** E+W

**36.10.**—(1) If a person makes an offer to settle before proceedings are begun which complies with the provisions of this rule, the court will take that offer into account when making any order as to costs.

(2) The offer must—

- (a) be expressed to be open for at least 21 days after the date it was made;
- (b) if made by a person who would be a defendant were proceedings commenced, include an offer to pay the costs of the offeree incurred up to the date 21 days after the date it was made; and
- (c) otherwise comply with this Part.

(3) If the offeror is a defendant to a money claim—

- (a) he must make a Part 36 payment within 14 days of service of the claim form; and
- (b) the amount of the payment must be not less than the sum offered before proceedings began.

(4) An offeree may not, after proceedings have begun, accept—

- (a) an offer made under paragraph (2); or
- (b) a Part 36 payment made under paragraph (3),

without the permission of the court.

(5) An offer under this rule is made when it is received by the offeree.

#### **Commencement Information**

**I320** [Rule 36.10](#) in force at 26.4.1999, see [Signature](#)

### **Time for acceptance of a defendant's Part 36 offer or Part 36 payment** E+W

**36.11.**—(1) A claimant may accept a Part 36 offer or a Part 36 payment made not less than 21 days before the start of the trial without needing the court's permission if he gives the defendant written notice of acceptance not later than 21 days after the offer or payment was made.

(Rule 36.13 sets out the costs consequences of accepting a defendant's offer or payment without needing the permission of the court)

(2) If—

- (a) a defendant's Part 36 offer or Part 36 payment is made less than 21 days before the start of the trial; or
- (b) the claimant does not accept it within the period specified in paragraph (1)—
  - (i) if the parties agree the liability for costs, the claimant may accept the offer or payment without needing the permission of the court;
  - (ii) if the parties do not agree the liability for costs the claimant may only accept the offer or payment with the permission of the court.

(3) Where the permission of the court is needed under paragraph (2) the court will, if it gives permission, make an order as to costs.

#### **Commencement Information**

**I321** [Rule 36.11](#) in force at 26.4.1999, see [Signature](#)

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

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### Time for acceptance of a claimant's Part 36 offer **E+W**

**36.12.**—(1) A defendant may accept a Part 36 offer made not less than 21 days before the start of the trial without needing the court's permission if he gives the claimant written notice of acceptance not later than 21 days after the offer was made.

(Rule 36.14 sets out the costs consequences of accepting a claimant's offer without needing the permission of the court)

(2) If—

- (a) a claimant's Part 36 offer is made less than 21 days before the start of the trial; or
- (b) the defendant does not accept it within the period specified in paragraph (1)—
  - (i) if the parties agree the liability for costs, the defendant may accept the offer without needing the permission of the court;
  - (ii) if the parties do not agree the liability for costs the defendant may only accept the offer with the permission of the court.

(3) Where the permission of the court is needed under paragraph (2) the court will, if it gives permission, make an order as to costs.

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#### Commencement Information

**I322** [Rule 36.12](#) in force at 26.4.1999, see [Signature](#)

### Costs consequences of acceptance of a defendant's Part 36 offer or Part 36 payment **E+W**

**36.13.**—(1) Where a Part 36 offer or a Part 36 payment is accepted without needing the permission of the court the claimant will be entitled to his costs of the proceedings up to the date of serving notice of acceptance.

(2) Where—

- (a) a Part 36 offer or a Part 36 payment relates to part only of the claim; and
  - (b) at the time of serving notice of acceptance the claimant abandons the balance of the claim,
- the claimant will be entitled to his costs of the proceedings up to the date of serving notice of acceptance, unless the court orders otherwise.

(3) The claimant's costs include any costs attributable to the defendant's counterclaim if the Part 36 offer or the Part 36 payment notice states that it takes into account the counterclaim.

(4) Costs under this rule will be payable on the standard basis if not agreed.

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#### Commencement Information

**I323** [Rule 36.13](#) in force at 26.4.1999, see [Signature](#)

### Costs consequences of acceptance of a claimant's Part 36 offer **E+W**

**36.14** Where a claimant's Part 36 offer is accepted without needing the permission of the court the claimant will be entitled to his costs of the proceedings up to the date upon which the defendant serves notice of acceptance.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

#### Commencement Information

**I324** [Rule 36.14](#) in force at 26.4.1999, see [Signature](#)

### The effect of acceptance of a Part 36 offer or a Part 36 payment **E+W**

**36.15.**—(1) If a Part 36 offer or Part 36 payment relates to the whole claim and is accepted, the claim will be stayed<sup>(GL)</sup>.

(2) In the case of acceptance of a Part 36 offer which relates to the whole claim—

- (a) the stay<sup>(GL)</sup> will be upon the terms of the offer; and
- (b) either party may apply to enforce those terms without the need for a new claim.

(3) If a Part 36 offer or a Part 36 payment which relates to part only of the claim is accepted—

- (a) the claim will be stayed<sup>(GL)</sup> as to that part; and
- (b) unless the parties have agreed costs, the liability for costs shall be decided by the court.

(4) If the approval of the court is required before a settlement can be binding, any stay<sup>(GL)</sup> which would otherwise arise on the acceptance of a Part 36 offer or a Part 36 payment will take effect only when that approval has been given.

(5) Any stay<sup>(GL)</sup> arising under this rule will not affect the power of the court—

- (a) to enforce the terms of a Part 36 offer;
- (b) to deal with any question of costs (including interest on costs) relating to the proceedings;
- (c) to order payment out of court of any sum paid into court.

(6) Where—

- (a) a Part 36 offer has been accepted; and
- (b) a party alleges that—
  - (i) the other party has not honoured the terms of the offer; and
  - (ii) he is therefore entitled to a remedy for breach of contract,

the party may claim the remedy by applying to the court without the need to start a new claim unless the court orders otherwise.

#### Commencement Information

**I325** [Rule 36.15](#) in force at 26.4.1999, see [Signature](#)

VALID FROM 30/04/2010

### Payment out of a sum in court on the acceptance of a Part 36 payment **E+W**

**36.16** Where a Part 36 payment is accepted the claimant obtains payment out of the sum in court by making a request for payment in the practice form.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

### Commencement Information

**I326** Rule 36.16 in force at 26.4.1999, see [Signature](#)

VALID FROM 30/04/2010

### Acceptance of a Part 36 offer or a Part 36 payment made by one or more, but not all, defendants **E+W**

**36.17.**—(1) This rule applies where the claimant wishes to accept a Part 36 offer or a Part 36 payment made by one or more, but not all, of a number of defendants.

(2) If the defendants are sued jointly or in the alternative, the claimant may accept the offer or payment without needing the permission of the court in accordance with rule 36.11(1) if—

- (a) he discontinues his claim against those defendants who have not made the offer or payment; and
- (b) those defendants give written consent to the acceptance of the offer or payment.

(3) If the claimant alleges that the defendants [<sup>F109</sup>if he is entitled to do so] have a several liability<sup>(GL)</sup> to him the claimant may—

- (a) accept the offer or payment in accordance with rule 36.11(1); and
- (b) continue with his claims against the other defendants.

(4) In all other cases the claimant must apply to the court for—

- (a) an order permitting a payment out to him of any sum in court; and
- (b) such order as to costs as the court considers appropriate.

### Textual Amendments

**F109** Words in rule 36.17(3)(b) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **14**

### Commencement Information

**I327** Rule 36.17 in force at 26.4.1999, see [Signature](#)

VALID FROM 30/04/2010

### Other cases where a court order is required to enable acceptance of a Part 36 offer or a Part 36 payment **E+W**

**36.18.**—(1) Where a Part 36 offer or a Part 36 payment is made in proceedings to which rule 21.10 applies—

- (a) the offer or payment may be accepted only with the permission of the court; and
- (b) no payment out of any sum in court shall be made without a court order.

(Rule 21.10 deals with compromise etc. by or on behalf of a child or patient)

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

(2) Where the court gives a claimant permission to accept a Part 36 offer or payment after the trial has started—

- (a) any money in court may be paid out only with a court order; and
- (b) the court must, in the order, deal with the whole costs of the proceedings.

(3) Where a claimant accepts a Part 36 payment after a defence of tender before claim<sup>(GL)</sup> has been put forward by the defendant, the money in court may be paid out only after an order of the court.

(Rule 37.3 requires a defendant who wishes to rely on a defence of tender before claim<sup>(GL)</sup> to make a payment into court)

#### Commencement Information

I328 [Rule 36.18](#) in force at 26.4.1999, see [Signature](#)

VALID FROM 30/04/2010

#### Restriction on disclosure of a Part 36 offer or a Part 36 payment **E+W**

**36.19.**—(1) A Part 36 offer will be treated as “without prejudice<sup>(GL)</sup> except as to costs”.

(2) The fact that a Part 36 payment has been made shall not be communicated to the trial judge until all questions of liability and the amount of money to be awarded have been decided.

(3) Paragraph (2) does not apply—

- (a) where the defence of tender before claim<sup>(GL)</sup> has been raised;
- (b) where the proceedings have been stayed<sup>(GL)</sup> under rule 36.15 following acceptance of a Part 36 offer or Part 36 payment; or
- (c) where—
  - (i) the issue of liability has been determined before any assessment of the money claimed; and
  - (ii) the fact that there has or has not been a Part 36 payment may be relevant to the question of the costs of the issue of liability.

#### Commencement Information

I329 [Rule 36.19](#) in force at 26.4.1999, see [Signature](#)

VALID FROM 30/04/2010

#### Costs consequences where claimant fails to do better than a Part 36 offer or a Part 36 payment **E+W**

**36.20.**—(1) This rule applies where at trial a claimant—

- (a) fails to better a Part 36 payment; or

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(b) fails to obtain a judgment which is more advantageous than a [F110 defendant's] Part 36 offer.

(2) Unless it considers it unjust to do so, the court will order the claimant to pay any costs incurred by the defendant after the latest date on which the payment or offer could have been accepted without needing the permission of the court.

(Rule 36.11 sets out the time for acceptance of a defendant's Part 36 offer or Part 36 payment)

#### Textual Amendments

**F110** Word in rule 36.20(1)(b) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **15**

#### Commencement Information

**I330** [Rule 36.20](#) in force at 26.4.1999, see [Signature](#)

VALID FROM 30/04/2010

#### Costs and other consequences where claimant does better than he proposed in his Part 36 offer **E+W**

**36.21.**—(1) This rule applies where at trial—

- (a) a defendant is held liable for more; or
- (b) the judgment against a defendant is more advantageous to the claimant,

than the proposals contained in a claimant's Part 36 offer.

(2) The court may order interest on the whole or part of any sum of money (excluding interest) awarded to the claimant at a rate not exceeding 10% above base rate <sup>(GL)</sup> for some or all of the period starting with the latest date on which the defendant could have accepted the offer without needing the permission of the court.

(3) The court may also order that the claimant is entitled to—

- (a) his costs on the indemnity basis from the latest date when the defendant could have accepted the offer without needing the permission of the court; and
- (b) interest on those costs at a rate not exceeding 10% above base rate <sup>(GL)</sup>.

(4) Where this rule applies, the court will make the orders referred to in paragraphs (2) and (3) unless it considers it unjust to do so.

(Rule 36.12 sets out the latest date when the defendant could have accepted the offer)

(5) In considering whether it would be unjust to make the orders referred to in paragraphs (2) and (3) above, the court will take into account all the circumstances of the case including—

- (a) the terms of any Part 36 offer;
- (b) the stage in the proceedings when any Part 36 offer or Part 36 payment was made;
- (c) the information available to the parties at the time when the Part 36 offer or Part 36 payment was made; and
- (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer or payment into court to be made or evaluated.



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[<sup>F111</sup>(6) Where the court awards interest under this rule and also awards interest on the same sum and for the same period under any other power, the total rate of interest may not exceed 10% above base rate<sup>(g1)</sup>.]

#### Textual Amendments

**F111** Rule 36.21(6) substituted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, 17

#### Commencement Information

**I331** Rule 36.21 in force at 26.4.1999, see [Signature](#)

### Interest **E+W**

**36.22.**—(1) Unless—

- (a) a claimant’s Part 36 offer which offers to accept a sum of money; or
- (b) a Part 36 payment notice,

indicates to the contrary, any such offer or payment will be treated as inclusive of all interest until the last date on which it could be accepted without needing the permission of the court.

(2) Where a claimant’s Part 36 offer or Part 36 payment notice is expressed not to be inclusive of interest, the offer or notice must state—

- (a) whether interest is offered; and
- (b) if so, the amount offered, the rate or rates offered and the period or periods for which it is offered.

#### Commencement Information

**I332** Rule 36.22 in force at 26.4.1999, see [Signature](#)

### Deduction of benefits **E+W**

**36.23.**—(1) This rule applies where a payment to a claimant following acceptance of a Part 36 offer or Part 36 payment into court would be a compensation payment as defined in section 1 of the Social Security (Recovery of Benefits) Act 1997<sup>(43)</sup>.

(2) A defendant to a money claim may make an offer to settle the claim which will have the consequences set out in this Part, without making a Part 36 payment if—

- (a) at the time he makes the offer he has applied for, but not received, a certificate of recoverable benefit; and
- (b) he makes a Part 36 payment not more than 7 days after he receives the certificate.

(Section 1 of the 1997 Act defines “recoverable benefit”)

(3) A Part 36 payment notice must state—

- (a) the amount of gross compensation;
- (b) the name and amount of any benefit by which that gross amount is reduced in accordance with section 8 and Schedule 2 to the 1997 Act; and

(43) 1997 c. 27.

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- (c) that the sum paid in is the net amount after deduction of the amount of benefit.
- (4) For the purposes of rule 36.20, a claimant fails to better a Part 36 payment if he fails to obtain judgment for more than the gross sum specified in the Part 36 payment notice.
- (5) Where—
- (a) a Part 36 payment has been made; and
  - (b) application is made for the money remaining in court to be paid out,
- the court may treat the money in court as being reduced by a sum equivalent to any further recoverable benefits paid to the claimant since the date of payment into court and may direct payment out accordingly.

#### Commencement Information

**I333** [Rule 36.23](#) in force at 26.4.1999, see [Signature](#)

## PART 37 **E+W**

### MISCELLANEOUS PROVISIONS ABOUT PAYMENTS INTO COURT

#### Contents of this Part

Money paid into court under a court order— general	Rule 37.1
Money paid into court may be treated as a Part 36 payment	Rule 37.2
Money paid into court where defendant wishes to rely on defence of tender before claim	Rule 37.3
Proceedings under Fatal Accidents Act 1976 and Law Reform (Miscellaneous Provisions) Act 1934—apportionment by court	Rule 37.4

#### Money paid into court under a court order—general **E+W**

**37.1.**—(1) When a party makes a payment into court under a court order, the court will give notice of the payment to every other party.

(2) Money paid into court under a court order may not be paid out without the court's permission except where—

- (a) the defendant treats the money as a Part 36 payment under rule 37.2; and
- (b) the claimant accepts the Part 36 payment without needing the permission of the court.

(Rule 36.11 sets out when the claimant can accept a Part 36 payment without needing the permission of the court)

#### Commencement Information

**I334** [Rule 37.1](#) in force at 26.4.1999, see [Signature](#)

### Money paid into court may be treated as a Part 36 payment **E+W**

**37.2.**—(1) Where a defendant makes a payment into court following an order made under rule 3.1(3) or 3.1(5) he may choose to treat the whole or any part of the money paid into court as a Part 36 payment.

(Rule 36.2 defines a Part 36 payment)

(2) To do this he must file a Part 36 payment notice.

(Rule 36.6 sets out what a Part 36 payment notice must contain and provides for the court to serve it on the other parties)

(3) If he does so Part 36 applies to the money as if he had paid it into court as a Part 36 payment.

#### Commencement Information

**I335** [Rule 37.2](#) in force at 26.4.1999, see [Signature](#)

### Money paid into court where defendant wishes to rely on defence of tender before claim **E+W**

**37.3.**—(1) Where a defendant wishes to rely on a defence of tender before claim<sup>(GL)</sup> he must make a payment into court of the amount he says was tendered.

(2) If the defendant does not make a payment in accordance with paragraph (1) the defence of tender before claim<sup>(GL)</sup> will not be available to him until he does so.

(3) Where the defendant makes such payment into court—

(a) he may choose to treat the whole or any part of the money paid into court as a Part 36 payment; and

(b) if he does so, he must file a Part 36 payment notice.

#### Commencement Information

**I336** [Rule 37.3](#) in force at 26.4.1999, see [Signature](#)

### Proceedings under Fatal Accidents Act 1976(44) and Law Reform (Miscellaneous Provisions) Act 1934(45)—apportionment by court **E+W**

**37.4.**—(1) Where—

(a) a claim includes claims arising under—

(i) the Fatal Accidents Act 1976; and

(ii) the Law Reform (Miscellaneous Provisions) Act 1934;

(b) a single sum of money is paid into court in satisfaction of those claims; and

(c) the money is accepted,

the court shall apportion the money between the different claims.

(2) The court shall apportion money under paragraph (1)—

(44) [1976 c. 30.](#)

(45) [1934 c. 41.](#)

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- (a) when it gives directions under rule 21.11 (control of money received by a child or patient); or
- (b) if rule 21.11 does not apply, when it gives permission for the money to be paid out of court.
- (3) Where, in an action in which a claim under the Fatal Accidents Act 1976 is made by or on behalf of more than one person—
- (a) a sum in respect of damages is ordered or agreed to be paid in satisfaction of the claim; or
- (b) a sum of money is accepted in satisfaction of the claim,
- the court shall apportion it between the persons entitled to it unless it has already been apportioned by the court, a jury, or agreement between the parties.

#### Commencement Information

**I337** [Rule 37.4](#) in force at 26.4.1999, see [Signature](#)

## PART 38 **E+W**

### DISCONTINUANCE

#### Contents of this Part

Scope of this Part	Rule 38.1
Right to discontinue claim	Rule 38.2
Procedure for discontinuing	Rule 38.3
Right to apply to have notice of discontinuance set aside	Rule 38.4
When discontinuance takes effect where permission of the court is not needed	Rule 38.5
Liability for costs	Rule 38.6
Discontinuance and subsequent proceedings	Rule 38.7
Stay of remainder of partly discontinued proceedings where costs not paid	Rule 38.8

#### Scope of this Part **E+W**

**38.1.**—(1) The rules in this Part set out the procedure by which a claimant may discontinue all or part of a claim.

- (2) A claimant who—
- (a) claims more than one remedy; and
- (b) subsequently abandons his claim to one or more of the remedies but continues with his claim for the other remedies,

is not treated as discontinuing all or part of a claim for the purposes of this Part.

(The procedure for amending a statement of case, set out in Part 17, applies where a claimant abandons a claim for a particular remedy but wishes to continue with his claim for other remedies)

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#### Commencement Information

I338 [Rule 38.1](#) in force at 26.4.1999, see [Signature](#)

### Right to discontinue claim **E+W**

**38.2.**—(1) A claimant may discontinue all or part of a claim at any time.

(2) However—

- (a) a claimant must obtain the permission of the court if he wishes to discontinue all or part of a claim in relation to which—
  - (i) the court has granted an interim injunction<sup>(GL)</sup>; or
  - (ii) any party has given an undertaking to the court;
- (b) where the claimant has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Part 25), he may discontinue that claim only if—
  - (i) the defendant who made the interim payment consents in writing; or
  - (ii) the court gives permission;
- (c) where there is more than one claimant, a claimant may not discontinue unless—
  - (i) every other claimant consents in writing; or
  - (ii) the court gives permission.

(3) Where there is more than one defendant, the claimant may discontinue all or part of a claim against all or any of the defendants.

#### Commencement Information

I339 [Rule 38.2](#) in force at 26.4.1999, see [Signature](#)

### Procedure for discontinuing **E+W**

**38.3.**—(1) To discontinue a claim or part of a claim, a claimant must—

- (a) file a notice of discontinuance; and
- (b) serve a copy of it on every other party to the proceedings.

(2) The claimant must state in the notice of discontinuance which he files that he has served notice of discontinuance on every other party to the proceedings.

(3) Where the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the notice of discontinuance.

(4) Where there is more than one defendant, the notice of discontinuance must specify against which defendants the claim is discontinued.

#### Commencement Information

I340 [Rule 38.3](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
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### Right to apply to have notice of discontinuance set aside **E+W**

**38.4.**—(1) Where the claimant discontinues under rule 38.2(1) the defendant may apply to have the notice of discontinuance set aside<sup>(GL)</sup>.

(2) The defendant may not make an application under this rule more than 28 days after the date when the notice of discontinuance was served on him.

#### Commencement Information

**I341** [Rule 38.4](#) in force at 26.4.1999, see [Signature](#)

### When discontinuance takes effect where permission of the court is not needed **E+W**

**38.5.**—(1) Discontinuance against any defendant takes effect on the date when notice of discontinuance is served on him under rule 38.3(1).

(2) Subject to rule 38.4, the proceedings are brought to an end as against him on that date.

(3) However, this does not affect proceedings to deal with any question of costs.

#### Commencement Information

**I342** [Rule 38.5](#) in force at 26.4.1999, see [Signature](#)

### Liability for costs **E+W**

**38.6.**—(1) Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom he discontinues incurred on or before the date on which notice of discontinuance was served on him.

(2) If proceedings are only partly discontinued—

- (a) the claimant is liable under paragraph (1) for costs relating only to the part of the proceedings which he is discontinuing; and
- (b) unless the court orders otherwise, the costs which the claimant is liable to pay must not be assessed until the conclusion of the rest of the proceedings.

(3) This rule does not apply to claims allocated to the small claims track.

(Rule 44.12 provides for the basis of assessment where right to costs arises on discontinuance)

#### Commencement Information

**I343** [Rule 38.6](#) in force at 26.4.1999, see [Signature](#)

### Discontinuance and subsequent proceedings **E+W**

**38.7** A claimant who discontinues a claim needs the permission of the court to make another claim against the same defendant if—

- (a) he discontinued the claim after the defendant filed a defence; and
- (b) the other claim arises out of facts which are the same or substantially the same as those relating to the discontinued claim.

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

#### Commencement Information

I344 Rule 38.7 in force at 26.4.1999, see [Signature](#)

### Stay of remainder of partly discontinued proceedings where costs not paid **E+W**

**38.8.**—(1) This rule applies where—

- (a) proceedings are partly discontinued;
- (b) a claimant is liable to pay costs under rule 38.6; and
- (c) the claimant fails to pay those costs within [<sup>F112</sup>14] days of—
  - (i) the date on which the parties agreed the sum payable by the claimant; or
  - (ii) the date on which the court ordered the costs to be paid.

(2) Where this rule applies, the court may stay<sup>(GL)</sup> the remainder of the proceedings until the claimant pays the whole of the costs which he is liable to pay under rule 38.6

#### Textual Amendments

F112 Word in rule 38.8(1)(c) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, 10 (with rule 39)

#### Commencement Information

I345 Rule 38.8 in force at 26.4.1999, see [Signature](#)

## PART 39 **E+W**

### MISCELLANEOUS PROVISIONS RELATING TO HEARINGS

#### Contents of this Part

Interpretation	Rule 39.1
General rule—hearing to be in public	Rule 39.2
Failure to attend the trial	Rule 39.3
Timetable for trial	Rule 39.4
Trial bundles	Rule 39.5
Representation at trial of companies or other corporations	Rule 39.6
Impounded documents	Rule 39.7

#### Interpretation **E+W**

**39.1** In this Part, reference to a hearing includes a reference to the trial.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

#### Commencement Information

**I346** Rule 39.1 in force at 26.4.1999, see [Signature](#)

### General rule—hearing to be in public **E+W**

**39.2.**—(1) The general rule is that a hearing is to be in public.

(2) The requirement for a hearing to be in public does not require the court to make special arrangements for accommodating members of the public.

(3) A hearing, or any part of it, may be in private if—

- (a) publicity would defeat the object of the hearing;
- (b) it involves matters relating to national security;
- (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
- (d) a private hearing is necessary to protect the interests of any child or patient;
- (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
- (f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
- (g) the court considers this to be necessary, in the interests of justice.

(4) The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

#### Commencement Information

**I347** Rule 39.2 in force at 26.4.1999, see [Signature](#)

### Failure to attend the trial **E+W**

**39.3.**—(1) The court may proceed with a trial in the absence of a party but—

- (a) if no party attends the trial, it may strike out<sup>(GL)</sup> the whole of the proceedings;
- (b) if the claimant does not attend, it may strike out his claim and any defence to counterclaim; and
- (c) if a defendant does not attend, it may strike out his defence or counterclaim (or both).

(2) Where the court strikes out proceedings, or any part of them, under this rule, it may subsequently restore the proceedings, or that part.

(3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside<sup>(GL)</sup>.

(4) An application under paragraph (2) or paragraph (3) <sup>F113</sup>... must be supported by evidence.

(5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant—

- (a) acted promptly when he found out that the court had exercised its power to strike out<sup>(GL)</sup> or to enter judgment or make an order against him;
- (b) had a good reason for not attending the trial; and



(c) has a reasonable prospect of success at the trial.

**Textual Amendments**

**F113** Words in [rule 39.3\(4\)](#) omitted (2.10.2000) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), [rules 1, 18](#)

**Commencement Information**

**I348** [Rule 39.3](#) in force at 26.4.1999, see [Signature](#)

**Timetable for trial** **E+W**

**39.4** When the court sets a timetable for a trial in accordance with [rule 28.6](#) (fixing or confirming the trial date and giving directions—fast track) or [rule 29.8](#) (setting a trial timetable and fixing or confirming the trial date or week—multi-track) it will do so in consultation with the parties.

**Commencement Information**

**I349** [Rule 39.4](#) in force at 26.4.1999, see [Signature](#)

**Trial bundles** **E+W**

**39.5.—(1)** Unless the court orders otherwise, the claimant must file a trial bundle containing documents required by—

- (a) a relevant practice direction; and
- (b) any court order.

(2) The claimant must file the trial bundle not more than 7 days and not less than 3 days before the start of the trial.

**Commencement Information**

**I350** [Rule 39.5](#) in force at 26.4.1999, see [Signature](#)

**Representation at trial of companies or other corporations** **E+W**

**39.6** A company or other corporation may be represented at trial by an employee if—

- (a) the employee has been authorised by the company or corporation to appear at trial on its behalf; and
- (b) the court gives permission.

**Commencement Information**

**I351** [Rule 39.6](#) in force at 26.4.1999, see [Signature](#)

**Impounded documents** **E+W**

**39.7.—(1)** Documents impounded by order of the court must not be released from the custody of the court except in compliance—

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- (a) with a court order; or
  - (b) with a written request made by a Law Officer or the Director of Public Prosecutions.
- (2) A document released from the custody of the court under paragraph(1)(b) must be released into the custody of the person who requested it.
- (3) Documents impounded by order of the court, while in the custody of the court, may not be inspected except by a person authorised to do so by a court order.

#### Commencement Information

**I352** [Rule 39.7](#) in force at 26.4.1999, see [Signature](#)

### [<sup>F114</sup>Claims under the Race Relations Act 1976 **E+W**]

**39.8** In a claim brought under section 57(1) of the Race Relations Act 1976, the court may, where it considers it expedient in the interests of national security—

- (a) exclude from all or part of the proceedings—
  - (i) the claimant;
  - (ii) the claimant’s representatives; or
  - (iii) any assessors appointed under section 67(4) of that Act;
- (b) permit a claimant or representative to make a statement to the court before the start of the proceedings (or part of the proceedings) from which he is to be excluded; or
- (c) take steps to keep secret all or part of the reasons for its decision in the claim.

(Section 67A(2) of the Race Relations Act 1976 provides that the Attorney General may appoint a person to represent the interests of a claimant in any proceedings from which he and his representatives are excluded)]

#### Textual Amendments

**F114** [Rule 39.8](#) inserted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **12**

## PART 40 **E+W**

### [<sup>F115</sup>JUDGMENTS, ORDERS, SALE OF LAND ETC]

#### Textual Amendments

**F115** [Pt. 40](#) heading substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **18(1)**

### [<sup>F116</sup>Contents of this Part

#### **I JUDGMENTS AND ORDERS**

Rule 40.1

Scope of this Section

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
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Standard requirements	Rule 40.2
Drawing up and filing of judgments and orders	Rule 40.3
Service of judgments and orders	Rule 40.4
Power to require judgment or order to be served on a party as well as his solicitor	Rule 40.5
Consent judgments and orders	Rule 40.6
When judgment or order takes effect	Rule 40.7
Time from which interest begins to run	Rule 40.8
Who may apply to set aside or vary a judgment or order	Rule 40.9
Judgment against a State in default of acknowledgement of service	Rule 40.10
Time for complying with a judgment or order	Rule 40.11
Correction of errors in judgments and orders	Rule 40.12
Cases where court gives judgment both on claim and counterclaim	Rule 40.13
Judgment in favour of certain part owners relating to the detention of goods	Rule 40.14
<b>II SALE OF LAND ETC. AND CONVEYANCING COUNSEL</b>	Rule 40.15
Scope of this Section	
Power to order sale etc.	Rule 40.16
Power to order delivery up of possession etc.	Rule 40.17
Reference to conveyancing counsel	Rule 40.18
Party may object to report]	Rule 40.19

## *[<sup>F117</sup>I JUDGMENTS AND ORDERS]*

### **Textual Amendments**

**F117** Pt. 40 Section 1 heading inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), 18(2), [Sch. 4 Pt. 1](#)

### **[<sup>F118</sup>Scope of this section E+W**

**40.1** This Section sets out rules about judgments and orders which apply except where any other of these Rules makes a different provision in relation to the judgment or order in question.]

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### Textual Amendments

**F118** Rule 40.1 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **18(3)**

### Standard requirements **E+W**

**40.2.**—(1) Every judgment or order must state the name and judicial title of the person who made it, unless it is—

- (a) default judgment entered under rule 12.4(1) (entry of default judgment where judgment is entered by a court officer) or a default costs certificate obtained under rule 47.11;
  - (b) judgment entered under rule 14.4, 14.5, 14.6, 14.7 and 14.9 (entry of judgment on admission where judgment is entered by a court officer); or
  - (c) a consent order under rule 40.6(2) (consent orders made by court officers).
- (2) Every judgment or order must—
- (a) bear the date on which it is given or made; and
  - (b) be sealed<sup>(GL)</sup> by the court.

### Commencement Information

**I353** Rule 40.2 in force at 26.4.1999, see [Signature](#)

### Drawing up and filing of judgments and orders **E+W**

**40.3.**—(1) Every judgment or order will be drawn up by the court unless—

- (a) the court orders a party to draw it up;
  - (b) a party, with the permission of the court, agrees to draw it up;
  - (c) the court dispenses with the need to draw it up; or
  - (d) it is a consent order under rule 40.6.
- (2) The court may direct that—
- (a) a judgment or an order drawn up by a party must be checked by the court before it is sealed<sup>(GL)</sup>; or
  - (b) before a judgment or an order is drawn up by the court, the parties must file an agreed statement of its terms.
- (3) Where a judgment or an order is to be drawn up by a party—
- (a) he must file it no later than 7 days after the date on which the court ordered or permitted him to draw it up so that it can be sealed<sup>(GL)</sup> by the court; and
  - (b) if he fails to file it within that period, any other party may draw it up and file it.

### Commencement Information

**I354** Rule 40.3 in force at 26.4.1999, see [Signature](#)

## Service of judgments and orders **E+W**

**40.4.**—(1) Where a judgment or an order has been drawn up by a party and is to be served by the court—

- (a) the party who drew it up must file a copy to be retained at court and sufficient copies for service on him and on the other parties; and
  - (b) once it has been sealed<sup>(GL)</sup>, the court must serve a copy of it on each party to the proceedings.
- (2) Unless the court directs otherwise, any order made otherwise than at trial must be served on—
- (a) the applicant and the respondent; and
  - (b) any other person on whom the court orders it to be served.

(Rule 6.3 specifies who must serve judgments and orders)

### Commencement Information

**I355** [Rule 40.4](#) in force at 26.4.1999, see [Signature](#)

## Power to require judgment or order to be served on a party as well as his solicitor **E+W**

**40.5** Where the party on whom a judgment or order is to be served is acting by a solicitor, the court may order the judgment or order to be served on the party as well as on his solicitor.

### Commencement Information

**I356** [Rule 40.5](#) in force at 26.4.1999, see [Signature](#)

## Consent judgments and orders **E+W**

**40.6.**—(1) This rule applies where all the parties agree the terms in which a judgment should be given or an order should be made.

- (2) A court officer may enter and seal<sup>(GL)</sup> an agreed judgment or order if—
- (a) the judgment or order is listed in paragraph (3);
  - (b) none of the parties is a litigant in person; and
  - (c) the approval of the court is not required by these Rules, a practice direction or any enactment before an agreed order can be made.
- (3) The judgments and orders referred to in paragraph (2) are—
- (a) a judgment or order for—
    - (i) the payment of an amount of money (including a judgment or order for damages or the value of goods to be decided by the court); or
    - (ii) the delivery up of goods with or without the option of paying the value of the goods or the agreed value.
  - (b) an order for—
    - (i) the dismissal of any proceedings, wholly or in part;
    - (ii) the stay<sup>(GL)</sup> of proceedings on agreed terms, disposing of the proceedings, whether those terms are recorded in a schedule to the order or elsewhere;

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- (iii) the stay<sup>(GL)</sup> of enforcement of a judgment, either unconditionally or on condition that the money due under the judgment is paid by instalments specified in the order;
- (iv) the setting aside under Part 13 of a default judgment which has not been satisfied;
- (v) the payment out of money which has been paid into court;
- (vi) the discharge from liability of any party;
- (vii) the payment, assessment or waiver of costs, or such other provision for costs as may be agreed.

(4) Rule 40.3 (drawing up and filing of judgments and orders) applies to judgments and orders entered and sealed<sup>(GL)</sup> by a court officer under paragraph (2) as it applies to other judgments and orders.

(5) Where paragraph (2) does not apply, any party may apply for a judgment or order in the terms agreed.

(6) The court may deal with an application under paragraph (5) without a hearing.

(7) Where this rule applies—

- (a) the order which is agreed by the parties must be drawn up in the terms agreed;
- (b) it must be expressed as being “By Consent”;
- (c) it must be signed by the legal representative acting for each of the parties to whom the order relates or, where paragraph (5) applies, by the party if he is a litigant in person.

#### Commencement Information

**I357** [Rule 40.6](#) in force at 26.4.1999, see [Signature](#)

#### When judgment or order takes effect **E+W**

**40.7.**—(1) A judgment or order takes effect from the day when it is given or made, or such later date as the court may specify.

(2) This rule applies to all judgments and orders except those to which rule 40.10 (judgment against a State) applies.

#### Commencement Information

**I358** [Rule 40.7](#) in force at 26.4.1999, see [Signature](#)

#### Time from which interest begins to run **E+W**

**40.8.**—(1) Where interest is payable on a judgment pursuant to section 17 of the Judgments Act 1838<sup>(46)</sup> or section 74 of the County Courts Act 1984<sup>(47)</sup>, the interest shall begin to run from the date that judgment is given unless—

- (a) a rule in another Part or a practice direction makes different provision; or
- (b) the court orders otherwise.

(2) The court may order that interest shall begin to run from a date before the date that judgment is given.

<sup>(46)</sup> 1838 c. 110. Section 17 was amended by S.I. 1998/2940.

<sup>(47)</sup> 1984 c. 28. Section 74 was amended by section 2 of the Private International Law (Miscellaneous Provisions) Act 1995 (c. 42).

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**Commencement Information**

**I359** [Rule 40.8](#) in force at 26.4.1999, see [Signature](#)

**Who may apply to set aside or vary a judgment or order** **E+W**

**40.9** A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.

**Commencement Information**

**I360** [Rule 40.9](#) in force at 26.4.1999, see [Signature](#)

**Judgment against a State in default of acknowledgment of service** **E+W**

**40.10.**—(1) Where the claimant obtains default judgment under Part 12 on a claim against a State where the defendant has failed to file an acknowledgment of service, the judgment does not take effect until 2 months after service on the State of—

- (a) a copy of the judgment; and
- (b) a copy of the evidence in support of the application for permission to enter default judgment (unless the evidence has already been served on the State in accordance with an order made under Part 12).

(2) In this rule, “State” has the meaning given by section 14 of the State Immunity Act 1978**(48)**.

**Commencement Information**

**I361** [Rule 40.10](#) in force at 26.4.1999, see [Signature](#)

**Time for complying with a judgment or order** **E+W**

**40.11** A party must comply with a judgment or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order, unless—

- (a) the judgment or order specifies a different date for compliance (including specifying payment by instalments);
- (b) any of these Rules specifies a different date for compliance; or
- (c) the court has stayed the proceedings or judgment.

(Parts 12 and 14 specify different dates for complying with certain default judgments and judgments on admissions)

**Commencement Information**

**I362** [Rule 40.11](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
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### Correction of errors in judgments and orders **E+W**

**40.12.**—(1) The court may at any time correct an accidental slip or omission in a judgment or order.

(2) A party may apply for a correction without notice.

#### Commencement Information

**I363** [Rule 40.12](#) in force at 26.4.1999, see [Signature](#)

### Cases where court gives judgment both on claim and counterclaim **E+W**

**40.13.**—(1) This rule applies where the court gives judgment for specified amounts both for the claimant on his claim and against the claimant on a counterclaim.

(2) If there is a balance in favour of one of the parties, it may order the party whose judgment is for the lesser amount to pay the balance.

(3) In a case to which this rule applies, the court may make a separate order as to costs against each party.

#### Commencement Information

**I364** [Rule 40.13](#) in force at 26.4.1999, see [Signature](#)

### Judgment in favour of certain part owners relating to the detention of goods **E+W**

**40.14.**—(1) In this rule “part owner” means one of two or more persons who have an interest in the same goods.

(2) Where—

- (a) a part owner makes a claim relating to the detention of the goods; and
- (b) the claim is not based on a right to possession,

any judgment or order given or made in respect of the claim is to be for the payment of damages only, unless the claimant had the written authority of every other part owner of the goods to make the claim on his behalf as well as for himself.

(3) This rule applies notwithstanding anything in subsection (3) of section 3 of the Torts (Interference with Goods) Act 1977<sup>(49)</sup>, but does not affect the remedies and jurisdiction mentioned in subsection (8) of that section.

#### Commencement Information

**I365** [Rule 40.14](#) in force at 26.4.1999, see [Signature](#)

(49) 1977 c. 32.



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## *F<sup>119</sup> II SALE OF LAND ETC. AND CONVEYANCING COUNSEL*

### **Textual Amendments**

**F119** Pt. 40 Section 2 inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 4 Pt. 2](#)

### **Scope of this Section** **E+W**

**40.15.**—(1) This Section—

- (a) deals with the court’s power to order the sale, mortgage, partition or exchange of land; and
- (b) contains provisions about conveyancing counsel.

(Section 131 of the Supreme Court Act 1981 provides for the appointment of the conveyancing counsel of the Supreme Court)

(2) In this Section “land” includes any interest in, or right over, land.

### **Power to order sale etc.** **E+W**

**40.16** In any proceedings relating to land, the court may order the land, or part of it, to be—

- (a) sold;
- (b) mortgaged;
- (c) exchanged; or
- (d) partitioned.

### **Power to order delivery up of possession etc.** **E+W**

**40.17** Where the court has made an order under rule 40.16, it may order any party to deliver up to the purchaser or any other person—

- (a) possession of the land;
- (b) receipt of rents or profits relating to it; or
- (c) both.

### **Reference to conveyancing counsel** **E+W**

**40.18.**—(1) The court may direct conveyancing counsel to investigate and prepare a report on the title of any land or to draft any document.

(2) The court may take the report on title into account when it decides the issue in question.

(Provisions dealing with the fees payable to conveyancing counsel are set out in the practice direction relating to Part 44)

### **Party may object to report** **E+W**

**40.19.**—(1) Any party to the proceedings may object to the report on title prepared by conveyancing counsel.

(2) Where there is an objection, the issue will be referred to a judge for determination.

(Part 23 contains general rules about making an application)]

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## <sup>F120</sup> III DECLARATORY JUDGMENTS

### Textual Amendments

**F120** Pt. 40 Section 3 inserted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **13**

### E+W

**40.20** The court may make binding declarations whether or not any other remedy is claimed.]

## PART 41 **E+W**

### PROVISIONAL DAMAGES

#### Contents of this Part

Application and definitions	Rule 41.1
Order for an award of provisional damages	Rule 41.2
Application for further damages	Rule 41.3

### Application and definitions **E+W**

- 41.1.**—(1) This Part applies to proceedings to which SCA s.32A or CCA s.51 applies.
- (2) In this Part—
- “SCA s.32A” means section 32A of the Supreme Court Act 1981(**50**);
  - “CCA s.51” means section 51 of the County Courts Act 1984(**51**); and
  - “award of provisional damages” means an award of damages for personal injuries under which—
    - damages are assessed on the assumption referred to in SCA s.32A or CCA s.51 that the injured person will not develop the disease or suffer the deterioration; and
    - the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

### Commencement Information

**I366** [Rule 41.1](#) in force at 26.4.1999, see [Signature](#)

### Order for an award of provisional damages **E+W**

- 41.2.**—(1) The court may make an order for an award of provisional damages if—
- the particulars of claim include a claim for provisional damages; and
  - the court is satisfied that SCA s.32A or CCA s.51 applies.

(50) 1981 c. 54. Section 32A was inserted by section 6(1) of the Administration of Justice Act 1982 (c. 53)

(51) 1984 c. 28.

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(Rule 16.4(1)(d) sets out what must be included in the particulars of claim where the claimant is claiming provisional damages)

- (2) An order for an award of provisional damages—
  - (a) must specify the disease or type of deterioration in respect of which an application may be made at a future date;
  - (b) must specify the period within which such an application may be made; and
  - (c) may be made in respect of more than one disease or type of deterioration and may, in respect of each disease or type of deterioration, specify a different period within which a subsequent application may be made.
- (3) The claimant may make more than one application to extend the period specified under paragraph (2)(b) or (2)(c).

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**Commencement Information**

**I367** [Rule 41.2](#) in force at 26.4.1999, see [Signature](#)

**Application for further damages** **E+W**

**41.3.**—(1) The claimant may not make an application for further damages after the end of the period specified under rule 41.2(2), or such period as extended by the court.

(2) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the award of provisional damages.

(3) The claimant must give at least 28 days written notice to the defendant of his intention to apply for further damages.

(4) If the claimant knows—

- (a) that the defendant is insured in respect of the claim; and
- (b) the identity of the defendant’s insurers,

he must also give at least 28 days written notice to the insurers.

(5) Within 21 days after the end of the 28 day notice period referred to in paragraphs (3) and (4), the claimant must apply for directions.

(6) The rules in Part 25 about the making of an interim payment apply where an application is made under this rule.

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**Commencement Information**

**I368** [Rule 41.3](#) in force at 26.4.1999, see [Signature](#)

**PART 42** **E+W**  
**CHANGE OF SOLICITOR**

**Contents of this Part**

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Solicitor acting for a party	Rule 42.1
Change of solicitor—duty to give notice	Rule 42.2

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Order that a solicitor has ceased to act	Rule 42.3
Removal of solicitor who has ceased to act on application of another party	Rule 42.4

### Solicitor acting for a party **E+W**

**42.1** Where the address for service of a party is the business address of his solicitor, the solicitor will be considered to be acting for that party until the provisions of this Part have been complied with.

(Part 6 contains provisions about the address for service)

#### Commencement Information

**I369** Rule 42.1 in force at 26.4.1999, see [Signature](#)

### Change of solicitor—duty to give notice **E+W**

**42.2.**—(1) This rule applies where—

- (a) a party for whom a solicitor [<sup>F121</sup>is acting] wants to change his solicitor;
- (b) a party, after having conducted the claim in person, appoints a solicitor to act on his behalf (except where the solicitor is appointed only to act as an advocate for a hearing); or
- (c) a party, after having conducted the claim by a solicitor, intends to act in person.

(2) Where this rule applies, the party or his solicitor (where one is acting) must—

- (a) file notice of the change; and
- (b) serve notice of the change on every other party and, where paragraph (1)(a) or (c) applies, on the former solicitor.

(3) The notice must state the party's new address for service.

(4) The notice filed at court must state that notice has been served as required by paragraph (2)(b).

(5) Subject to paragraph (6), where a party has changed his solicitor or intends to act in person, the former solicitor will be considered to be the party's solicitor unless and until—

- (a) notice is served in accordance with paragraph (1); or
- (b) the court makes an order under rule 42.3 and the order is served as required by paragraph (3) of that rule.

[<sup>F122</sup>(6) Where the certificate of a LSC funded client or an assisted person is revoked or discharged—

- (a) the solicitor who acted for that person will cease to be the solicitor acting in the case as soon as his retainer is determined—
  - (i) under regulation 4 of the Community Legal Service (Costs) Regulations 2000; or
  - (ii) under regulation 83 of the Civil Legal Aid (General) Regulations 1989; and
- (b) if that person wishes to continue—
  - (i) where he appoints a solicitor to act on his behalf, paragraph (2) will apply as if he had previously conducted the claim in person; and
  - (ii) where he wants to act in person, he must give an address for service.

(Rule 6.5 deals with a party's address for service)

("LSC funded client" and "assisted person" are defined in rule 43.2)

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- (7) “Certificate” in paragraph (6) means—
- (a) in the case of a LSC funded client, a certificate issued under the Funding Code (approved under section 9 of the Access to Justice Act 1999), or
  - (b) in the case of an assisted person, a certificate within the meaning of the Civil Legal Aid (General) Regulations 1989.]

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**Textual Amendments**

**F121** Words in rule 42.2(1)(a) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **16**

**F122** Rule 42.2(6)(7) substituted for rule 42.2(6) (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **11** (with rule 39)

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**Commencement Information**

**I370** [Rule 42.2](#) in force at 26.4.1999, see [Signature](#)

**Order that a solicitor has ceased to act** **E+W**

**42.3.**—(1) A solicitor may apply for an order declaring that he has ceased to be the solicitor acting for a party.

- (2) Where an application is made under this rule—
- (a) notice of the application must be given to the party for whom the solicitor is acting, unless the court directs otherwise; and
  - (b) the application must be supported by evidence.
- (3) Where the court makes an order that a solicitor has ceased to act—
- (a) a copy of the order must be served on every party to the proceedings; and
  - (b) if it is served by a party or the solicitor, the party or the solicitor (as the case may be) must file a certificate of service.

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**Commencement Information**

**I371** [Rule 42.3](#) in force at 26.4.1999, see [Signature](#)

**Removal of solicitor who has ceased to act on application of another party** **E+W**

- 42.4.**—(1) Where—
- (a) a solicitor who has acted for a party—
    - (i) has died;
    - (ii) has become bankrupt;
    - (iii) has ceased to practice; or
    - (iv) cannot be found; and
  - (b) the party has not given notice of a change of solicitor or notice of intention to act in person as required by rule 42.2(2),

any other party may apply for an order declaring that the solicitor has ceased to be the solicitor acting for the other party in the case.

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(2) Where an application is made under this rule, notice of the application must be given to the party to whose solicitor the application relates unless the court directs otherwise.

(3) Where the court makes an order made under this rule—

- (a) a copy of the order must be served on every other party to the proceedings; and
- (b) where it is served by a party, that party must file a certificate of service.

#### Commencement Information

**I372** [Rule 42.4](#) in force at 26.4.1999, see [Signature](#)

## PART 43 E+W

### SCOPE OF COST RULES AND DEFINITIONS

#### Modifications etc. (not altering text)

- C7** [Pt. 43](#) applied (with modifications) (26.4.1999) by [The Family Proceedings \(Miscellaneous Amendments\) Rules 1999 \(S.I. 1999/1012\)](#), rules 1, **4(1)(2)** (with rule 4(3))
- C8** [Pt. 43](#) applied (with modifications) (1.4.2001) by [The Court of Protection Rules 2001 \(S.I. 2001/824\)](#), rules 1, **86** (with rule 91)
- C9** [Pt. 43](#) applied (with modifications) (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **6.21**

#### Contents of this Part

Scope of this Part	Rule 43.1
Definitions and application	Rule 43.2
Meaning of summary assessment	Rule 43.3
Meaning of detailed assessment	Rule 43.4

#### Scope of this Part E+W

**43.1** This Part contains definitions and interpretation of certain matters set out in the rules about costs contained in Parts 44 to 48.

(Part 44 contains general rules about costs; Part 45 deals with fixed costs; Part 46 deals with fast track trial costs; Part 47 deals with the detailed assessment of costs and related appeals and Part 48 deals with costs payable in special cases)

#### Commencement Information

**I373** [Rule 43.1](#) in force at 26.4.1999, see [Signature](#)

#### Definitions and application E+W

**43.2.**—(1) In Parts 44 to 48, unless the context otherwise requires—

- (a) “costs” includes fees, charges, disbursements, expenses, remuneration, reimbursement allowed to a litigant in person under rule 48.6 [F123, any additional liability incurred under a funding arrangement] and any fee or reward charged by a lay representative for acting on behalf of a party in proceedings allocated to the small claims track;
- (b) “costs judge” means a taxing master of the Supreme Court;
- (c) “costs officer” means—
  - (i) a costs judge;
  - (ii) a district judge; and
  - (iii) an authorised court officer;
- (d) “authorised court officer” means any officer of—
  - (i) a county court;
  - (ii) a district registry;
  - (iii) the Principal Registry of the Family Division; or
  - (iv) the Supreme Court Costs Office,whom the Lord Chancellor has authorised to assess costs.
- (e) “fund” includes any estate or property held for the benefit of any person or class of person and any fund to which a trustee or personal representative is entitled in his capacity as such;
- (f) “receiving party” means a party entitled to be paid costs;
- (g) “paying party” means a party liable to pay costs;
- (h) “assisted person” means an assisted person within the statutory provisions relating to legal aid; F124 ...
- [F125(i) “LSC funded client” means an individual who receives services funded by the Legal Services Commission as part of the Community Legal Service within the meaning of Part I of the Access to Justice Act 1999;]
- [F126(j)] “fixed costs” means the amounts which are to be allowed in respect of solicitors' charges in the circumstances set out in Part 45.
- [F127(k) “funding arrangement” means an arrangement where a person has—
  - (i) entered into a conditional fee agreement [F128 or a collective conditional fee agreement] which provides for a success fee within the meaning of section 58(2) of the Courts and Legal Services Act 1990;
  - (ii) taken out an insurance policy to which section 29 of the Access to Justice Act 1999 (recovery of insurance premiums by way of costs) applies; or
  - (iii) made an agreement with a membership organisation to meet his legal costs;
- (l) “percentage increase” means the percentage by which the amount of a legal representative’s fee can be increased in accordance with a conditional fee agreement which provides for a success fee;
- (m) “insurance premium” means a sum of money paid or payable for insurance against the risk of incurring a costs liability in the proceedings, taken out after the event that is the subject matter of the claim;
- (n) “membership organisation” means a body prescribed for the purposes of section 30 of the Access to Justice Act 1999 (recovery where body undertakes to meet costs liabilities); and
- (o) “additional liability” means the percentage increase, the insurance premium, or the additional amount in respect of provision made by a membership organisation, as the case may be.

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(The Conditional Fee Agreements Regulations 2000 [<sup>F129</sup>, the Collective Conditional Fee Agreements Regulations 2000] and the Access to Justice (Membership Organisations) Regulations 2000 contain further provisions about conditional fee agreements and arrangements to meet costs liabilities <sup>F130</sup> ...)]

- (2) The costs to which Parts 44 to 48 apply include—
- (a) the following costs where those costs may be assessed by the court—
- (i) costs of proceedings before an arbitrator or umpire;
  - (ii) costs of proceedings before a tribunal or other statutory body; and
  - (iii) costs payable by a client to his solicitor; and
- (b) costs which are payable by one party to another party under the terms of a contract, where the court makes an order for an assessment of those costs.

#### Textual Amendments

- F123** Words in rule 43.2(1)(a) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **12(a)** (with rule 39)
- F124** Word in rule 43.2(1)(h) omitted (3.7.2000) by virtue of [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **12(b)** (with rule 39)
- F125** Rule 43.2(1)(i) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **12(d)** (with rule 39)
- F126** Rule 43.2(1)(i) renumbered as rule 43.2(1)(j) (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **12(c)** (with rule 39)
- F127** Rules 43.2(1)(k)-(o) and words inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **12(e)** (with rule 39)
- F128** Words in rule 43.2(1)(k)(i) inserted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **14(a)**
- F129** Words in rule 43.2 inserted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **14(b)(i)**
- F130** Word in rule 43.2 omitted (26.3.2001) by virtue of [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **14(b)(ii)**

#### Commencement Information

- I374** [Rule 43.2](#) in force at 26.4.1999, see [Signature](#)

#### Meaning of summary assessment **E+W**

**43.3** “Summary assessment” means the procedure by which the court, when making an order about costs, orders payment of a sum of money instead of fixed costs or “detailed assessment”.

#### Commencement Information

- I375** [Rule 43.3](#) in force at 26.4.1999, see [Signature](#)

#### Meaning of detailed assessment **E+W**

**43.4** “Detailed assessment” means the procedure by which the amount of costs is decided by a costs officer in accordance with Part 47.



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### Commencement Information

**I376** Rule 43.4 in force at 26.4.1999, see [Signature](#)

## PART 44 **E+W**

### GENERAL RULES ABOUT COSTS

#### Modifications etc. (not altering text)

- C10** Pt. 44 applied in part (with modifications) (26.4.1999) by [The Family Proceedings \(Miscellaneous Amendments\) Rules 1999 \(S.I. 1999/1012\)](#), rules 1, **4(1)(2)** (with rule 4(3))
- C11** Pt. 44 applied (with modifications) (1.4.2001) by [The Court of Protection Rules 2001 \(S.I. 2001/824\)](#), rules 1, **86** (with rule 91)
- C12** Pt. 44 applied (with modifications) (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **6.21**

#### Contents of this Part

Scope of this Part	Rule 44.1
Solicitor's duty to notify client	Rule 44.2
Court's discretion and circumstances to be taken into account when exercising its discretion as to costs	Rule 44.3
[ <sup>F131</sup> Costs orders relating to funding arrangements	Rule 44.3A
Limits on recovery under funding arrangements	Rule 44.3B]
Basis of assessment	Rule 44.4
Factors to be taken into account in deciding the amount of costs	Rule 44.5
Fixed costs	Rule 44.6
Procedure for assessing costs	Rule 44.7
Time for complying with an order for costs	Rule 44.8
Costs on the small claims track and fast track	Rule 44.9
Limitation on amount court may award where a claim allocated to the fast track settles before trial	Rule 44.10
Costs following allocation and re-allocation	Rule 44.11
Cases where costs orders deemed to have been made	Rule 44.12
[ <sup>F132</sup> Costs-only proceedings	Rule 44.12A]

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Special situations	Rule 44.13
Court's powers in relation to misconduct	Rule 44.14
[ <sup>F133</sup> Providing information about funding arrangements	Rule 44.15
Adjournment where legal representative seeks to challenge disallowance of any amount of percentage increase	Rule 44.16
Application of costs rules	Rule 44.17]

### Scope of this Part **E+W**

**44.1** This Part contains general rules about costs and entitlement to costs.

(The definitions contained in Part 43 are relevant to this Part)

#### Commencement Information

**I377** [Rule 44.1](#) in force at 26.4.1999, see [Signature](#)

### Solicitor's duty to notify client **E+W**

**44.2** Where—

- (a) the court makes a costs order against a legally represented party; and
- (b) the party is not present when the order is made,

the party's solicitor must notify his client in writing of the costs order no later than 7 days after the solicitor receives notice of the order.

#### Commencement Information

**I378** [Rule 44.2](#) in force at 26.4.1999, see [Signature](#)

### Court's discretion and circumstances to be taken into account when exercising its discretion as to costs **E+W**

**44.3.**—(1) The court has discretion as to—

- (a) whether costs are payable by one party to another;
- (b) the amount of those costs; and
- (c) when they are to be paid.

(2) If the court decides to make an order about costs—

- (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
- (b) the court may make a different order.

(3) The general rule does not apply to the following proceedings—

- (a) proceedings in the Court of Appeal on an application or appeal made in connection with proceedings in the Family Division; or

- (b) proceedings in the Court of Appeal from a judgment, direction, decision or order given or made in probate proceedings or family proceedings.
- (4) In deciding what order (if any) to make about costs, the court must have regard to all the circumstances, including—
- (a) the conduct of all the parties;
  - (b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and
  - (c) any payment into court or admissible offer to settle made by a party which is drawn to the court's attention (whether or not made in accordance with Part 36).
- (Part 36 contains further provisions about how the court's discretion is to be exercised where a payment into court or an offer to settle is made under that Part)
- (5) The conduct of the parties includes—
- (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed any relevant pre-action protocol;
  - (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
  - (c) the manner in which a party has pursued or defended his case or a particular allegation or issue; and
  - (d) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim.
- (6) The orders which the court may make under this rule include an order that a party must pay—
- (a) a proportion of another party's costs;
  - (b) a stated amount in respect of another party's costs;
  - (c) costs from or until a certain date only;
  - (d) costs incurred before proceedings have begun;
  - (e) costs relating to particular steps taken in the proceedings;
  - (f) costs relating only to a distinct part of the proceedings; and
  - (g) interest on costs from or until a certain date, including a date before judgment.
- (7) Where the court would otherwise consider making an order under paragraph (6)(f), it must instead, if practicable, make an order under paragraph (6)(a) or (c).
- (8) Where the court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.
- (9) Where a party entitled to costs is also liable to pay costs the court may assess the costs which that party is liable to pay and either—
- (a) set off the amount assessed against the amount the party is entitled to be paid and direct him to pay any balance; or
  - (b) delay the issue of a certificate for the costs to which the party is entitled until he has paid the amount which he is liable to pay.

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**Commencement Information**

**I379** [Rule 44.3](#) in force at 26.4.1999, see [Signature](#)

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### [<sup>F134</sup>Costs orders relating to funding arrangements **E+W**

**44.3A.**—(1) The court will not assess any additional liability until the conclusion of the proceedings, or the part of the proceedings, to which the funding arrangement relates.

(“Funding arrangement” and “additional liability” are defined in rule 43.2)

(2) At the conclusion of the proceedings, or the part of the proceedings, to which the funding arrangement relates the court may—

- (a) make a summary assessment of all the costs, including any additional liability;
- (b) make an order for detailed assessment of the additional liability but make a summary assessment of the other costs; or
- (c) make an order for detailed assessment of all the costs.

(Part 47 sets out the procedure for the detailed assessment of costs)

#### Textual Amendments

**F134** Rules 44.3A, 44.3B inserted (3.7.2000) by The Civil Procedure (Amendment No. 3) Rules 2000 (S.I. 2000/1317), rules 1, 14 (with rule 39)

### Limits on recovery under funding arrangements **E+W**

**44.3B.**—(1) A party may not recover as an additional liability—

- (a) any proportion of the percentage increase relating to the cost to the legal representative of the postponement of the payment of his fees and expenses;
- (b) any provision made by a membership organisation which exceeds the likely cost to that party of the premium of an insurance policy against the risk of incurring a liability to pay the costs of other parties to the proceedings;
- (c) any additional liability for any period in the proceedings during which he failed to provide information about a funding arrangement in accordance with a rule, practice direction or court order;
- (d) any percentage increase where a party has failed to comply with—
  - (i) a requirement in the costs practice direction; or
  - (ii) a court order,

to disclose in any assessment proceedings the reasons for setting the percentage increase at the level stated in the conditional fee agreement.

(2) This rule does not apply in an assessment under rule 48.9 (assessment of a solicitor’s bill to his client).

(Rule 3.9 sets out the circumstances the court will consider on an application for relief from a sanction for failure to comply with any rule, practice direction or court order)]

#### Textual Amendments

**F134** Rules 44.3A, 44.3B inserted (3.7.2000) by The Civil Procedure (Amendment No. 3) Rules 2000 (S.I. 2000/1317), rules 1, 14 (with rule 39)

**Basis of assessment** **E+W**

**44.4.**—(1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs—

- (a) on the standard basis; or
- (b) on the indemnity basis,

but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.

(Rule 48.3 sets out how the court decides the amount of costs payable under a contract)

- (2) Where the amount of costs is to be assessed on the standard basis, the court will—
  - (a) only allow costs which are proportionate to the matters in issue; and
  - (b) resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

(Factors which the court may take into account are set out in rule 44.5)

(3) Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

- (4) Where—
  - (a) the court makes an order about costs without indicating the basis on which the costs are to be assessed; or
  - (b) the court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis,

the costs will be assessed on the standard basis.

<sup>F135</sup>(5) .....

(6) Where the amount of a solicitor's remuneration in respect of non-contentious business is regulated by any general orders made under the Solicitors Act 1974(52), the amount of the costs to be allowed in respect of any such business which falls to be assessed by the court will be decided in accordance with those general orders rather than this rule and rule 44.5.

**Textual Amendments**

**F135** Rule 44.4(5) revoked (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), [rules 1, 15](#) (with [rule 39](#))

**Commencement Information**

**I380** Rule 44.4 in force at 26.4.1999, see [Signature](#)

**Factors to be taken into account in deciding the amount of costs** **E+W**

**44.5.**—(1) The court is to have regard to all the circumstances in deciding whether costs were—

- (a) if it is assessing costs on the standard basis—
  - (i) proportionately and reasonably incurred; or
  - (ii) were proportionate and reasonable in amount, or
- (b) if it is assessing costs on the indemnity basis—

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- (i) unreasonably incurred; or
  - (ii) unreasonable in amount.
- (2) In particular the court must give effect to any orders which have already been made.
- (3) The court must also have regard to—
- (a) the conduct of all the parties, including in particular—
    - (i) conduct before, as well as during, the proceedings; and
    - (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
  - (b) the amount or value of any money or property involved;
  - (c) the importance of the matter to all the parties;
  - (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
  - (e) the skill, effort, specialised knowledge and responsibility involved;
  - (f) the time spent on the case; and
  - (g) the place where and the circumstances in which work or any part of it was done.

(Rule 35.4(4) gives the court power to limit the amount that a party may recover with regard to the fees and expenses of an expert)

**Commencement Information**

**I381** [Rule 44.5](#) in force at 26.4.1999, see [Signature](#)

**Fixed costs** **E+W**

**44.6** A party may recover the fixed costs specified in Part 45 in accordance with that Part.

**Commencement Information**

**I382** [Rule 44.6](#) in force at 26.4.1999, see [Signature](#)

**Procedure for assessing costs** **E+W**

**44.7** Where the court orders a party to pay costs to another party (other than fixed costs) it may either—

- (a) make a summary assessment of the costs; or
- (b) order detailed assessment of the costs by a costs officer,

unless any rule, practice direction or other enactment provides otherwise.

(The costs practice direction sets out the factors which will affect the court's decision under this rule)

**Commencement Information**

**I383** [Rule 44.7](#) in force at 26.4.1999, see [Signature](#)

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### Time for complying with an order for costs **E+W**

**44.8** A party must comply with an order for the payment of costs within 14 days of—

- (a) the date of the judgment or order if it states the amount of those costs; <sup>F136</sup>...
- (b) if the amount of those costs (or part of them) is decided later in accordance with Part 47, the date of the certificate which states the amount [<sup>F137</sup>; or]
- <sup>F138</sup>(c) in either case, such later date as the court may specify.]

(Part 47 sets out the procedure for detailed assessment of costs)

#### Textual Amendments

**F136** Word in [rule 44.8\(a\)](#) omitted (3.7.2000) by virtue of [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), [rules 1, 16\(a\)](#) (with [rule 39](#))

**F137** Word in [rule 44.8\(b\)](#) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), [rules 1, 16\(b\)](#) (with [rule 39](#))

**F138** [Rule 44.8\(c\)](#) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), [rules 1, 16\(c\)](#) (with [rule 39](#))

#### Commencement Information

**I384** [Rule 44.8](#) in force at 26.4.1999, see [Signature](#)

### Costs on the small claims track and fast track **E+W**

**44.9.—(1)** Part 27 (Small claims) and Part 46 (Fast track trial costs) contain special rules about—

- (a) liability for costs;
- (b) the amount of costs which the court may award; and
- (c) the procedure for assessing costs.

<sup>F139</sup>(2) Once a claim is allocated to a particular track, those special rules shall apply to the period before, as well as after, allocation except where the court or a practice direction provides otherwise.]

#### Textual Amendments

**F139** [Rule 44.9\(2\)](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1, 17](#)

#### Commencement Information

**I385** [Rule 44.9](#) in force at 26.4.1999, see [Signature](#)

### Limitation on amount court may allow where a claim allocated to the fast track settles before trial **E+W**

**44.10.—(1)** Where the court—

- (a) assesses costs in relation to a claim which—
  - (i) has been allocated to the fast track; and
  - (ii) settles before the start of the trial; and
- (b) is considering the amount of costs to be allowed in respect of a party's advocate for preparing for the trial,

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it may not allow, in respect of those advocate's costs, an amount that exceeds the amount of fast track trial costs which would have been payable in relation to the claim had the trial taken place.

(2) When deciding the amount to be allowed in respect of the advocate's costs, the court shall have regard to—

- (a) when the claim was settled; and
- (b) when the court was notified that the claim had settled.

(3) In this rule, “advocate” and “fast track trial costs” have the meanings given to them by Part 46. (Part 46 sets out the amount of fast track trial costs which may be awarded)

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**Commencement Information**

**I386** [Rule 44.10](#) in force at 26.4.1999, see [Signature](#)

**Costs following allocation and re-allocation** **E+W**

**44.11.**—(1) Any costs orders made before a claim is allocated will not be affected by allocation.

(2) Where—

- (a) a claim is allocated to a track; and
- (b) the court subsequently re-allocates that claim to a different track,

then unless the court orders otherwise, any special rules about costs applying—

- (i) to the first track, will apply to the claim up to the date of re-allocation; and
- (ii) to the second track, will apply from the date of re-allocation.

(Part 26 deals with the allocation and re-allocation of claims between tracks)

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**Commencement Information**

**I387** [Rule 44.11](#) in force at 26.4.1999, see [Signature](#)

**Cases where costs orders deemed to have been made** **E+W**

**44.12.**—(1) Where a right to costs arises under—

- (a) rule 3.7 (defendant's right to costs where claim struck out for non-payment of fees);
- (b) rule 36.13(1) (claimant's right to costs where he accepts defendant's Part 36 offer or Part 36 payment);
- (c) rule 36.14 (claimant's right to costs where defendant accepts the claimant's Part 36 offer); or
- (d) rule 38.6 (defendant's right to costs where claimant discontinues),

a costs order will be deemed to have been made on the standard basis.

(2) Interest payable pursuant to section 17 of the Judgments Act 1838(**53**) or section 74 of the County Courts Act 1984(**54**) on the costs deemed to have been ordered under paragraph (1) shall begin to run from the date on which the event which gave rise to the entitlement to costs occurred.

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**(53)** 1838 c. 110. Section 17 was amended by [S.I. 1998/2940](#).

**(54)** 1984 c. 28. Section 74 was amended by section (2) of the Private International Law (Miscellaneous Provisions) Act 1995 (c. 42).



*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

#### Commencement Information

**I388** Rule 44.12 in force at 26.4.1999, see [Signature](#)

#### [<sup>F140</sup>Costs-only proceedings **E+W**

**44.12A.**—(1) This rule sets out a procedure which may be followed where—

- (a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs) which is made or confirmed in writing; but
- (b) they have failed to agree the amount of those costs; and
- (c) no proceedings have been started.

(2) Either party to the agreement may start proceedings under this rule by issuing a claim form in accordance with Part 8.

(3) The claim form must contain or be accompanied by the agreement or confirmation.

(4) In proceedings to which this rule applies the court—

- (a) may
  - (i) make an order for costs; or
  - (ii) dismiss the claim;
- and
- (b) must dismiss the claim if it is opposed.

(5) Rule 48.3 (amount of costs where costs are payable pursuant to a contract) does not apply to claims started under the procedure in this rule. (Rule 7.2 provides that proceedings are started when the court issues a claim form at the request of the claimant)

(Rule 8.1(6) provides that a practice direction may modify the Part 8 procedure)]

#### Textual Amendments

**F140** Rule 44.12A inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), [rules 1, 17](#) (with [rule 39](#))

#### Special situations **E+W**

**44.13.**—(1) Where the court makes an order which does not mention costs no party is entitled to costs in relation to that order.

(2) The court hearing an appeal may, unless it dismisses the appeal, make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

(3) Where proceedings are transferred from one court to another, the court to which they are transferred may deal with all the costs, including the costs before the transfer.

(4) Paragraph (3) is subject to any order of the court which ordered the transfer.

#### Commencement Information

**I389** Rule 44.13 in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

## Court's powers in relation to misconduct **E+W**

**44.14.**—(1) The court may make an order under this rule where—

- [<sup>F141</sup>(a) a party or his legal representative, in connection with a summary or detailed assessment, fails to comply with a rule, practice direction or court order; or]
- (b) it appears to the court that the conduct of a party or his legal representative, before or during the proceedings which gave rise to the assessment proceedings, was unreasonable or improper.
- (2) Where paragraph (1) applies, the court may—
- (a) disallow all or part of the costs which are being assessed; or
- (b) order the party at fault or his legal representative to pay costs which he has caused any other party to incur.
- (3) Where—
- (a) the court makes an order under paragraph (2) against a legally represented party; and
- (b) the party is not present when the order is made,

the party's solicitor must notify his client in writing of the order no later than 7 days after the solicitor receives notice of the order.

### Textual Amendments

**F141** Rule 44.14(1)(a) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **18** (with rule 39)

### Commencement Information

**I390** Rule 44.14 in force at 26.4.1999, see [Signature](#)

## [<sup>F142</sup>Providing information about funding arrangements **E+W**

**44.15.**—(1) A party who seeks to recover an additional liability must provide information about the funding arrangement to the court and to other parties as required by a rule, practice direction or court order.

(2) Where the funding arrangement has changed, and the information a party has previously provided in accordance with paragraph (1) is no longer accurate, that party must file notice of the change and serve it on all other parties within 7 days.

- (3) Where paragraph (2) applies, and a party has already filed—
- (a) an allocation questionnaire; or
- (b) a listing questionnaire,

he must file and serve a new estimate of costs with the notice.

(The costs practice direction sets out—

- the information to be provided when a party issues or responds to a claim form, files an allocation questionnaire, a listing questionnaire, and a claim for costs;
- the meaning of estimate of costs and the information required in it) (Rule 44.3B sets out situations where a party will not recover a sum representing any additional liability)

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

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#### Textual Amendments

**F142** Rules 44.15-44.17 inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **19** (with rule 39)

### Adjournment where legal representative seeks to challenge disallowance of any amount of percentage increase **E+W**

#### 44.16 Where—

- (a) the court disallows any amount of a legal representative's percentage increase in summary or detailed assessment proceedings; and
- (b) the legal representative applies for an order that the disallowed amount should continue to be payable by his client,

the court may adjourn the hearing to allow the legally represented party to be notified of the order sought.

(Regulation 3(2)(b) of the Conditional Fee Agreements Regulations 2000 provides that a conditional fee agreement which provides for a success fee must state that any amount of a percentage increase disallowed on assessment ceases to be payable unless the court is satisfied that it should continue to be so payable<sup>F143</sup>. Regulation 5(2)(b) of the Collective Conditional Fee Agreements Regulations 2000 makes similar provision in relation to collective conditional fee agreements])

#### Textual Amendments

**F142** Rules 44.15-44.17 inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **19** (with rule 39)

**F143** Words in rule 44.16 inserted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **15**

### Application of costs rules **E+W**

**44.17** This Part and Part 45 (fixed costs), Part 46 (fast track trial costs), Part 47 (procedure for detailed assessment of costs and default provisions) and Part 48 (special cases), do not apply to the assessment of costs in proceedings to the extent that—

- (a) section 11 of the Access to Justice Act 1999, and provisions made under that Act, or
- (b) regulations made under the Legal Aid Act 1988,

make different provision. (The costs practice direction sets out the procedure to be followed where a party was wholly or partially funded by the Legal Services Commission)]

#### Textual Amendments

**F142** Rules 44.15-44.17 inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **19** (with rule 39)

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

**PART 45** **E+W**  
**FIXED COSTS**

**Modifications etc. (not altering text)**

**C13** Pt. 45 applied (with modifications) (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **6.21**

**Contents of this Part**

Scope of this Part	Rule 45.1
Amount of fixed commencement costs	Rule 45.2
When defendant liable for fixed commencement costs	Rule 45.3
Costs on entry of judgment	Rule 45.4
Miscellaneous fixed costs	Rule 45.5

**Scope of this Part** **E+W**

**45.1.**—(1) This Part sets out the amounts which, unless the court orders otherwise, are to be allowed in respect of solicitors' charges in the cases to which this Part applies.

(The definitions contained in Part 43 are relevant to this Part)

(2) This Part applies where—

- (a) the only claim is a claim for a specified sum of money and—
  - (i) judgment in default is obtained under rule 12.4(1);
  - (ii) judgment on admission is obtained under rule 14.4(3);
  - (iii) judgment on admission on part of the claim is obtained under rule 14.5(6);
  - (iv) summary judgment is given under Part 24;
  - (v) the court has made an order to strike out <sup>(GL)</sup> a defence under rule 3.4(2)(a) as disclosing no reasonable grounds for defending the claim; or
  - (vi) rule 45.3 applies; or
- (b) the only claim is a claim where the court gave a fixed date for the hearing when it issued the claim and judgment is given for the delivery of goods,

and in either case the value of the claim exceeds £25.

(The practice direction supplementing rule 7.9 sets out the types of case where a court may give a fixed date for a hearing when it issues a claim)

<sup>F144</sup>(3) .....

[<sup>F145</sup>(3)] Any appropriate court fee will be allowed in addition to the costs set out in this Part.

**Textual Amendments**

**F144** Rule 45.1(3) omitted (3.7.2000) by virtue of [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **20(a)** (with rule 39)

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

**F145** Rule 45.1(4) renumbered as rule 45.1(3) (3.7.2000) by The Civil Procedure (Amendment No. 3) Rules 2000 (S.I. 2000/1317), rules 1, **20(b)** (with rule 39)

#### Commencement Information

**I391** Rule 45.1 in force at 26.4.1999, see [Signature](#)

#### Amount of fixed commencement costs **E+W**

**45.2.**—(1) The claim form may include a claim for fixed commencement costs.

(2) The amount of fixed commencement costs which the claim form may include shall be calculated by reference to the following Table (Table 1).

(3) Additional costs may also be claimed in the circumstances specified in Table 3.

(4) The amount claimed, or the value of the goods claimed if specified, in the claim form is to be used for determining the band in the Table that applies to the claim.

**TABLE 1**

*Fixed costs on commencement of a claim*

<i>Relevant Band</i>	<i>Where the claim form is served by the court or by any method other than personal service by the claimant</i>	<i>Where</i> <ul style="list-style-type: none"> <li>• <i>the claim form is served personally by the claimant;</i></li> <li>and</li> <li>• <i>there is only one defendant</i></li> </ul>	<i>Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant</i>
Where— <ul style="list-style-type: none"> <li>• the value of the claim exceeds £25 but does not exceed £500</li> </ul>	£50	£60	£15
Where— <ul style="list-style-type: none"> <li>• the value of the claim exceeds £500 but does not exceed £1000</li> </ul>	£70	£80	£15
Where— <ul style="list-style-type: none"> <li>• the value of the claim exceeds £1000 but does not exceed £5000; or</li> <li>• the only claim is for delivery of goods and no value is specified or stated on the claim form</li> </ul>	£80	£90	£15

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<i>Relevant Band</i>	<i>Where the claim form is served by the court or by any method other than personal service by the claimant</i>	<i>Where</i>	<i>Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant</i>
Where— • the value of the claim exceeds £5000	£100	£110	£15
		<ul style="list-style-type: none"> <li>• the claim form is served personally by the claimant; and</li> <li>• there is only one defendant</li> </ul>	

#### Commencement Information

**I392** [Rule 45.2](#) in force at 26.4.1999, see [Signature](#)

#### When defendant only liable for fixed commencement costs **E+W**

**45.3.**—(1) 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 particulars of claim on him, 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.

(2) Where—

- (a) the claimant gives notice of acceptance of a payment into court in satisfaction of the whole claim;
- (b) the only claim is for a specified sum of money; and
- (c) the defendant made the payment into court within 14 days after service of the particulars of claim on him, together with the fixed costs stated in the claim form,

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

#### Commencement Information

**I393** [Rule 45.3](#) in force at 26.4.1999, see [Signature](#)

#### Costs on entry of judgment **E+W**

**45.4** Where—

- (a) the claimant has claimed fixed commencement costs under rule 45.2; and
- (b) judgment is entered in the circumstances specified in the table in this rule (Table 2),

the amount to be included in the judgment in respect of the claimant's solicitor's charges is the aggregate of—

- (i) the fixed commencement costs; and
- (ii) the relevant amount shown in Table 2.

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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**TABLE 2***Fixed Costs on Entry of Judgment*

	<i>Where the amount of the judgment exceeds £25 but does not exceed £5000</i>	<i>Where the amount of the judgment exceeds £5000</i>
Where judgment in default of an acknowledgment of service is entered under rule 12.4(1) (entry of judgment by request on claim for money only)	£22	£30
Where judgment in default of a defence is entered under rule 12.4(1) (entry of judgment by request on claim for money only)	£25	£35
Where judgment is entered under rule 14.4 (judgment on admission), or rule 14.5 (judgment on admission of part of claim) and claimant accepts the defendant's proposal as to the manner of payment.	£40	£55
Where judgment is entered under rule 14.4 (judgment on admission), or rule 14.5 (judgment on admission on part of claim) and court decides the date or times of payment	£55	£70
Where summary judgment is given under Part 24 or the court strikes out a defence under rule 3.4(2) (a), in either case, on application by a party	£175	£210
Where judgment is given on a claim for delivery of goods under a regulated agreement	£60	£85

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
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	Where the amount of the judgment exceeds £25 but does not exceed £5000	Where the amount of the judgment exceeds £5000
within the meaning of the Consumer Credit Act 1974(55) and no other entry in this table applies		

#### Commencement Information

**I394** [Rule 45.4](#) in force at 26.4.1999, see [Signature](#)

#### Miscellaneous fixed costs **E+W**

**45.5** The table in this rule (Table 3) shows the amount to be allowed in respect of solicitor's charges in the circumstances mentioned.

**TABLE 3**

#### *Miscellaneous Fixed Costs*

For service by a party of any document required to be served personally including preparing and copying a certificate of service for each individual served £15 Where service by an alternative method is permitted by an order under rule 6.8 for each individual served	£25
Where a document is served out of the jurisdiction—	£65
(a) in Scotland, Northern Ireland, the Isle of Man or the Channel Islands;	
(b) (b) in any other place	£75

#### Commencement Information

**I395** [Rule 45.5](#) in force at 26.4.1999, see [Signature](#)

## PART 46 **E+W**

### FAST TRACK TRIAL COSTS

#### Contents of this Part

Scope of this Part	46.1
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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

Amount of fast track trial costs	46.2
Power to award more or less than amount of fast track trial costs	46.3
Fast track trial costs where there is more than one claimant or defendant	46.4

### Scope of this Part **E+W**

**46.1.**—(1) This Part deals with the amount of costs which the court may award as the costs of an advocate for preparing for and appearing at the trial of a claim in the fast track (referred to in this rule as “fast track trial costs”).

(2) For the purposes of this Part—

- (a) “advocate” means a person exercising a right of audience as a representative of, or on behalf of, a party;
- (b) “fast track trial costs” means the costs of a party’s advocate for preparing for and appearing at the trial, but does not include—
  - (i) any other disbursements; or
  - (ii) any value added tax payable on the fees of a party’s advocate; and
- (c) “trial” includes a hearing where the court decides an amount of money or the value of goods following a judgment under Part 12 (default judgment) or Part 14 (admissions) but does not include—
  - (i) the hearing of an application for summary judgment under Part 24; or
  - (ii) the court’s approval of a settlement or other compromise under rule 21.10.
 (Part 21 deals with claims made by or on behalf of, or against, children and patients)

#### Commencement Information

**I396** Rule 46.1 in force at 26.4.1999, see [Signature](#)

### Amount of fast track trial costs **E+W**

**46.2.**—(1) The following table shows the amount of fast track trial costs which the court may award (whether by summary or detailed assessment).

<i>Value of the claim</i>	<i>Amount of fast track trial costs which the court may award</i>
Up to £3,000	£350
More than £3,000 but not more than £10,000	£500
More than £10,000	£750

(2) The court may not award more or less than the amount shown in the table except where—

- (a) it decides not to award any fast track trial costs; or
- (b) rule 46.3 applies,

but the court may apportion the amount awarded between the parties to reflect their respective degrees of success on the issues at trial.

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- (3) Where the only claim is for the payment of money—
- (a) for the purpose of quantifying fast track trial costs awarded to a claimant, the value of the claim is the total amount of the judgment excluding—
    - (i) interest and costs; and
    - (ii) any reduction made for contributory negligence;
  - (b) for the purpose of the quantifying fast track trial costs awarded to a defendant, the value of the claim is—
    - (i) the amount specified in the claim form (excluding interest and costs);
    - (ii) if no amount is specified, the maximum amount which the claimant reasonably expected to recover according to the statement of value included in the claim form under rule 16.3; or
    - (iii) more than £10,000, if the claim form states that the claimant cannot reasonably say how much he expects to recover.
- (4) Where the claim is only for a remedy other than the payment of money the value of the claim is deemed to be more than £3,000 but not more than £10,000, unless the court orders otherwise.
- (5) Where the claim includes both a claim for the payment of money and for a remedy other than the payment of money, the value of the claim is deemed to be the higher of—
- (a) the value of the money claim decided in accordance with paragraph (3); or
  - (b) the deemed value of the other remedy decided in accordance with paragraph (4),
- unless the court orders otherwise.
- (6) Where—
- (a) a defendant has made a counterclaim against the claimant;
  - (b) the counterclaim has a higher value than the claim; and
  - (c) the claimant succeeds at trial both on his claim and the counterclaim,
- for the purpose of quantifying fast track trial costs awarded to the claimant, the value of the claim is the value of the defendant’s counterclaim calculated in accordance with this rule.
- (Rule 20.4 sets out how a defendant may make a counterclaim)

#### Commencement Information

**I397** Rule 46.2 in force at 26.4.1999, see [Signature](#)

### Power to award more or less than the amount of fast track trial costs **E+W**

- 46.3.**—(1) This rule sets out when a court may award—
- (a) an additional amount to the amount of fast track trial costs shown in the table in rule 46.2(1); and
  - (b) less than those amounts.
- (2) If—
- (a) in addition to the advocate, a party’s legal representative attends the trial;
  - (b) the court considers that it was necessary for a legal representative to attend to assist the advocate; and
  - (c) the court awards fast track trial costs to that party,
- the court may award an additional £250 in respect of the legal representative’s attendance at the trial.

(Legal representative is defined in rule 2.3)

[<sup>F146</sup>(2A) The court may in addition award a sum representing an additional liability.

(The requirements to provide information about a funding arrangement where a party wishes to recover any additional liability under a funding arrangement are set out in the costs practice direction)

(“Additional liability” is defined in rule 43.2)]

(3) If the court considers that it is necessary to direct a separate trial of an issue then the court may award an additional amount in respect of the separate trial but that amount is limited in accordance with paragraph (4) of this rule.

(4) The additional amount the court may award under paragraph 3 must not exceed two-thirds of the amount payable for that claim, subject to a minimum award of £350.

(5) Where the party to whom fast track trial costs are to be awarded is a litigant in person, the court will award—

- (a) if the litigant in person can prove financial loss, two thirds of the amount that would otherwise be awarded; or
- (b) if the litigant in person fails to prove financial loss, an amount in respect of the time spent reasonably doing the work at the rate specified in the costs practice direction.

(6) Where a defendant has made a counterclaim against the claimant and—

- (a) the claimant has succeeded on his claim; and
- (b) the defendant has succeeded on his counterclaim,

the court will quantify the amount of the award of fast track trial costs to which—

- (i) but for the counterclaim, the claimant would be entitled for succeeding on his claim; and
- (ii) but for the claim, the defendant would be entitled for succeeding on his counterclaim,

and make one award of the difference, if any, to the party entitled to the higher award of costs.

(7) Where the court considers that the party to whom fast track trial costs are to be awarded has behaved unreasonably or improperly during the trial, it may award that party an amount less than would otherwise be payable for that claim, as it considers appropriate.

(8) Where the court considers that the party who is to pay the fast track trial costs has behaved improperly during the trial the court may award such additional amount to the other party as it considers appropriate.

#### Textual Amendments

**F146** Rule 46.3(2A) and words inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, 21 (with rule 39)

#### Commencement Information

**I398** [Rule 46.3](#) in force at 26.4.1999, see [Signature](#)

### Fast track trial costs where there is more than one claimant or defendant **E+W**

**46.4.**—(1) Where the same advocate is acting for more than one party—

- (a) the court may make only one award in respect of fast track trial costs payable to that advocate; and
- (b) the parties for whom the advocate is acting are jointly entitled to any fast track trial costs awarded by the court.

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

(2) Where—

- (a) the same advocate is acting for more than one claimant; and
- (b) each claimant has a separate claim against the defendant,

the value of the claim, for the purpose of quantifying the award in respect of fast track trial costs is to be ascertained in accordance with paragraph (3).

(3) The value of the claim in the circumstances mentioned in paragraph (2) is—

- (a) where the only claim of each claimant is for the payment of money—
  - (i) if the award of fast track trial costs is in favour of the claimants, the total amount of the judgment made in favour of all the claimants jointly represented; or
  - (ii) if the award is in favour of the defendant, the total amount claimed by the claimants, and in either case, quantified in accordance with rule 46.2(3);
- (b) where the only claim of each claimant is for a remedy other than the payment of money, deemed to be more than £3,000 but not more than £10,000; and
- (c) where claims of the claimants include both a claim for the payment of money and for a remedy other than the payment of money, deemed to be—
  - (i) more than £3,000 but not more than £10,000; or
  - (ii) if greater, the value of the money claims calculated in accordance with sub paragraph (a) above.

(4) Where—

- (a) there is more than one defendant; and
- (b) any or all of the defendants are separately represented,

the court may award fast track trial costs to each party who is separately represented.

(5) Where—

- (a) there is more than one claimant; and
- (b) a single defendant,

the court may make only one award to the defendant of fast track trial costs, for which the claimants are jointly and severally liable. <sup>(GL)</sup>

(6) For the purpose of quantifying the fast track trial costs awarded to the single defendant under paragraph (5), the value of the claim is to be calculated in accordance with paragraph (3) of this rule.

#### Commencement Information

**I399** Rule 46.4 in force at 26.4.1999, see [Signature](#)

## PART 47 **E+W**

### PROCEDURE FOR DETAILED ASSESSMENT OF COSTS AND DEFAULT PROVISIONS

#### Modifications etc. (not altering text)

**C14** Pt. 47 applied (with modifications) (1.4.2001) by [The Court of Protection Rules 2001 \(S.I. 2001/824\)](#), rules 1, **86** (with rule 91)

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*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

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**C15** Pt. 47 applied (with modifications) (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **6.21**

## Contents of this Part

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### I. GENERAL RULES ABOUT DETAILED ASSESSMENT

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
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FUNDED CLIENT OR AN ASSISTED PERSON WHERE COSTS ARE PAYABLE OUT OF THE COMMUNITY LEGAL SERVICE FUND]

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**SECTION I—GENERAL RULES ABOUT DETAILED ASSESSMENT**

**Time when detailed assessment may be carried out E+W**

**47.1** The general rule is that the costs of any proceedings or any part of the proceedings are not to be assessed by the detailed procedure until the conclusion of the proceedings but the court may order them to be assessed immediately.

(The costs practice direction gives further guidance about when proceedings are concluded for the purpose of this rule)

**Commencement Information**

**1400** Rule 47.1 in force at 26.4.1999, see [Signature](#)

**No stay of detailed assessment where there is an appeal E+W**

**47.2** Detailed assessment is not stayed pending an appeal unless the court so orders.

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**Commencement Information**

**I401** [Rule 47.2](#) in force at 26.4.1999, see [Signature](#)

**Powers of an authorised court officer** **E+W**

**47.3.**—(1) An authorised court officer has all the powers of the court when making a detailed assessment, except—

- (a) power to make a wasted costs order as defined in rule 48.7;
- (b) power to make an order under—
  - (i) rule 44.14 (powers in relation to misconduct);
  - (ii) rule 47.8 (sanction for delay in commencing detailed assessment proceedings);
  - (iii) paragraph (2) (objection to detailed assessment by authorised court officer); and
- (c) power to make a detailed assessment of costs payable to a solicitor by his client, unless the costs are being assessed under rule 48.5 (costs where money is payable to a child or patient).

(2) Where a party objects to the detailed assessment of costs being made by an authorised court officer, the court may order it to be made by a costs judge or a district judge.

(The costs practice direction sets out the relevant procedure)

**Commencement Information**

**I402** [Rule 47.3](#) in force at 26.4.1999, see [Signature](#)

**Venue for detailed assessment proceedings** **E+W**

**47.4.**—(1) All applications and requests in detailed assessment proceedings must be made to or filed at the appropriate office.

(The costs practice direction sets out the meaning of “appropriate office” in any particular case)

- (2) The court may direct that the appropriate office is to be the Supreme Court Costs Office.
- (3) A county court may direct that another county court is to be the appropriate office.
- (4) A direction under paragraph (3) may be made without proceedings being transferred to that court.

(Rule 30.2 makes provision for any county court to transfer the proceedings to another county court for detailed assessment of costs)

**Commencement Information**

**I403** [Rule 47.4](#) in force at 26.4.1999, see [Signature](#)

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**SECTION II—COSTS PAYABLE BY ONE PARTY TO ANOTHER—  
COMMENCEMENT OF DETAILED ASSESSMENT PROCEEDINGS**

**Application of this Section** **E+W**

**47.5** This section of Part 47 applies where a costs officer is to make a detailed assessment of costs which are payable by one party to another.

**Commencement Information**

**I404** [Rule 47.5](#) in force at 26.4.1999, see [Signature](#)

**Commencement of detailed assessment proceedings** **E+W**

**47.6.—(1)** Detailed assessment proceedings are commenced by the receiving party serving on the paying party—

- (a) notice of commencement in the relevant practice form; and
- (b) a copy of the bill of costs.

(Rule 47.7 sets out the period for commencing detailed assessment proceedings)

(2) The receiving party must also serve a copy of the notice of commencement and the bill on any other relevant persons specified in the costs practice direction.

(3) A person on whom a copy of the notice of commencement is served under paragraph (2) is a party to the detailed assessment proceedings (in addition to the paying party and the receiving party).

(The costs practice direction deals with—

- other documents which the party must file when he requests detailed assessment;
- the court’s powers where it considers that a hearing may be necessary;
- the form of a bill; and
- the length of notice which will be given if a hearing date is fixed)

**Commencement Information**

**I405** [Rule 47.6](#) in force at 26.4.1999, see [Signature](#)

**Period for commencing detailed assessment proceedings** **E+W**

**47.7** The following table shows the period for commencing detailed assessment proceedings.

<i>Source of right to detailed assessment</i>	<i>Time by which detailed assessment proceedings must be commenced</i>
Judgment, direction, order, award or other determination	3 months after the date of the judgment etc. Where detailed assessment is stayed pending an appeal, 3 months after the date of the order lifting the stay.
Discontinuance under Part 38	3 months after the date of service of notice of discontinuance under rule 38.3; or 3 months after the date of the dismissal of application



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<i>Source of right to detailed assessment</i>	<i>Time by which detailed assessment proceedings must be commenced</i>
Acceptance of an offer to settle or a payment into court under Part 36	to set the notice of discontinuance aside under rule 38.4 3 months after the date when the right to costs arose.

#### Commencement Information

**I406** Rule 47.7 in force at 26.4.1999, see [Signature](#)

### Sanction for delay in commencing detailed assessment proceedings **E+W**

**47.8.**—(1) Where the receiving party fails to commence detailed assessment proceedings within the period specified—

- (a) in rule 47.7; or
- (b) by any direction of the court,

the paying party may apply for an order requiring the receiving party to commence detailed assessment proceedings within such time as the court may specify.

(2) On an application under paragraph (1), the court may direct that, unless the receiving party commences detailed assessment proceedings within the time specified by the court, all or part of the costs to which the receiving party would otherwise be entitled will be disallowed.

(3) If—

- (a) the paying party has not made an application in accordance with paragraph (1); and
- (b) the receiving party commences the proceedings later than the period specified in rule 47.7,

the court may disallow all or part of the interest otherwise payable to the receiving party under—

- (i) section 17 of the Judgments Act 1838<sup>(56)</sup>; or
- (ii) section 74 of the County Courts Act 1984<sup>(57)</sup>,

but must not impose any other sanction except in accordance with rule 44.14 (powers in relation to misconduct).

(4) Where the costs to be assessed in a detailed assessment are payable out of the [<sup>F150</sup>Community Legal Service Fund], this rule applies as if the receiving party were the solicitor to whom the costs are payable and the paying party were the [<sup>F151</sup>Legal Services Commission].

#### Textual Amendments

**F150** Words in rule 47.8(4) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **23(a)** (with rule 39)

**F151** Words in rule 47.8(4) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **23(b)** (with rule 39)

#### Commencement Information

**I407** Rule 47.8 in force at 26.4.1999, see [Signature](#)

<sup>(56)</sup> 1838 c. 110. Section 17 was amended by S.I. 1998/2940.

<sup>(57)</sup> 1984 c. 28. Section 74 was amended by section 2 of the Private International Law (Miscellaneous Provisions) Act 1995 (c. 42).

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### Points of dispute and consequence of not serving **E+W**

**47.9.**—(1) The paying party and any other party to the detailed assessment proceedings may dispute any item in the bill of costs by serving points of dispute on—

- (a) the receiving party; and
- (b) every other party to the detailed assessment proceedings.

(2) The period for serving points of dispute is 21 days after the date of service of the notice of commencement.

(3) If a party serves points of dispute after the period set out in paragraph (2), he may not be heard further in the detailed assessment proceedings unless the court gives permission.

(The costs practice direction sets out requirements about the form of points of dispute)

(4) The receiving party may file a request for a default costs certificate if—

- (a) the period set out in rule 47.9(2) for serving points of dispute has expired; and
- (b) he has not been served with any points of dispute.

(5) If any party (including the paying party) serves points of dispute before the issue of a default costs certificate the court may not issue the default costs certificate.

(Section IV of this Part sets out the procedure to be followed after points of dispute have been filed)

#### Commencement Information

**I408** Rule 47.9 in force at 26.4.1999, see [Signature](#)

### Procedure where costs are agreed **E+W**

**47.10.**—(1) If the paying party and the receiving party agree the amount of costs, either party may apply for a costs certificate (either interim or final) in the amount agreed.

(Rule 47.15 and Rule 47.16 contain further provisions about interim and final costs certificates respectively)

[<sup>F152</sup>(2) An application for a certificate under paragraph (1) must be made to the court which would be the venue for detailed assessment proceedings under rule 47.4.]

#### Textual Amendments

**F152** Rule 47.10(2) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, 24 (with rule 39)

#### Commencement Information

**I409** Rule 47.10 in force at 26.4.1999, see [Signature](#)

## **SECTION III—COSTS PAYABLE BY ONE PARTY TO ANOTHER—DEFAULT PROVISIONS**

### Default costs certificate **E+W**

**47.11.**—(1) Where the receiving party is permitted by rule 47.9 to obtain a default costs certificate, he does so by filing a request in the relevant practice form.

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(The costs practice direction deals with the procedure by which the receiving party may obtain a default costs certificate)

(2) A default costs certificate will include an order to pay the costs to which it relates.

[<sup>F153</sup>(3) Where a receiving party obtains a default costs certificate, the costs payable to him for the commencement of detailed assessment proceedings shall be the sum set out in the costs practice direction.]

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**Textual Amendments**

**F153** Rule 47.11(3) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 18

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**Commencement Information**

**I410** [Rule 47.11](#) in force at 26.4.1999, see [Signature](#)

**Setting aside default costs certificate** **E+W**

**47.12.**—(1) The court must set aside a default costs certificate if the receiving party was not entitled to it.

(2) In any other case, the court may set aside or vary a default costs certificate if it appears to the court that there is some good reason why the detailed assessment proceedings should continue.

(3) Where—

- (a) the receiving party has purported to serve the notice of commencement on the paying party;
- (b) a default costs certificate has been issued; and
- (c) the receiving party subsequently discovers that the notice of commencement did not reach the paying party at least 21 days before the default costs certificate was issued,

the receiving party must—

- (i) file a request for the default costs certificate to be set aside; or
- (ii) apply to the court for directions.

(4) Where paragraph (3) applies, the receiving party may take no further step in

- (a) the detailed assessment proceedings; or
- (b) the enforcement of the default costs certificate,

until the certificate has been set aside or the court has given directions.

(The costs practice direction contains further details about the procedure for setting aside a default costs certificate and the matters which the court must take into account)

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**Commencement Information**

**I411** [Rule 47.12](#) in force at 26.4.1999, see [Signature](#)

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## **SECTION IV—COSTS PAYABLE BY ONE PARTY TO ANOTHER —PROCEDURE WHERE POINTS OF DISPUTE ARE SERVED**

### **Optional reply** E+W

**47.13.**—(1) Where any party to the detailed assessment proceedings serves points of dispute, the receiving party may serve a reply on the other parties to the assessment proceedings.

(2) He may do so within 21 days after service on him of the points of dispute to which his reply relates.

[<sup>F154</sup>(The costs practice direction sets out the meaning of reply)]

#### **Textual Amendments**

**F154** Words in [rule 47.13](#) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **25** (with [rule 39](#))

#### **Commencement Information**

**I412** [Rule 47.13](#) in force at 26.4.1999, see [Signature](#)

### **Detailed assessment hearing** E+W

**47.14.**—(1) Where points of dispute are served in accordance with this Part, the receiving party must file a request for a detailed assessment hearing.

(2) He must file the request within 3 months of the expiry of the period for commencing detailed assessment proceedings as specified—

- (a) in [rule 47.7](#); or
- (b) by any direction of the court.

(3) Where the receiving party fails to file a request in accordance with paragraph (2), the paying party may apply for an order requiring the receiving party to file the request within such time as the court may specify.

(4) On an application under paragraph (3), the court may direct that, unless the receiving party requests a detailed assessment hearing within the time specified by the court, all or part of the costs to which the receiving party would otherwise be entitled will be disallowed.

(5) If—

- (a) the paying party has not made an application in accordance with paragraph (3); and
- (b) the receiving party [<sup>F155</sup>files a request for a detailed assessment hearing] later than the period specified in paragraph (2),

the court may disallow all or part of the interest otherwise payable to the receiving party under—

- (i) section 17 of the Judgments Act 1838(**58**); or
- (ii) section 74 of the County Courts Act 1984(**59**),

but must not impose any other sanction except in accordance with [rule 44.14](#) (powers in relation to misconduct).

(6) No person other than—

- (a) the receiving party;

**(58)** [1838 c. 110](#). Section 17 was amended by [S.I. 1998/2940](#).

**(59)** [1984 c. 28](#). Section 74 was amended by section 2 of the Private International Law (Miscellaneous Provisions) Act [1995 \(c. 42\)](#).

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(b) the paying party; and  
(c) any party who has served points of dispute under rule 47.9,  
may be heard at the detailed assessment hearing unless the court gives permission.

(7) Only items specified in the points of dispute may be raised at the hearing, unless the court gives permission.

(The costs practice direction specifies other documents which must be filed with the request for hearing and the length of notice which the court will give when it fixes a hearing date)

**Textual Amendments**

**F155** Words in [rule 47.14\(5\)\(b\)](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1, 19](#)

**Commencement Information**

**I413** [Rule 47.14](#) in force at 26.4.1999, see [Signature](#)

**SECTION V—INTERIM COSTS CERTIFICATE AND FINAL COSTS CERTIFICATE**

**Power to issue an interim certificate** **E+W**

**47.15.**—(1) The court may at any time after the receiving party has filed a request for a detailed assessment hearing—

- (a) issue an interim costs certificate for such sum as it considers appropriate;
- (b) amend or cancel an interim certificate.

(2) An interim certificate will include an order to pay the costs to which it relates, unless the court orders otherwise.

(3) The court may order the costs certified in an interim certificate to be paid into court.

**Commencement Information**

**I414** [Rule 47.15](#) in force at 26.4.1999, see [Signature](#)

**Final costs certificate** **E+W**

**47.16.**—(1) In this rule a completed bill means a bill <sup>F156</sup>... calculated to show the amount due following the detailed assessment of the costs.

(2) The period for filing the completed bill is 14 days after the end of the detailed assessment hearing.

(3) When a completed bill is filed the court will issue a final costs certificate and serve it on the parties to the detailed assessment proceedings.

(4) Paragraph (3) is subject to any order made by the court that a certificate is not to be issued until other costs have been paid.

(5) A final costs certificate will include an order to pay the costs to which it relates, unless the court orders otherwise.

(The costs practice direction deals with the form of a final costs certificate)

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#### Textual Amendments

**F156** Words in rule 47.16(1) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999](#) (S.I. 1999/1008), rules 1, **20**

#### Commencement Information

**I415** [Rule 47.16](#) in force at 26.4.1999, see [Signature](#)

### ***[<sup>F157</sup>SECTION VI—DETAILED ASSESSMENT PROCEDURE FOR COSTS OF A LSC FUNDED CLIENT OR AN ASSISTED PERSON WHERE COSTS ARE PAYABLE OUT OF THE COMMUNITY LEGAL SERVICE FUND]***

#### Textual Amendments

**F157** Pt. 47 Section 6 heading substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000](#) (S.I. 2000/1317), rules 1, **26** (with rule 39)

#### **Detailed assessment procedure for costs of [<sup>F158</sup>a LSC funded client or] an assisted person where costs are payable out of the [<sup>F159</sup>Community Legal Service Fund] **E+W****

**47.17.**—(1) Where the court is to assess costs of [<sup>F160</sup>a LSC funded client or] an assisted person which are payable out of the [<sup>F159</sup>Community Legal Service Fund], [<sup>F161</sup>that person's] solicitor may commence detailed assessment proceedings by filing a request in the relevant practice form.

(2) A request under paragraph (1) must be filed within 3 months after the date when the right to detailed assessment arose.

(3) The solicitor must also serve a copy of the request for detailed assessment on [<sup>F162</sup>the LSC funded client or] the assisted person, if notice of [<sup>F161</sup>that person's] interest has been given to the court in accordance with [<sup>F163</sup>community legal service or] legal aid regulations.

(4) Where the solicitor has certified that [<sup>F164</sup>the LSC funded client or] the assisted person wishes to attend an assessment hearing, the court will, on receipt of the request for assessment, fix a date for the assessment hearing.

(5) Where paragraph (3) does not apply, the court will, on receipt of the request for assessment provisionally assess the costs without the attendance of the solicitor, unless it considers that a hearing is necessary.

(6) After the court has provisionally assessed the bill, it will return the bill to the solicitor.

(7) The court will fix a date for an assessment hearing if the solicitor informs the court, within 14 days after he receives the provisionally assessed bill, that he wants the court to hold such a hearing.

#### Textual Amendments

**F158** Words in rule 47.17 heading inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000](#) (S.I. 2000/1317), rules 1, **27(b)** (with rule 39)

**F159** Words in rule 47.17 substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000](#) (S.I. 2000/1317), rules 1, **27(a)(i)** (with rule 39)

**F160** Words in rule 47.17(1) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000](#) (S.I. 2000/1317), rules 1, **27(c)** (with rule 39)

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- F161** Words in rule 47.17 substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **27(a)(ii)** (with rule 39)
- F162** Words in rule 47.17(3) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **27(d)** (with rule 39)
- F163** Words in rule 47.17(3) inserted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **19**
- F164** Words in rule 47.17(4) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **27(e)** (with rule 39)

#### Commencement Information

- I416** [Rule 47.17](#) in force at 26.4.1999, see [Signature](#)

### [<sup>F165</sup>Detailed assessment procedure where costs are payable out of a fund other than the Community Legal Service Fund **E+W**

**47.17A.**—(1) Where the court is to assess costs which are payable out of a fund other than the Community Legal Service Fund, the receiving party may commence detailed assessment proceedings by filing a request in the relevant practice form.

(2) A request under paragraph (1) must be filed within 3 months after the date when the right to detailed assessment arose.

(3) The court may direct that the party seeking assessment serve a copy of the request on any person who has a financial interest in the outcome of the assessment.

(4) The court will, on receipt of the request for assessment, provisionally assess the costs without the attendance of the receiving party, unless it considers that a hearing is necessary.

(5) After the court has provisionally assessed the bill, it will return the bill to the receiving party.

(6) The court will fix a date for an assessment hearing if the party informs the court, within 14 days after he receives the provisionally assessed bill, that he wants the court to hold such a hearing.]

#### Textual Amendments

- F165** [Rule 47.17A](#) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **28** (with rule 39)

## SECTION VII—COSTS OF DETAILED ASSESSMENT PROCEEDINGS

### Liability for costs of detailed assessment proceedings **E+W**

**47.18.**—(1) The receiving party is entitled to his costs of the detailed assessment proceedings except where—

- (a) the provisions of any Act, any of these Rules or any relevant practice direction provide otherwise; or
- (b) the court makes some other order in relation to all or part of the costs of the detailed assessment proceedings.

(2) In deciding whether to make some other order, the court must have regard to all the circumstances, including—

- (a) the conduct of all the parties;
- (b) the amount, if any, by which the bill of costs has been reduced; and

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- (c) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.

#### Commencement Information

I417 [Rule 47.18](#) in force at 26.4.1999, see [Signature](#)

### Offers to settle without prejudice save as to costs of the detailed assessment proceedings **E**

**+W**

47.19.—(1) Where—

- (a) a party (whether the paying party or the receiving party) makes a written offer to settle the costs of the proceedings which gave rise to the assessment proceedings; and
- (b) the offer is expressed to be without prejudice<sup>(GL)</sup> save as to the costs of the detailed assessment proceedings,

the court will take the offer into account in deciding who should pay the costs of those proceedings.

(2) The fact of the offer must not be communicated to the costs officer until the question of costs of the detailed assessment proceedings falls to be decided.

(The costs practice direction provides that rule 47.19 does not apply where the receiving party is <sup>[F166]</sup>a LSC funded client or] an assisted person)

#### Textual Amendments

F166 Words in [rule 47.19](#) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, [29](#) (with [rule 39](#))

#### Commencement Information

I418 [Rule 47.19](#) in force at 26.4.1999, see [Signature](#)

### <sup>[F167]</sup>SECTION VIII—APPEALS FROM AUTHORISED COURT OFFICERS IN DETAILED ASSESSMENT PROCEEDINGS

#### Textual Amendments

F167 [Pt. 47 Section 8](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment No. 2\) Rules 2000 \(S.I. 2000/940\)](#), rule 1, [Sch. Pt. 2](#)

### Right to appeal **E+W**

47.20.—<sup>[F168]</sup>(1) Any party to detailed assessment proceedings may appeal against a decision of an authorised court officer in those proceedings.

(Part 52 sets out general rules about appeals)

<sup>[F169]</sup>(2) For the purposes of this Section, a LSC funded client or an assisted person is not a party to detailed assessment proceedings.]



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#### Textual Amendments

- F168** Words in 4 rule 47.20 renumbered as rule 47.20(1) (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **30(a)** (with rule 39)
- F169** Rule 47.20(2) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **30(b)** (with rule 39)

#### Court to hear appeal **E+W**

**47.21** An appeal against a decision of an authorised court officer is to a costs judge or a district judge of the High Court.

#### Appeal procedure **E+W**

**47.22.**—(1) The appellant must file an appeal notice within 14 days after the date of the decision he wishes to appeal against.

- (2) On receipt of the appeal notice, the court will—
- (a) serve a copy of the notice on the parties to the detailed assessment proceedings; and
  - (b) give notice of the appeal [<sup>F170</sup>hearing] to those parties.

#### Textual Amendments

- F170** Word in rule 47.22(2)(b) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **31** (with rule 39)

#### Powers of the court on appeal **E+W**

- 47.23** On an appeal from an authorised court officer the court will—
- (a) re-hear the proceedings which gave rise to the decision appealed against; and
  - (b) make any order and give any directions as it considers appropriate.]

## PART 48 **E+W**

### COSTS—SPECIAL CASES

#### Modifications etc. (not altering text)

- C16** Pt. 48 applied (with modifications) (1.4.2001) by [The Court of Protection Rules 2001 \(S.I. 2001/824\)](#), rules 1, **86** (with rule 91)
- C17** Pt. 48 applied (with modifications) (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **6.21**

#### Contents of this Part

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I COSTS PAYABLE BY OR TO  
PARTICULAR PERSONS

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

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(The definitions contained in Part 43 are relevant to this Part)

### ***SECTION 1—COSTS PAYABLE BY OR TO PARTICULAR PERSONS***

#### **Pre-commencement disclosure and orders for disclosure against a person who is not a party E+W**

- 48.1.**—(1) This paragraph applies where a person applies—
- (a) for an order under—
    - (i) section 33 of the Supreme Court Act 1981(**60**); or
    - (ii) section 52 of the County Courts Act 1984(**61**),
 (which give the court powers exercisable before commencement of proceedings); or
  - (b) for an order under—
    - (i) section 34 of the Supreme Court Act 1981(**62**); or
    - (ii) section 53 of the County Courts Act 1984(**63**),
 (which give the court power to make an order against a non-party for disclosure of documents, inspection of property etc.).

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**(60)** 1981 c. 54. Section 33 was amended by S.I. 1998/2940.

**(61)** 1984 c. 28. Section 52 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 43 and by S.I. 1998/2940.

**(62)** 1981 c. 54. Section 34 was amended by S.I. 1998/2940.

**(63)** 1984 c. 28. Section 53 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 44 and by S.I. 1998/2940.

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(2) The general rule is that the court will award the person against whom the order is sought his costs—

- (a) of the application; and
- (b) of complying with any order made on the application.

(3) The court may however make a different order, having regard to all the circumstances, including—

- (a) the extent to which it was reasonable for the person against whom the order was sought to oppose the application; and
- (b) whether the parties to the application have complied with any relevant pre-action protocol.

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#### Commencement Information

**I419** Rule 48.1 in force at 26.4.1999, see [Signature](#)

### Costs orders in favour of or against non-parties **E+W**

**48.2.**—(1) Where the court is considering whether to exercise its power under section 51 of the Supreme Court Act 1981 (**64**) (costs are in the discretion of the court) to make a costs order in favour of or against a person who is not a party to proceedings—

- (a) that person must be added as a party to the proceedings for the purposes of costs only; and
- (b) he must be given a reasonable opportunity to attend a hearing at which the court will consider the matter further.

(2) This rule does not apply—

- (a) where the court is considering whether to—
  - (i) make an order against the [<sup>F172</sup>Legal Services Commission];
  - (ii) make a wasted costs order (as defined in 48.7); and
- (b) in proceedings to which rule 48.1 applies (pre-commencement disclosure and orders for disclosure against a person who is not a party).

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#### Textual Amendments

**F172** Words in rule 48.2(2)(a)(i) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **33** (with rule 39)

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#### Commencement Information

**I420** Rule 48.2 in force at 26.4.1999, see [Signature](#)

### Amount of costs where costs are payable pursuant to a contract **E+W**

**48.3.**—(1) Where the court assesses (whether by the summary or detailed procedure) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which—

- (a) have been reasonably incurred; and
- (b) are reasonable in amount,

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**(64)** 1981 c. 54. Section 51 was substituted by section 4(1) of the Courts and Legal Services Act 1990 (c. 41).

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and the court will assess them accordingly.

(The costs practice direction sets out circumstances where the court may order otherwise)

(2) This rule does not apply where the contract is between a solicitor and his client.

#### Commencement Information

**I421** [Rule 48.3](#) in force at 26.4.1999, see [Signature](#)

### Limitations on court's power to award costs in favour of trustee or personal representative **E+W**

**48.4.**—(1) This rule applies where—

- (a) a person is or has been a party to any proceedings in the capacity of trustee or personal representative; and
- (b) rule 48.3 does not apply.

[<sup>F173</sup>(2) The general rule is that where he is entitled to be paid his costs of the proceedings out of any fund held by him as trustee or personal representative, those costs shall be assessed on the indemnity basis.]

(3) The court may order otherwise <sup>F174</sup>... if a trustee or personal representative has acted for a benefit other than that of the fund.

#### Textual Amendments

**F173** [Rule 48.4\(2\)](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **23(a)**

**F174** Words in [rule 48.4\(3\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **23(b)**

#### Commencement Information

**I422** [Rule 48.4](#) in force at 26.4.1999, see [Signature](#)

### Costs where money is payable by or to a child or patient **E+W**

**48.5.**—(1) This rule applies to any proceedings where a party is a child or patient and—

- (a) money is ordered or agreed to be paid to, or for the benefit of, that party; or
- (b) money is ordered to be paid by him or on his behalf.

(“Child” and “patient” are defined in rule 2.3)

(2) The general rule is that—

- (a) the court must order a detailed assessment of the costs payable by any party who is a child or patient to his solicitor; and
- (b) on an assessment under paragraph (a), the court must also assess any costs payable to that party in the proceedings, unless the court has issued a default costs certificate in relation to those costs under rule 47.11.

(3) The court need not order detailed assessment of costs in the circumstances set out in the costs practice direction.

(4) Where—

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- (a) a claimant is a child or patient; and
- (b) a detailed assessment has taken place under paragraph (2)(a),

the only amount payable by the child or patient to his solicitor is the amount which the court certifies as payable.

(This rule applies to a counterclaim by or on behalf of child or patient by virtue of rule 20.3)

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**Commencement Information**

**I423** Rule 48.5 in force at 26.4.1999, see [Signature](#)

**Litigants in person** **E+W**

**48.6.**—(1) This rule applies where the court orders (whether by summary assessment or detailed assessment) that the costs of a litigant in person are to be paid by any other person.

(2) The costs allowed under this rule must not exceed, except in the case of a disbursement, two-thirds of the amount which would have been allowed if the litigant in person had been represented by a legal representative.

(3) Costs allowed to the litigant in person shall be—

- (a) such costs which would have been allowed if the work had been done or the disbursements made by a legal representative on the litigant in person’s behalf;
- (b) the payments reasonably made by him for legal services relating to the conduct of the proceedings; and
- (c) the costs of obtaining expert assistance in connection with assessing the claim for costs.

(The costs practice direction deals with who may be an expert for the purpose of paragraph (2)(c))

(4) Subject to paragraph (2), the amount of costs to be allowed to the litigant in person for any item of work to which the costs relate shall, if he fails to prove financial loss, be an amount in respect of the time spent reasonably doing the work at the rate specified in the costs practice direction.

(5) A litigant who is allowed costs for attending at court to conduct his case is not entitled to a witness allowance in respect of such attendance in addition to those costs.

(6) For the purposes of this rule, a litigant in person includes—

- (a) a company or other corporation which is acting without a legal representative; and
- (b) a barrister, solicitor, solicitor’s employee or other authorised litigator (as defined in the Courts and Legal Services Act 1990(65)) who is acting for himself.

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**Commencement Information**

**I424** Rule 48.6 in force at 26.4.1999, see [Signature](#)

**[<sup>F175</sup>Costs where the court has made a Group Litigation Order** **E+W**

**48.6A.**—(1) This rule applies where the court has made a Group Litigation Order (“GLO”).

(2) In this rule—

- (a) “individual costs” means costs incurred in relation to an individual claim on the group register;

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- (b) “common costs” means—
  - (i) costs incurred in relation to the GLO issues;
  - (ii) individual costs incurred in a claim while it is proceeding as a test claim, and
  - (iii) costs incurred by the lead solicitor in administering the group litigation; and
- (c) “group litigant” means a claimant or defendant, as the case may be, whose claim is entered on the group register.

(3) Unless the court orders otherwise, any order for common costs against group litigants imposes on each group litigant several liability<sup>(GL)</sup> for an equal proportion of those common costs.

(4) The general rule is that where a group litigant is the paying party, he will, in addition to any costs he is liable to pay to the receiving party, be liable for—

- (a) the individual costs of his claim; and
- (b) an equal proportion, together with all the other group litigants, of the common costs.

(5) Where the court makes an order about costs in relation to any application or hearing which involved—

- (a) one or more GLO issues; and
- (b) issues relevant only to individual claims,

the court will direct the proportion of the costs that is to relate to common costs and the proportion that is to relate to individual costs.

(6) Where common costs have been incurred before a claim is entered on the group register, the court may order the group litigant to be liable for a proportion of those costs.

(7) Where a claim is removed from the group register, the court may make an order for costs in that claim which includes a proportion of the common costs incurred up to the date on which the claim is removed from the group register. (Part 19 sets out rules about group litigation).]

**Textual Amendments**

**F175** Rule 48.6A inserted (3.7.2000) by The Civil Procedure (Amendment No. 3) Rules 2000 (S.I. 2000/1317), rules 1, 34 (with rule 39)

**SECTION II—COSTS RELATING TO SOLICITORS AND OTHER LEGAL REPRESENTATIVES**

**Personal liability of legal representative for costs—wasted costs orders** E+W

**48.7.**—(1) This rule applies where the court is considering whether to make an order under section 51(6) of the Supreme Court Act 1981<sup>(66)</sup> (court’s power to disallow or (as the case may be) order a legal representative to meet, “wasted costs”).

(2) The court must give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make such an order.

<sup>F176</sup>(3) .....

(4) When the court makes a wasted costs order, it must specify the amount to be disallowed or paid.

<sup>(66)</sup> 1981 c. 54. Section 51 was substituted by section 4(1) of the Courts and Legal Services Act 1990 (c. 41).

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(5) The court may direct that notice must be given to the legal representative's client, in such manner as the court may direct—

- (a) of any proceedings under this rule; or
- (b) of any order made under it against his legal representative.

(6) Before making a wasted costs order, the court may direct a costs judge or a district judge to inquire into the matter and report to the court.

(7) The court may refer the question of wasted costs to a costs judge or a district judge, instead of making a wasted costs order.

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**Textual Amendments**

**F176** Rule 48.7(3) revoked (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **35** (with rule 39)

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**Commencement Information**

**I425** Rule 48.7 in force at 26.4.1999, see [Signature](#)

**Basis of detailed assessment of solicitor and client costs** **E+W**

**48.8.**—<sup>F177</sup>(1) This rule applies to every assessment of a solicitor's bill to his client except a bill which is to be paid out of the Community Legal Service Fund under the Legal Aid Act 1988 or the Access to Justice Act 1999.]

<sup>F178</sup>(1A) Section 74(3) of the Solicitors Act 1974 applies unless the solicitor and client have entered into a written agreement which expressly permits payment to the solicitor of an amount of costs greater than that which the client could have recovered from another party to the proceedings.]

(2) <sup>F179</sup>Subject to paragraph (1A),] costs are to be assessed on the indemnity basis but are to be presumed—

- (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client;
- (b) to be reasonable in amount if their amount was expressly or impliedly approved by the client;
- (c) to have been unreasonably incurred if—
  - (i) they are of an unusual nature or amount; and
  - (ii) the solicitor did not tell his client that as a result he might not recover all of them from the other party.

<sup>F180</sup>(3) Where the court is considering a percentage increase, whether on the application of the legal representative under rule 44.16 or on the application of the client, the court will have regard to all the relevant factors as they reasonably appeared to the solicitor or counsel when the conditional fee agreement was entered into or varied.

(4) In paragraph (3), “conditional fee agreement” means an agreement enforceable under section 58 of the Courts and Legal Services Act 1990 at the date on which that agreement was entered into or varied.]

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**Textual Amendments**

**F177** Rule 48.8(1) substituted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **16(1)(a)**

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- F178** Rule 48.8(1A) inserted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **24(a)**
- F179** Words in rule 48.8(2) inserted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **24(b)**
- F180** Rule 48.8(3)(4) inserted (26.3.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(a), **16(1)(b)**

**Commencement Information**

**I426** Rule 48.8 in force at 26.4.1999, see [Signature](#)

**Conditional fees** E+W

**48.9** <sup>F181</sup> .....

**Textual Amendments**

**F181** Rule 48.9 omitted (26.3.2001) by virtue of The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(a), **16(2)**

**Assessment procedure** E+W

**48.10.**—(1) This [<sup>F182</sup>rule] sets out the procedure to be followed where the court has made an order under Part III of the Solicitors Act 1974(**67**) for the assessment of costs payable to a solicitor by his client.

(2) The solicitor must serve a breakdown of costs within 28 days of the order for costs to be assessed.

(3) The client must serve points of dispute within 14 days after service on him of the breakdown of costs.

(4) If the solicitor wishes to serve a reply, he must do so within 14 days of service on him of the points of dispute.

(5) Either party may file a request for a hearing date—

(a) after points of dispute have been served; but

(b) no later than 3 months after the date of the order for the costs to be assessed.

(6) This procedure applies subject to any contrary order made by the court.

**Textual Amendments**

**F182** Word in rule 48.10(1) substituted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **25**

**Commencement Information**

**I427** Rule 48.10 in force at 26.4.1999, see [Signature](#)

(67) 1974 c. 47.



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**PART 49** **E+W**  
**SPECIALIST PROCEEDINGS**

**49.**—(1) These Rules shall apply to the proceedings listed in paragraph (2) subject to the provisions of the relevant practice direction which applies to those proceedings.

(2) The proceedings referred to in paragraph (1) are—

- (a) admiralty proceedings;
- (b) arbitration proceedings;
- (c) commercial and mercantile actions;
- (d) Patents Court business (as defined by the relevant practice direction) and proceedings under—
  - (i) the Copyright, Designs and Patents Act 1988**(68)**;
  - (ii) the Trade Marks Act 1994**(69)**; and
  - (iii) the Olympic Symbol etc Protection Act 1995**(70)** and Olympics Association Right (Infringement Proceedings) Regulations 1995**(71)**;
- (e) Technology and Construction Court Business (as defined by the relevant practice direction);
- (f) proceedings under the Companies Act 1985**(72)** and the Companies Act 1989**(73)**<sup>F183.</sup>
- <sup>F184</sup>(g) .....

**Textual Amendments**

**F183** Rule 49(2)(f): full stop substituted for word (15.10.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(b), **13(a)**

**F184** Rule 49(2)(g) omitted (15.10.2001) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(b), **13(b)**

**Commencement Information**

**I428** [Rule 49](#) in force at 26.4.1999, see [Signature](#)

**PART 50** **E+W**  
**APPLICATION OF THE SCHEDULES**

**50.**—(1) The Schedules to these Rules set out, with modifications, certain provisions previously contained in the Rules of the Supreme Court 1965**(74)** and the County Court Rules 1981**(75)**.

(2) These Rules apply in relation to the proceedings to which the Schedules apply subject to the provisions in the Schedules and the relevant practice directions.

**(68)** 1988 c. 48.  
**(69)** 1994 c. 26.  
**(70)** 1995 c. 32.  
**(71)** S.I. 1995/3325.  
**(72)** 1985 c. 6.  
**(73)** 1989 c. 40.  
**(74)** S.I. 1965/1776.  
**(75)** S.I. 1981/1687.

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- (3) A provision previously contained in the Rules of the Supreme Court 1965—
  - (a) is headed “RSC”;
  - (b) is numbered with the Order and rule numbers it bore as part of the RSC; and
  - (c) unless otherwise stated in the Schedules or the relevant practice direction, applies only to proceedings in the High Court.
- (4) A provision previously contained in the County Court Rules 1981—
  - (a) is headed “CCR”;
  - (b) is numbered with the Order and rule numbers it bore as part of the CCR; and
  - (c) unless otherwise stated in the Schedules or the relevant practice direction, applies only to proceedings in the county court.
- (5) A reference in a Schedule to a rule by number alone is a reference to the rule so numbered in the Order in which the reference occurs.
- (6) A reference in a Schedule to a rule by number prefixed by “CPR” is a reference to the rule with that number in these Rules.
- (7) In the Schedules, unless otherwise stated, “the Act” means—
  - (a) in a provision headed “RSC”, the Supreme Court Act 1981; and
  - (b) in a provision headed “CCR”, the County Courts Act 1984.

**Commencement Information**  
 I429 [Rule 50](#) in force at 26.4.1999, see [Signature](#)

## PART 51 E+W

### [<sup>F185</sup>Transitional Arrangements and Pilot Schemes]

**Textual Amendments**  
 F185 [Pt. 51](#) heading substituted (15.10.2001) by [The Civil Procedure \(Amendment No. 4\) Rules 2001 \(S.I. 2001/2792\)](#), [rules 1\(a\)](#), [5\(a\)](#) (with [rule 24](#))

<sup>F186</sup>51. ....

**Textual Amendments**  
 F186 [Rule 51](#) renumbered as rule 51.1 (15.10.2001) by [The Civil Procedure \(Amendment No. 4\) Rules 2001 \(S.I. 2001/2792\)](#), [rules 1\(a\)](#), [5\(b\)](#) (with [rule 24](#))

[<sup>F187</sup>51.1]. A practice direction shall make provision for the extent to which these Rules shall apply to proceedings issued before 26th April 1999.

**Textual Amendments**  
 F187 [Rule 51](#) renumbered as rule 51.1 (15.10.2001) by [The Civil Procedure \(Amendment No. 4\) Rules 2001 \(S.I. 2001/2792\)](#), [rules 1\(a\)](#), [5\(b\)](#) (with [rule 24](#))

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### Commencement Information

**I430** [Rule 51](#) in force at 26.4.1999, see [Signature](#)

[<sup>F188</sup>**51.2** Practice directions may modify or disapply any provision of these Rules—

- (a) for specified periods; and
- (b) in relation to proceedings in specified courts,

during the operation of pilot schemes for assessing the use of new practices and procedures in connection with proceedings.]

### Textual Amendments

**F188** [Rule 51.2](#) inserted (15.10.2001) by [The Civil Procedure \(Amendment No. 4\) Rules 2001 \(S.I. 2001/2792\)](#), [rules 1\(a\), 5\(c\)](#) (with [rule 24](#))

## [<sup>F189</sup>PART 52 **E+W**

### APPEALS

### Textual Amendments

**F189** [Pt. 52](#) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\), Sch. 5](#) (with [rule 39\(a\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

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Second appeals to the court

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### I GENERAL RULES ABOUT APPEALS

#### Scope and interpretation E+W

**52.1.**—(1) The rules in this Part apply to appeals to—

- (a) the civil division of the Court of Appeal;
- (b) the High Court; and
- (c) a county court.

[<sup>F190</sup>(2) This Part does not apply to an appeal in detailed assessment proceedings against a decision of an authorised court officer.]

<sup>F191</sup> ...

(Rules 47.21 to 47.26 deal with appeals against a decision of an authorised court officer in detailed assessment proceedings)

(3) In this Part—

- (a) “appeal” includes an appeal by way of case stated;
- (b) “appeal court” means the court to which an appeal is made;
- (c) “lower court” means the court, tribunal or other person or body from whose decision an appeal is brought;
- (d) “appellant” means a person who brings or seeks to bring an appeal;
- (e) “respondent” means—
  - (i) a person other than the appellant who was a party to the proceedings in the lower court and who is affected by the appeal; and
  - (ii) a person who is permitted by the appeal court to be a party to the appeal; and
- (f) “appeal notice” means an appellant’s or respondent’s notice.

(4) This Part is subject to any rule, enactment or practice direction which sets out special provisions with regard to any particular category of appeal.

#### Textual Amendments

**F190** Rule 52.1(2) substituted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **20** (with rule 29)

**F191** Words in rule 52.1 omitted (2.10.2000) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **21** (with rule 29)

## Parties to comply with the practice direction **E+W**

**52.2** All parties to an appeal must comply with the relevant practice direction.

## Permission **E+W**

**52.3.**—(1) An appellant or respondent requires permission to appeal—

- (a) where the appeal is from a decision of a judge in a county court or the High Court, except where the appeal is against—
  - (i) a committal order;
  - (ii) a refusal to grant habeas corpus; or
  - (iii) a secure accommodation order made under section 25 of the Children Act 1989(19);  
or
- (b) as provided by the relevant practice direction.

(Other enactments may provide that permission is required for particular appeals)

(2) An application for permission to appeal may be made—

- (a) to the lower court at the hearing at which the decision to be appealed was made; or
- (b) to the appeal court in an appeal notice.

(Rule 52.4 sets out the time limits for filing an appellant’s notice at the appeal court. Rule 52.5 sets out the time limits for filing a respondent’s notice at the appeal court. Any application for permission to appeal to the appeal court must be made in the appeal notice (see rules 52.4(1) and 52.5(3))

(Rule 52.13(1) provides that permission is required from the Court of Appeal for all appeals to that court from a decision of a county court or the High Court which was itself made on appeal)

(3) Where the lower court refuses an application for permission to appeal, a further application for permission to appeal may be made to the appeal court.

(4) Where the appeal court, without a hearing, refuses permission to appeal, the person seeking permission may request the decision to be reconsidered at a hearing.

(5) A request under paragraph (4) must be filed within seven days after service of the notice that permission has been refused.

(6) Permission to appeal will only be given where—

- (a) the court considers that the appeal would have a real prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard.

(7) An order giving permission may—

- (a) limit the issues to be heard; and
- (b) be made subject to conditions.

(Rule 3.1(3) also provides that the court may make an order subject to conditions)

(Rule 25.15 provides for the court to order security for costs of an appeal)

## Appellant’s notice **E+W**

**52.4.**—(1) Where the appellant seeks permission from the appeal court it must be requested in the appellant’s notice.

(2) The appellant must file the appellant’s notice at the appeal court within—

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- (a) such period as may be directed by the lower court; or
  - (b) where the court makes no such direction, 14 days after the date of the decision of the lower court that the appellant wishes to appeal.
- (3) Unless the appeal court orders otherwise, an appeal notice must be served on each respondent—
- (a) as soon as practicable; and
  - (b) in any event not later than 7 days,
- after it is filed.

### **Respondent's notice** E+W

**52.5.**—(1) A respondent may file and serve a respondent's notice.

- (2) A respondent who—
- (a) is seeking permission to appeal from the appeal court; or
  - (b) wishes to ask the appeal court to uphold the order of the lower court for reasons different from or additional to those given by the lower court,

must file a respondent's notice.

(3) Where the respondent seeks permission from the appeal court it must be requested in the respondent's notice.

- (4) A respondent's notice must be filed within—
- (a) such period as may be directed by the lower court; or
  - (b) where the court makes no such direction, 14 days after the date in paragraph (5).
- (5) The date referred to in paragraph (4) is—
- (a) the date the respondent is served with the appellant's notice where—
    - (i) permission to appeal was given by the lower court; or
    - (ii) permission to appeal is not required;
  - (b) the date the respondent is served with notification that the appeal court has given the appellant permission to appeal; or
  - (c) the date the respondent is served with notification that the application for permission to appeal and the appeal itself are to be heard together.

(6) Unless the appeal court orders otherwise a respondent's notice must be served on the appellant and any other respondent—

- (a) as soon as practicable; and
  - (b) in any event not later than 7 days,
- after it is filed.

### **Variation of time** E+W

**52.6.**—(1) An application to vary the time limit for filing an appeal notice must be made to the appeal court.

- (2) The parties may not agree to extend any date or time limit set by—
- (a) these Rules;
  - (b) the relevant practice direction; or
  - (c) an order of the appeal court or the lower court.

(Rule 3.1(2)(a) provides that the court may extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired))

(Rule 3.1(2)(b) provides that the court may adjourn or bring forward a hearing)

### **Stay<sup>(gl)</sup> E+W**

**52.7** Unless—

- (a) the appeal court or the lower court orders otherwise; or
- (b) the appeal is from the Immigration Appeal Tribunal,

an appeal shall not operate as a stay of any order or decision of the lower court.

### **Amendment of appeal notice E+W**

**52.8** An appeal notice may not be amended without the permission of the appeal court.

### **Striking out<sup>(gl)</sup> appeal notices and setting aside or imposing conditions on permission to appeal E+W**

**52.9.**—(1) The appeal court may—

- (a) strike out the whole or part of an appeal notice;
- (b) set aside<sup>(gl)</sup> permission to appeal in whole or in part;
- (c) impose or vary conditions upon which an appeal may be brought.

(2) The court will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party was present at the hearing at which permission was given he may not subsequently apply for an order that the court exercise its powers under sub-paragraphs (1)(b) or (1)(c).

### **Appeal court's powers E+W**

**52.10.**—(1) In relation to an appeal the appeal court has all the powers of the lower court.

(Rule 52.1(4) provides that this Part is subject to any enactment that sets out special provisions with regard to any particular category of appeal—where such an enactment gives a statutory power to a tribunal, person or other body it may be the case that the appeal court may not exercise that power on an appeal)

(2) The appeal court has power to—

- (a) affirm, set aside or vary any order or judgment made or given by the lower court;
- (b) refer any claim or issue for determination by the lower court;
- (c) order a new trial or hearing;
- (d) make orders for the payment of interest;
- (e) make a costs order.

(3) In an appeal from a claim tried with a jury the Court of Appeal may, instead of ordering a new trial—

- (a) make an order for damages<sup>(gl)</sup> or
- (b) vary an award of damages made by the jury.

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(4) The appeal court may exercise its powers in relation to the whole or part of an order of the lower court.

(Part 3 contains general rules about the court’s case management powers)

### **Hearing of appeals** E+W

- 52.11.**—(1) Every appeal will be limited to a review of the decision of the lower court unless—
- (a) a practice direction makes different provision for a particular category of appeal; or
  - (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.
- (2) Unless it orders otherwise, the appeal court will not receive—
- (a) oral evidence; or
  - (b) evidence which was not before the lower court.
- (3) The appeal court will allow an appeal where the decision of the lower court was—
- (a) wrong; or
  - (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
- (4) The appeal court may draw any inference of fact which it considers justified on the evidence.
- (5) At the hearing of the appeal a party may not rely on a matter not contained in his appeal notice unless the appeal court gives permission.

### **Non-disclosure of Part 36 offers and payments** E+W

- 52.12.**—(1) The fact that a Part 36 offer or Part 36 payment has been made must not be disclosed to any judge of the appeal court who is to hear and finally determine an appeal until all questions (other than costs) have been determined.
- (2) Paragraph (1) does not apply if the Part 36 offer or Part 36 payment is relevant to the substance of the appeal.
- (3) Paragraph (1) does not prevent disclosure in any application in the appeal proceedings if disclosure of the fact that a Part 36 offer or Part 36 payment has been made is properly relevant to the matter to be decided.

## ***II SPECIAL PROVISIONS APPLYING TO THE COURT OF APPEAL***

### **Second appeals to the court** E+W

- 52.13.**—(1) Permission is required from the Court of Appeal for any appeal to that court from a decision of a county court or the High Court which was itself made on appeal.
- (2) The Court of Appeal will not give permission unless it considers that—
- (a) the appeal would raise an important point of principle or practice; or
  - (b) there is some other compelling reason for the Court of Appeal to hear it.

### **Assignment of appeals to the Court of Appeal** E+W

- 52.14.**—(1) Where the court from or to which an appeal is made or from which permission to appeal is sought (“the relevant court”) considers that—



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- (a) an appeal which is to be heard by a county court or the High Court would raise an important point of principle or practice; or
  - (b) there is some other compelling reason for the Court of Appeal to hear it,
- the relevant court may order the appeal to be transferred to the Court of Appeal.

(The Master of the Rolls has the power to direct that an appeal which would be heard by a county court or the High Court should be heard instead by the Court of Appeal—see section 57 of the Access to Justice Act 1999)(20)

(2) The Master of the Rolls or the Court of Appeal may remit an appeal to the court in which the original appeal was or would have been brought.

### **Judicial review appeals** **E+W**

**52.15.**—(1) Where permission to apply for judicial review has been refused at a hearing in the High Court, the person seeking that permission may apply to the Court of Appeal for permission to appeal.

(2) An application in accordance with paragraph (1) must be made within 7 days of the decision of the High Court to refuse to give permission to apply for judicial review.

(3) On an application under paragraph (1), the Court of Appeal may, instead of giving permission to appeal, give permission to apply for judicial review.

(4) Where the Court of Appeal gives permission to apply for judicial review in accordance with paragraph (3), the case will proceed in the High Court unless the Court of Appeal orders otherwise.

### **Who may exercise the powers of the Court of Appeal** **E+W**

**52.16.**—(1) A court officer assigned to the Civil Appeals Office who is—

- (a) a barrister; or
- (b) a solicitor

may exercise the jurisdiction of the Court of Appeal with regard to the matters set out in paragraph (2) with the consent of the Master of the Rolls.

(2) The matters referred to in paragraph (1) are—

- (a) any matter incidental to any proceedings in the Court of Appeal;
- (b) any other matter where there is no substantial dispute between the parties; and
- (c) the dismissal of an appeal or application where a party has failed to comply with any order, rule or practice direction.

(3) A court officer may not decide an application for—

- (a) permission to appeal;
- (b) bail pending an appeal;
- (c) an injunction<sup>(g1)</sup>;
- (d) a stay<sup>(g1)</sup> of any proceedings, other than a temporary stay of any order or decision of the lower court over a period when the Court of Appeal is not sitting or cannot conveniently be convened.

(4) Decisions of a court officer may be made without a hearing.

(5) A party may request any decision of a court officer to be reviewed by the Court of Appeal.

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- (6) At the request of a party, a hearing will be held to reconsider a decision of—
- (a) a single judge; or
  - (b) a court officer,
- made without a hearing.
- (7) A single judge may refer any matter for a decision by a court consisting of two or more judges.
- (Section 54(6) of the Supreme Court Act 1981(21) provides that there is no appeal from the decision of a single judge on an application for permission to appeal)
- (Section 58(2) of the Supreme Court Act 1981(22) provides that there is no appeal to the House of Lords from decisions of the Court of Appeal that—
- (a) are taken by a single judge or any officer or member of staff of that court in proceedings incidental to any cause or matter pending before the civil division of that court; and
  - (b) do not involve the determination of an appeal or of an application for permission to appeal,
- and which may be called into question by rules of court. Rules 52.16(5) and (6) provide the procedure for the calling into question of such decisions)]

## [<sup>F192</sup>PART 53 E+W]

### DEFAMATION CLAIMS

#### Textual Amendments

**F192** Pt. 53 inserted (28.2.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(a), [Sch. 6](#)

#### Contents of this Part

Scope of this Part	Rule 53.1
Summary disposal under the Defamation Act 1996	Rule 53.2
Sources of information	Rule 53.3

#### Scope of this Part E+W

**53.1** This Part contains rules about defamation claims.

#### Summary disposal under the Defamation Act 1996 E+W

**53.2.**—(1) This rule provides for summary disposal in accordance with the Defamation Act 1996 (“the Act”)(23).

(2) In proceedings for summary disposal under sections 8 and 9 of the Act, rules 24.4 (procedure), 24.5 (evidence) and 24.6 (directions) apply.

(3) An application for summary judgment under Part 24 may not be made if—

(21) 1984 c. 16.

(22) 1995 c. 21.

(23) 1980 c. 58.

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- (a) an application has been made for summary disposal in accordance with the Act, and that application has not been disposed of; or
  - (b) summary relief has been granted on an application for summary disposal under the Act.
- (4) The court may on any application for summary disposal direct the defendant to elect whether or not to make an offer to make amends under section 2 of the Act.
- (5) When it makes a direction under paragraph (4), the court will specify the time by which and the manner in which—
- (a) the election is to be made; and
  - (b) notification of it is to be given to the court and the other parties.

### Sources of information **E+W**

**53.3** Unless the court orders otherwise, a party will not be required to provide further information about the identity of the defendant's sources of information.

(Part 18 provides for requests for further information)]

## [<sup>F193</sup>PART 54 **E+W**

### JUDICIAL REVIEW

#### Textual Amendments

**F193** Pt. 54 inserted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rule 1, [Sch.](#) (with rule 30)

#### Contents of this Part

Scope and interpretation	Rule 54.1
When this Part must be used	Rule 54.2
When this Part may be used	Rule 54.3
Permission required	Rule 54.4
Time limit for filing claim form	Rule 54.5
Claim form	Rule 54.6
Service of claim form	Rule 54.7
Acknowledgement of service	Rule 54.8
Failure to file acknowledgment of service	Rule 54.9
Permission given	Rule 54.10
Service of order giving or refusing permission	Rule 54.11
Permission decision without a hearing	Rule 54.12
Defendant etc. may not apply to set aside <sup>(gl)</sup>	Rule 54.13
Response	Rule 54.14

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Where claimant seeks to rely on additional grounds	Rule 54.15
Evidence	Rule 54.16
Court's powers to hear any person	Rule 54.17
Judicial review may be decided without a hearing	Rule 54.18
Court's powers in respect of quashing orders	Rule 54.19
Transfer	Rule 54.20

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### Scope and interpretation **E+W**

**54.1.**—(1) This Part contains rules about judicial review.

(2) In this Part—

- (a) a “claim for judicial review” means a claim to review the lawfulness of—
  - (i) an enactment; or
  - (ii) a decision, action or failure to act in relation to the exercise of a public function.
- (b) an order of mandamus is called a “mandatory order”;
- (c) an order of prohibition is called a “prohibiting order”;
- (d) an order of certiorari is called a “quashing order”;
- (e) “the judicial review procedure” means the Part 8 procedure as modified by this Part;
- (f) “interested party” means any person (other than the claimant and defendant) who is directly affected by the claim; and
- (g) “court” means the High Court, unless otherwise stated.

(Rule 8.1(6)(b) provides that a rule or practice direction may, in relation to a specified type of proceedings, disapply or modify any of the rules set out in Part 8 as they apply to those proceedings)

### When this Part must be used **E+W**

**54.2** —The judicial review procedure must be used in a claim for judicial review where the claimant is seeking—

- (a) a mandatory order;
- (b) a prohibiting order;
- (c) a quashing order; or
- (d) an injunction under section 30 of the Supreme Court Act 1981 (restraining a person from acting in any office in which he is not entitled to act).

### When this Part may be used **E+W**

**54.3.**—(1) The judicial review procedure may be used in a claim for judicial review where the claimant is seeking—

- (a) a declaration; or
- (b) an injunction<sup>(g1)</sup>.

(Section 31(2) of the Supreme Court Act 1981 sets out the circumstances in which the court may grant a declaration or injunction in a claim for judicial review)

(Where the claimant is seeking a declaration or injunction in addition to one of the remedies listed in rule 54.2, the judicial review procedure must be used)

**54.3.—(2)** A claim for judicial review may include a claim for damages but may not seek damages alone.

(Section 31(4) of the Supreme Court Act 1981 sets out the circumstances in which the court may award damages on a claim for judicial review)

#### **Permission required** **E+W**

**54.4** The court's permission to proceed is required in a claim for judicial review whether started under this Part or transferred to the Administrative Court.

#### **Time limit for filing claim form** **E+W**

**54.5.—(1)** The claim form must be filed—

- (a) promptly; and
  - (b) in any event not later than 3 months after the grounds to make the claim first arose.
- (2) The time limit in this rule may not be extended by agreement between the parties.
- (3) This rule does not apply when any other enactment specifies a shorter time limit for making the claim for judicial review.

#### **Claim form** **E+W**

**54.6.—(1)** In addition to the matters set out in rule 8.2 (contents of the claim form) the claimant must also state—

- (a) the name and address of any person he considers to be an interested party;
- (b) that he is requesting permission to proceed with a claim for judicial review; and
- (c) any remedy (including any interim remedy) he is claiming.

(Part 25 sets out how to apply for an interim remedy)

(2) The claim form must be accompanied by the documents required by the relevant practice direction.

#### **Service of claim form** **E+W**

**54.7** The claim form must be served on—

- (a) the defendant; and
- (b) unless the court otherwise directs, any person the claimant considers to be an interested party, within 7 days after the date of issue.

#### **Acknowledgment of service** **E+W**

**54.8.—(1)** Any person served with the claim form who wishes to take part in the judicial review must file an acknowledgment of service in the relevant practice form in accordance with the following provisions of this rule.

(2) Any acknowledgment of service must be—

- (a) filed not more than 21 days after service of the claim form; and

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- (b) served on—
  - (i) the claimant; and
  - (ii) subject to any direction under rule 54.7(b), any other person named in the claim form, as soon as practicable and, in any event, not later than 7 days after it is filed.
- (3) The time limits under this rule may not be extended by agreement between the parties.
- (4) The acknowledgment of service—
  - (a) must—
    - (i) where the person filing it intends to contest the claim, set out a summary of his grounds for doing so; and
    - (ii) state the name and address of any person the person filing it considers to be an interested party; and
  - (b) may include or be accompanied by an application for directions.
- (5) Rule 10.3(2) does not apply.

#### **Failure to file acknowledgment of service** E+W

**54.9.**—(1) Where a person served with the claim form has failed to file an acknowledgment of service in accordance with rule 54.8, he—

- (a) may not take part in a hearing to decide whether permission should be given unless the court allows him to do so; but
- (b) provided he complies with rule 54.14 or any other direction of the court regarding the filing and service of—
  - (i) detailed grounds for contesting the claim or supporting it on additional grounds; and
  - (ii) any written evidence,
 may take part in the hearing of the judicial review.
- (2) Where that person takes part in the hearing of the judicial review, the court may take his failure to file an acknowledgment of service into account when deciding what order to make about costs.
- (3) Rule 8.4 does not apply.

#### **Permission given** E+W

- 54.10.**—(1) Where permission to proceed is given the court may also give directions.
- (2) Directions under paragraph (1) may include a stay<sup>(g1)</sup> of proceedings to which the claim relates. (Rule 3.7 provides a sanction for the non-payment of the fee payable when permission to proceed has been given)

#### **Service of order giving or refusing permission** E+W

- 54.11** The court will serve—
- (a) the order giving or refusing permission; and
  - (b) any directions,
- on—
- (i) the claimant;
  - (ii) the defendant; and
  - (iii) any other person who filed an acknowledgment of service.

### **Permission decision without a hearing** **E+W**

**54.12.**—(1) This rule applies where the court, without a hearing—

- (a) refuses permission to proceed; or
- (b) gives permission to proceed—
  - (i) subject to conditions; or
  - (ii) on certain grounds only.

(2) The court will serve its reasons for making the decision when it serves the order giving or refusing permission in accordance with rule 54.11.

(3) The claimant may not appeal but may request the decision to be reconsidered at a hearing.

(4) A request under paragraph (3) must be filed within 7 days after service of the reasons under paragraph (2).

(5) The claimant, defendant and any other person who has filed an acknowledgment of service will be given at least 2 days' notice of the hearing date.

### **Defendant etc. may not apply to set aside<sup>(gl)</sup>** **E+W**

**54.13** Neither the defendant nor any other person served with the claim form may apply to set aside<sup>(gl)</sup> an order giving permission to proceed.

### **Response** **E+W**

**54.14.**—(1) A defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve—

- (a) detailed grounds for contesting the claim or supporting it on additional grounds; and
- (b) any written evidence,

within 35 days after service of the order giving permission.

(2) The following rules do not apply—

- (a) rule 8.5(3) and 8.5(4) (defendant to file and serve written evidence at the same time as acknowledgment of service); and
- (b) rule 8.5(5) and 8.5(6) (claimant to file and serve any reply within 14 days).

### **Where claimant seeks to rely on additional grounds** **E+W**

**54.15** The court's permission is required if a claimant seeks to rely on grounds other than those for which he has been given permission to proceed.

### **Evidence** **E+W**

**54.16.**—(1) Rule 8.6 does not apply.

(2) No written evidence may be relied on unless—

- (a) it has been served in accordance with any—
  - (i) rule under this Part; or
  - (ii) direction of the court; or
- (b) the court gives permission.

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### **Court's powers to hear any person** E+W

- 54.17.**—(1) Any person may apply for permission—
- (a) to file evidence; or
  - (b) make representations at the hearing of the judicial review.
- (2) An application under paragraph (1) should be made promptly.

### **Judicial review may be decided without a hearing** E+W

**54.18** The court may decide the claim for judicial review without a hearing where all the parties agree.

### **Court's powers in respect of quashing orders** E+W

**54.19.**—(1) This rule applies where the court makes a quashing order in respect of the decision to which the claim relates.

- (2) The court may—
- (a) remit the matter to the decision-maker; and
  - (b) direct it to reconsider the matter and reach a decision in accordance with the judgment of the court.
- (3) Where the court considers that there is no purpose to be served in remitting the matter to the decision-maker it may, subject to any statutory provision, take the decision itself.
- (Where a statutory power is given to a tribunal, person or other body it may be the case that the court cannot take the decision itself)

### **Transfer** E+W

- 54.20** The court may—
- (a) order a claim to continue as if it had not been started under this Part; and
  - (b) where it does so, give directions about the future management of the claim.

(Part 30 (transfer) applies to transfers to and from the Administrative Court)]

## [<sup>F194</sup>**PART 55** E+W] **POSSESSION CLAIMS**

#### **Textual Amendments**

**F194** Pt. 55 inserted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 1](#) (with [rule 31](#))

#### **Contents of this part**

Interpretation	Rule 55.1
I–GENERAL RULES	
Scope	Rule 55.2



Starting the claim	Rule 55.3
Particulars of claim	Rule 55.4
Hearing date	Rule 55.5
Service of claims against trespassers	Rule 55.6
Defendant's response	Rule 55.7
The hearing	Rule 55.8
Allocation	Rule 55.9
Possession claims relating to mortgaged residential property	Rule 55.10
<b>II-ACCELERATED POSSESSION CLAIMS OF PROPERTY LET ON AN ASSURED SHORTHOLD TENANCY</b>	
When this section may be used	Rule 55.11
Conditions	Rule 55.12
Claim form	Rule 55.13
Defence	Rule 55.14
Claim referred to judge	Rule 55.15
Consideration of the claim	Rule 55.16
Possession order	Rule 55.17
Postponement of possession	Rule 55.18
Application to set aside or vary	Rule 55.19

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## **Interpretation** **E+W**

### **55.1** In this Part—

- (a) “a possession claim” means a claim for the recovery of possession of land (including buildings or parts of buildings);
- (b) “a possession claim against trespassers” means a claim for the recovery of land which the claimant alleges is occupied only by a person or persons who entered or remained on the land without the consent of a person entitled to possession of that land but does not include a claim against a tenant or sub-tenant whether his tenancy has been terminated or not;
- (c) “mortgage” includes a legal or equitable mortgage and a legal or equitable charge and “mortgagee” is to be interpreted accordingly; and
- (d) “the 1988 Act” means the Housing Act 1988(11).

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(11) 1981 c. 54. Section 35A was inserted by the Administration of Justice Act 1982 (c. 53), section 15(1), Schedule 1, Part I.

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## ***I–GENERAL RULES***

### **Scope** **E+W**

**55.2.**—(1) The procedure set out in this Section of this Part must be used where the claim includes—

- (a) a possession claim brought by a—
    - (i) landlord (or former landlord);
    - (ii) mortgagee; or
    - (iii) licensor (or former licensor);
  - (b) a possession claim against trespassers; or
  - (c) a claim by a tenant seeking relief from forfeiture.
- (2) This Section of this Part
- (a) is subject to any enactment or practice direction which sets out special provisions with regard to any particular category of claim; and
  - (b) does not apply where the claimant uses the procedure set out in Section II of this Part.
- (CCR Order 24, rule 10(1) provides that where an application for an interim possession order is made, unless otherwise provided, Part 55 does not apply)

### **Starting the claim** **E+W**

**55.3.**—(1) The claim must be started in the county court for the district in which the land is situated unless paragraph (2) applies or an enactment provides otherwise.

(2) The claim may be started in the High Court if the claimant files with his claim form a certificate stating the reasons for bringing the claim in that court verified by a statement of truth in accordance with rule 22.1(1).

(3) The practice direction refers to circumstances which may justify starting the claim in the High Court.

(4) Where, in a possession claim against trespassers, the claimant does not know the name of a person in occupation or possession of the land, the claim must be brought against “persons unknown” in addition to any named defendants.

(5) The claim form and form of defence sent with it must be in the forms set out in the relevant practice direction.

### **Particulars of claim** **E+W**

**55.4** The particulars of claim must be filed and served with the claim form.

(The relevant practice direction and Part 16 provide details about the contents of the particulars of claim)

### **Hearing date** **E+W**

**55.5.**—(1) The court will fix a date for the hearing when it issues the claim form.

(2) In a possession claim against trespassers the defendant must be served with the claim form, particulars of claim and any witness statements—

- (a) in the case of residential property, not less than 5 days; and
- (b) in the case of other land, not less than 2 days,

before the hearing date.

- (3) In all other possession claims—
- (a) the hearing date will be not less than 28 days from the date of issue of the claim form;
  - (b) the standard period between the issue of the claim form and the hearing will be not more than 8 weeks; and
  - (c) the defendant must be served with the claim form and particulars of claim not less than 21 days before the hearing date.

(Rule 3.1(2)(a) provides that the court may extend or shorten the time for compliance with any rule)

### **Service of claims against trespassers** **E+W**

**55.6** Where, in a possession claim against trespassers, the claim has been issued against “persons unknown”, the claim form, particulars of claim and any witness statements must be served on those persons by—

- (a)
  - (i) attaching copies of the claim form, particulars of claim and any witness statements to the main door or some other part of the land so that they are clearly visible; and
  - (ii) if practicable, inserting copies of those documents in a sealed transparent envelope addressed to “the occupiers” through the letter box; or
- (b) placing stakes in the land in places where they are clearly visible and attaching to each stake copies of the claim form, particulars of claim and any witness statements in a sealed transparent envelope addressed to “the occupiers”.

### **Defendant’s response** **E+W**

**55.7.**—(1) An acknowledgment of service is not required and Part 10 does not apply.

(2) In a possession claim against trespassers rule 15.2 does not apply and the defendant need not file a defence.

(3) Where, in any other possession claim, the defendant does not file a defence within the time specified in rule 15.4, he may take part in any hearing but the court may take his failure to do so into account when deciding what order to make about costs.

(4) Part 12 (default judgment) does not apply in a claim to which this Part applies.

### **The hearing** **E+W**

**55.8.**—(1) At the hearing fixed in accordance with rule 55.5(1) or at any adjournment of that hearing, the court may—

- (a) decide the claim; or
- (b) give case management directions.

(2) Where the claim is genuinely disputed on grounds which appear to be substantial, case management directions given under paragraph (1)(b) will include the allocation of the claim to a track or directions to enable it to be allocated.

(3) Except where—

- (a) the claim is allocated to the fast track or the multi-track; or
- (b) the court orders otherwise,

any fact that needs to be proved by the evidence of witnesses at a hearing referred to in paragraph (1) may be proved by evidence in writing.

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(Rule 32.2(1) sets out the general rule about evidence. Rule 32.2(2) provides that rule 32.2(1) is subject to any provision to the contrary)

(4) Subject to paragraph (5), all witness statements must be filed and served at least 2 days before the hearing.

(5) In a possession claim against trespassers all witness statements on which the claimant intends to rely must be filed and served with the claim form.

(6) Where the claimant serves the claim form and particulars of claim, he must produce at the hearing a certificate of service of those documents and rule 6.14(2)(a) does not apply.

### **Allocation** **E+W**

**55.9.**—(1) When the court decides the track for a possession claim, the matters to which it shall have regard include—

- (a) the matters set out in rule 26.8 as modified by the relevant practice direction;
- (b) the amount of any arrears of rent or mortgage instalments;
- (c) the importance to the defendant of retaining possession of the land; and
- (d) the importance of vacant possession to the claimant.

(2) The court will only allocate possession claims to the small claims track if all the parties agree.

(3) Where a possession claim has been allocated to the small claims track the claim shall be treated, for the purposes of costs, as if it were proceeding on the fast track except that trial costs shall be in the discretion of the court and shall not exceed the amount that would be recoverable under rule 46.2 (amount of fast track costs) if the value of the claim were up to £3,000.

(4) Where all the parties agree the court may, when it allocates the claim, order that rule 27.14 (costs on the small claims track) applies and, where it does so, paragraph (3) does not apply.

### **Possession claims relating to mortgaged residential property** **E+W**

**55.10.**—(1) This rule applies where a mortgagee seeks possession of land which consists of or includes residential property.

(2) Not less than 14 days before the hearing the claimant must send a notice to the property addressed to “the occupiers”.

(3) The notice referred to in paragraph (2) must—

- (a) state that a possession claim for the property has started;
- (b) show the name and address of the claimant, the defendant and the court which issued the claim form; and
- (c) give details of the hearing.

(4) The claimant must produce at the hearing—

- (a) a copy of the notice; and
- (b) evidence that he has served it.

## **II—ACCELERATED POSSESSION CLAIMS OF PROPERTY LET ON AN ASSURED SHORTHOLD TENANCY**

### **When this section may be used** **E+W**

**55.11.**—(1) The claimant may bring a possession claim under this Section of this Part where—

- (a) the claim is brought under section 21 of the 1988 Act<sup>(12)</sup> to recover possession of residential property let under an assured shorthold tenancy; and
  - (b) all the conditions listed in rule 55.12 are satisfied.
- (2) The claim must be started in the county court for the district in which the property is situated.

### Conditions **E+W**

**55.12** The conditions referred to in rule 55.11(1)(b) are that—

- (a) the tenancy and any agreement for the tenancy were entered into on or after 15 January 1989;
- (b) the only purpose of the claim is to recover possession of the property and no other claim is made;
- (c) the tenancy did not immediately follow an assured tenancy which was not an assured shorthold tenancy;
- (d) the tenancy fulfilled the conditions provided by section 19A or 20(1)(a) to (c) of the 1988 Act<sup>(13)</sup>;
- (e) the tenancy—
  - (i) was the subject of a written agreement;
  - (ii) arises by virtue of section 5 of the 1988 Act but follows a tenancy that was the subject of a written agreement; or
  - (iii) relates to the same or substantially the same property let to the same tenant and on the same terms (though not necessarily as to rent or duration) as a tenancy which was the subject of a written agreement; and
- (f) a notice in accordance with sections 21(1) or 21(4) of the 1988 Act<sup>(14)</sup> was given to the tenant in writing.

### Claim form **E+W**

**55.13.**—(1) The claim form must—

- (a) be in the form set out in the relevant practice direction; and
  - (b)
    - (i) contain such information; and
    - (ii) be accompanied by such documents,  
as are required by that form.
- (2) All relevant sections of the form must be completed.
- (3) The court will serve the claim form by first class post.

### Defence **E+W**

**55.14.**—(1) A defendant who wishes to—

- (a) oppose the claim; or
  - (b) seek a postponement of possession in accordance with rule 55.18,  
must file his defence within 14 days after service of the claim form.
- (2) The defence should be in the form set out in the relevant practice direction.

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<sup>(12)</sup> 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 46.

<sup>(13)</sup> 1982 c. 27.

<sup>(14)</sup> 1964 c. 81.

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### Claim referred to judge **E+W**

- 55.15.**—(1) On receipt of the defence the court will—
- (a) send a copy to the claimant; and
  - (b) refer the claim and defence to a judge.
- (2) Where the period set out in rule 55.14 has expired without the defendant filing a defence—
- (a) the claimant may file a written request for an order for possession; and
  - (b) the court will refer that request to a judge.
- (3) Where the defence is received after the period set out in rule 55.14 has expired but before a request is filed in accordance with paragraph (2), paragraph (1) will still apply.
- (4) Where—
- (a) the period set out in rule 55.14 has expired without the defendant filing a defence; and
  - (b) the claimant has not made a request for an order for possession under paragraph (2) within 3 months after the expiry of the period set out in rule 55.14,
- the claim will be stayed.

### Consideration of the claim **E+W**

- 55.16.**—(1) After considering the claim and any defence, the judge will—
- (a) make an order for possession under rule 55.17;
  - (b) where he is not satisfied as to any of the matters set out in paragraph (2)—
    - (i) direct that a date be fixed for a hearing; and
    - (ii) give any appropriate case management directions; or
  - (c) strike out the claim if the claim form discloses no reasonable grounds for bringing the claim.
- (2) The matters referred to in paragraph (1)(b) are that—
- (a) the claim form was served; and
  - (b) the claimant has established that he is entitled to recover possession under section 21 of the 1988 Act against the defendant.
- (3) The court will give all parties not less than 14 days' notice of a hearing fixed under paragraph (1)(b)(i).
- (4) Where a claim is struck out under paragraph (1)(c)—
- (a) the court will serve its reasons for striking out the claim with the order; and
  - (b) the claimant may apply to restore the claim within 28 days after the date the order was served on him.

### Possession order **E+W**

**55.17** Except where rules 55.16(1)(b) or (c) apply, the judge will make an order for possession without requiring the attendance of the parties.

### Postponement of possession **E+W**

**55.18.**—(1) Where the defendant seeks postponement of possession on the ground of exceptional hardship under section 89 of the Housing Act 1980(15), the judge may direct a hearing of that issue.

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(15) 1968 c. 48; 1981 c. 9.

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- (2) Where the judge directs a hearing under paragraph (1)—
- (a) the hearing must be held before the date on which possession is to be given up; and
  - (b) the judge will direct how many days' notice the parties must be given of that hearing.

(3) Where the judge is satisfied, on a hearing directed under paragraph (1), that exceptional hardship would be caused by requiring possession to be given up by the date in the order of possession, he may vary the date on which possession must be given up.

#### Application to set aside or vary **E+W**

**55.19** The court may—

- (a) on application by a party within 14 days of service of the order; or
- (b) of its own initiative,  
set aside or vary any order made under rule 55.17.]

## [<sup>F195</sup> **PART 56** **E+W**

### **LANDLORD AND TENANT CLAIMS AND MISCELLANEOUS PROVISIONS ABOUT LAND**

#### **Textual Amendments**

**F195** Pt. 56 inserted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 2](#) (with [rule 31](#))

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#### **Contents of this part**

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##### **II—MISCELLANEOUS PROVISIONS ABOUT LAND**

Scope	Rule 56.4
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#### ***I—LANDLORD AND TENANT CLAIMS***

#### **Scope and interpretation **E+W****

- 56.1.**—(1) In this Section of this Part “landlord and tenant claim” means a claim under—
- (a) the Landlord and Tenant Act 1927(**16**);
  - (b) the Leasehold Property (Repairs) Act 1938(**17**);

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**(16)** 1978 c. 33.

**(17)** 1981 c. 54. Section 35A was inserted by the Administration of Justice Act 1982 (c. 53), section 15(1), Schedule 1, Part I.

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- (c) the Landlord and Tenant Act 1954<sup>(18)</sup>;
- (d) the Landlord and Tenant Act 1985<sup>(19)</sup>; or
- (e) the Landlord and Tenant Act 1987<sup>(20)</sup>.

(2) A practice direction may set out special provisions with regard to any particular category of landlord and tenant claim.

### Starting the claim **E+W**

**56.2.**—(1) The claim must be started in the county court for the district in which the land is situated unless paragraphs (2) or (4) apply or an enactment provides otherwise.

(2) The claim may be started in the High Court if the claimant files with his claim form a certificate stating the reasons for bringing the claim in that court verified by a statement of truth in accordance with rule 22.1(1).

(3) The practice direction refers to circumstances which may justify starting the claim in the High Court.

(4) A joint claim by a landlord and tenant to authorise an agreement under section 38(4) of the Landlord and Tenant Act 1954 may be started in the High Court or any county court.

### Claims under section 24 of the Landlord and Tenant Act 1954 **E+W**

**56.3.**—(1) This rule applies to a claim for a new tenancy under section 24 of the Landlord and Tenant Act 1954<sup>(21)</sup>.

(2) The claimant must use the Part 8 procedure but the following rules do not apply—

- (a) rule 8.3(1);
- (b) rule 8.5; and
- (c) rule 8.6(1).

(3) The claim form must be served within 2 months after the date of issue and rules 7.5 and 7.6 are modified accordingly.

(4) Within 14 days after service of the claim form the defendant must file and serve—

- (a) a notice that he wishes the claim to be stayed<sup>(GL)</sup> for 3 months in order to facilitate negotiation of a new tenancy; or
- (b) where he intends to contest the claim, his acknowledgment of service.

(5) Where the defendant files and serves a notice in accordance with paragraph (4)(a), the claim will be stayed for 3 months.

(6) Any party may file and serve a notice requesting the stay to be lifted.

(7) Where a party files a notice in accordance with paragraph (6) the court—

- (a) will lift the stay; and
- (b) may give directions about the future management of the claim.

(8) Unless the court otherwise orders where—

- (a) the stay expires; and
- (b) the defendant intends to contest the claim,

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<sup>(18)</sup> 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), section 125(3), Schedule 18, paragraph 46.

<sup>(19)</sup> 1997 c. 27.

<sup>(20)</sup> 1980 c. 58.

<sup>(21)</sup> 1984 c. 16.



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he must file and serve his acknowledgment of service within 14 days after the day on which the stay expires.

(9) Unless the court otherwise orders where—

- (a) the stay is lifted; and
- (b) the defendant intends to contest the claim,

he must file and serve his acknowledgment of service within 14 days after he is served with notification that the stay has been lifted.

(10) The claimant must file and serve any written evidence on which he intends to rely within 14 days of service on him of the acknowledgment of service.

(11) The defendant must file and serve any written evidence on which he intends to rely within 14 days of service on him of the claimant's evidence.

(12) The court will give directions about the future management of the claim—

- (a) when it receives the written evidence of the defendant; or
- (b) where the defendant fails to file any written evidence within the period set out in paragraph (11), after that period has expired.

(13) No written evidence may be relied on at the hearing of the claim unless—

- (a) it has been served in accordance with paragraphs (10) or (11) (as the case may be); or
- (b) the court gives permission.

## **II—MISCELLANEOUS PROVISIONS ABOUT LAND**

### **Scope** **E+W**

**56.4** A practice direction may set out special provisions with regard to claims under the following enactments—

- (a) the Chancel Repairs Act 1932<sup>(22)</sup>;
- (b) the Leasehold Reform Act 1967<sup>(23)</sup>;
- (c) the Access to Neighbouring Land Act 1992; and
- (d) the Leasehold Reform, Housing and Urban Development Act 1993.]

## **[<sup>F196</sup>PART 57** **E+W**

### **PROBATE CLAIMS**

#### **RECTIFICATION OF WILLS**

#### **SUBSTITUTION AND REMOVAL OF PERSONAL REPRESENTATIVES**

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#### **Textual Amendments**

**F196** Pt. 57 inserted (15.10.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rule 1(b), [Sch.](#) (with rule 19)

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<sup>(22)</sup> 1995 c. 21.

<sup>(23)</sup> 1980 c. 58.

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SECTION III—SUBSTITUTION AND REMOVAL OF PERSONAL REPRESENTATIVES	Rule 57.13

### Scope of this Part and definitions **E+W**

**57.1.**—(1) This Part contains rules about—

- (a) probate claims;
- (b) claims for the rectification of wills; and
- (c) claims and applications to—
  - (i) substitute another person for a personal representative; or
  - (ii) remove a personal representative.

(2) In this Part:

- (a) “probate claim” means a claim for—
  - (i) the grant of probate of the will, or letters of administration of the estate, of a deceased person;
  - (ii) the revocation of such a grant; or
  - (iii) a decree pronouncing for or against the validity of an alleged will;
 not being a claim which is non-contentious (or common form) probate business;

(Section 128 of the Supreme Court Act 1981<sup>(9)</sup> defines non-contentious (or common form) probate business.)

- (b) “relevant office” means—

<sup>(9)</sup> 1983 c. 20.

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- (i) in the case of High Court proceedings in a Chancery district registry, that registry;
  - (ii) in the case of any other High Court proceedings, Chancery Chambers at the Royal Courts of Justice, Strand, London, WC2A 2LL; and
  - (iii) in the case of county court proceedings, the office of the county court in question;
- (c) “testamentary document” means a will, a draft of a will, written instructions for a will made by or at the request of, or under the instructions of, the testator, and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed;
- (d) “will” includes a codicil.

### **SECTION I—PROBATE CLAIMS**

#### **General** **E+W**

- 57.2.**—(1) This Section contains rules about probate claims.
- (2) Probate claims in the High Court are assigned to the Chancery Division.
- (3) Probate claims in the county court must only be brought in a county court where there is also a Chancery district registry.
- (4) All probate claims are allocated to the multi-track.

#### **How to start a probate claim** **E+W**

- 57.3** A probate claim must be commenced—
- (a) in the relevant office; and
  - (b) using the procedure in Part 7.

#### **Acknowledgment of service and defence** **E+W**

- 57.4.**—(1) A defendant who is served with a claim form must file an acknowledgment of service.
- (2) Subject to paragraph (3), the period for filing an acknowledgment of service is—
- (a) if the defendant is served with a claim form which states that particulars of claim are to follow, 28 days after service of the particulars of claim; and
  - (b) in any other case, 28 days after service of the claim form.
- (3) If the claim form is served out of the jurisdiction under rule 6.19, the period for filing an acknowledgment of service is 14 days longer than the relevant period specified in rule 6.22 or the practice direction supplementing Section 3 of Part 6.
- (4) Rule 15(4) (which provides the period for filing a defence) applies as if the words “under Part 10” were omitted from rule 15.4(1)(b).

#### **Lodging of testamentary documents and filing of evidence about testamentary documents** **E+W**

- 57.5.**—(1) Any testamentary document of the deceased person in the possession or control of any party must be lodged with the court.
- (2) Unless the court directs otherwise, the testamentary documents must be lodged in the relevant office—
- (a) by the claimant when the claim form is issued; and

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(b) by a defendant when he acknowledges service.

(3) The claimant and every defendant who acknowledges service of the claim form must in written evidence—

- (a) describe any testamentary document of the deceased of which he has any knowledge or, if he does not know of any such testamentary document, state that fact, and
- (b) if any testamentary document of which he has knowledge is not in his possession or under his control, give the name and address of the person in whose possession or under whose control it is or, if he does not know the name or address of that person, state that fact.

(A specimen form for the written evidence about testamentary documents is annexed to the practice direction.)

(4) Unless the court directs otherwise, the written evidence required by paragraph (3) must be filed in the relevant office—

- (a) by the claimant, when the claim form is issued; and
- (b) by a defendant when he acknowledges service.

(5) Except with the permission of the court, a party shall not be allowed to inspect the testamentary documents or written evidence lodged or filed by any other party until he himself has lodged his testamentary documents and filed his evidence.

(6) The provisions of paragraphs (2) and (4) may be modified by a practice direction under this Part.

#### **Revocation of existing grant** E+W

**57.6.—**(1) In a probate claim which seeks the revocation of a grant of probate or letters of administration every person who is entitled, or claims to be entitled, to administer the estate under that grant must be made a party to the claim.

(2) If the claimant is the person to whom the grant was made, he must lodge the probate or letters of administration in the relevant office when the claim form is issued.

(3) If a defendant has the probate or letters of administration under his control, he must lodge it in the relevant office when he acknowledges service.

(4) Paragraphs (2) and (3) do not apply where the grant has already been lodged at the court, which in this paragraph includes the Principal Registry of the Family Division or a district probate registry.

#### **Contents of statements of case** E+W

**57.7.—**(1) The claim form must contain a statement of the nature of the interest of the claimant and of each defendant in the estate.

(2) If a party disputes another party's interest in the estate he must state this in his statement of case and set out his reasons.

(3) Any party who contends that at the time when a will was executed the testator did not know of and approve its contents must give particulars of the facts and matters relied on.

(4) Any party who wishes to contend that—

- (a) a will was not duly executed;
- (b) at the time of the execution of a will the testator was not of sound mind, memory and understanding; or
- (c) the execution of a will was obtained by undue influence or fraud,

must set out the contention specifically and give particulars of the facts and matters relied on.

- (a) (5) (a) A defendant may give notice in his defence that he does not raise any positive case, but insists on the will being proved in solemn form and, for that purpose, will cross-examine the witnesses who attested the will.
- (b) If a defendant gives such a notice, the court will not make an order for costs against him unless it considers that there was no reasonable ground for opposing the will.

### **Counterclaim** **E+W**

**57.8.**—(1) A defendant who contends that he has any claim or is entitled to any remedy relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person must serve a counterclaim making that contention.

(2) If the claimant fails to serve particulars of claim within the time allowed, the defendant may, with the permission of the court, serve a counterclaim and the probate claim shall then proceed as if the counterclaim were the particulars of claim.

### **Probate counterclaim in other proceedings** **E+W**

**57.9.**—(1) In this rule “probate counterclaim” means a counterclaim in any claim other than a probate claim by which the defendant claims any such remedy as is mentioned in rule 57.1(2)(a).

(2) Subject to the following paragraphs of this rule, this Part shall apply with the necessary modifications to a probate counterclaim as it applies to a probate claim.

(3) A probate counterclaim must contain a statement of the nature of the interest of each of the parties in the estate of the deceased to which the probate counterclaim relates.

(4) Unless an application notice is issued within 7 days after the service of a probate counterclaim for an order under rule 3.1(2)(e) or 3.4 for the probate counterclaim to be dealt with in separate proceedings or to be struck out, and the application is granted, the court shall order the transfer of the proceedings to either—

- (a) the Chancery Division (if it is not already assigned to that Division) and to either the Royal Courts of Justice or a Chancery district registry (if it is not already proceeding in one of those places); or
- (b) if the county court has jurisdiction, to a county court where there is also a Chancery district registry.

(5) If an order is made that a probate counterclaim be dealt with in separate proceedings, the order shall order the transfer of the probate counterclaim as required under paragraph (4).

### **Failure to acknowledge service or to file a defence** **E+W**

**57.10.**—(1) A default judgment cannot be obtained in a probate claim and rule 10.2 and Part 12 do not apply.

(2) If any of several defendants fails to acknowledge service the claimant may—

- (a) after the time for acknowledging service has expired; and
- (b) upon filing written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on that defendant;

proceed with the probate claim as if that defendant had acknowledged service.

(3) If no defendant acknowledges service or files a defence then, unless on the application of the claimant the court orders the claim to be discontinued, the claimant may, after the time for acknowledging service or for filing a defence (as the case may be) has expired, apply to the court for an order that the claim is to proceed to trial.

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*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
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(4) When making an application under paragraph (3) the claimant must file written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on each of the defendants.

(5) Where the court makes an order under paragraph (3), it may direct that the claim be tried on written evidence.

### **Discontinuance and dismissal** E+W

**57.11.**—(1) Part 38 does not apply to probate claims.

(2) At any stage of a probate claim the court, on the application of the claimant or of any defendant who has acknowledged service, may order that—

- (a) the claim be discontinued or dismissed on such terms as to costs or otherwise as it thinks just; and
- (b) a grant of probate of the will, or letters of administration of the estate, of the deceased person be made to the person entitled to the grant.

## **SECTION II—RECTIFICATION OF WILLS**

**57.12.**—(1) This Section contains rules about claims for the rectification of a will.

(Section 20 of the Administration of Justice Act 1982<sup>(10)</sup> provides for rectification of a will. Additional provisions are contained in rule 55 of the Non-Contentious Probate Rules 1987<sup>(11)</sup>.)

(2) Every personal representative of the estate shall be joined as a party.

(3) The practice direction makes provision for lodging the grant of probate or letters of administration with the will annexed in a claim under this Section.

## **SECTION III—SUBSTITUTION AND REMOVAL OF PERSONAL REPRESENTATIVES**

**57.13.**—(1) This Section contains rules about claims and applications for substitution or removal of a personal representative.

(2) Claims under this Section must be brought in the High Court and are assigned to the Chancery Division.

(Section 50 of the Administration of Justice Act 1985<sup>(12)</sup> gives the High Court power to appoint a substitute for, or to remove, a personal representative.)

(3) Every personal representative of the estate shall be joined as a party.

(4) The practice direction makes provision for lodging the grant of probate or letters of administration in a claim under this Section.

(5) If substitution or removal of a personal representative is sought by application in existing proceedings, this rule shall apply with references to claims being read as if they referred to applications.]

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<sup>(10)</sup> 1974 c. 39.

<sup>(11)</sup> 1981 c. 54. Section 35A was inserted by the Administration of Justice Act 1982 (c. 53), section 15(1), Schedule 1, Part I.

<sup>(12)</sup> 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 46.

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## GLOSSARY **E+W**

### Commencement Information

**I431** Glossary in force at 26.4.1999, see Signature

### Scope **E+W**

This glossary is a guide to the meaning of certain legal expressions as used in these Rules, but it does not give the expressions any meaning in the Rules which they do not otherwise have in the law.

Expression	Meaning
Affidavit	A written, sworn statement of evidence.
Alternative dispute resolution	Collective description of methods of resolving disputes otherwise than through the normal trial process.
Base rate	The interest rate set by the Bank of England which is used as the basis for other banks' rates.
Contribution	A right of someone to recover from a third person all or part of the amount which he himself is liable to pay.
Counterclaim	A claim brought by a defendant in response to the claimant's claim, which is included in the same proceedings as the claimant's claim.
Cross-examination (and see "evidence in chief")	Questioning of a witness by a party other than the party who called the witness.
Damages	A sum of money awarded by the court as compensation to the claimant.
• aggravated damages	Additional damages which the court may award as compensation for the defendant's objectionable behaviour
• exemplary damages	Damages which go beyond compensating for actual loss and are awarded to show the court's disapproval of the defendant's behaviour
Defence of tender before claim	A defence that, before the claimant started proceedings, the defendant unconditionally offered to the claimant the amount due or, if no specified amount is claimed, an amount sufficient to satisfy the claim.
Evidence in chief (and see "cross-examination")	The evidence given by a witness for the party who called him.
Indemnity	A right of someone to recover from a third party the whole amount which he himself is liable to pay.

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<b>Expression</b>	<b>Meaning</b>
Injunction	A court order prohibiting a person from doing something or requiring a person to do something.
Joint liability (and see “several liability”)	Parties who are jointly liable share a single liability and each party can be held liable for the whole of it.
Limitation period	The period within which a person who has a right to claim against another person must start court proceedings to establish that right. The expiry of the period may be a defence to the claim.
List	Cases are allocated to different lists depending on the subject matter of the case. The lists are used for administrative purposes and may also have their own procedures and judges.
Official copy	A copy of an official document, supplied and marked as such by the office which issued the original.
Practice form	Form to be used for a particular purpose in proceedings, the form and purpose being specified by a practice direction.
Pre-action protocol	Statements of understanding between legal practitioners and others about pre-action practice and which are approved by a relevant practice direction.
Privilege	The right of a party to refuse to disclose a document or produce a document or to refuse to answer questions on the ground of some special interest recognised by law.
Seal	A seal is a mark which the court puts on a document to indicate that the document has been issued by the court.
Service	Steps required by rules of court to bring documents used in court proceedings to a person’s attention.
Set aside	Cancelling a judgment or order or a step taken by a party in the proceedings.
Several liability (and see “joint liability”)	A person who is severally liable with others may remain liable for the whole claim even where judgment has been obtained against the others.
Stay	A stay imposes a halt on proceedings, apart from taking any steps allowed by the Rules or the terms of the stay. Proceedings can be continued if a stay is lifted.



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<b>Expression</b>	<b>Meaning</b>
Strike out	Striking out means the court ordering written material to be deleted so that it may no longer be relied upon.
Without prejudice	Negotiations with a view to a settlement are usually conducted “without prejudice” which means that the circumstances in which the content of those negotiations may be revealed to the court are very restricted.

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*Woolf M.R.,  
Richard Scott V-C.,  
Anthony May L.J.,  
John Leslie  
Richard Holman  
Godfrey Gypps  
Henrietta Manners  
Nicholas Chambers  
David Foskett  
Peter Watson  
Peter Haworth  
David Greene  
Harriet Kimbell  
Olivia Morrison-Lyons*

I allow these Rules which shall come into force on 26th April 1999

*Irvine of Laing, C.*

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SCHEDULE 1 **E+W**

Rule 50(3)

**Commencement Information**

**I432** Sch. 1 in force at 26.4.1999, see [Signature](#)

RSC ORDER 10 **E+W**

SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS

Service of claim form in certain actions for possession of land **E+W**

<sup>F197</sup>**Rule 4** .....

**Textual Amendments**

**F197** Sch. 1 RSC Order 10 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

RSC ORDER 11 **E+W**

SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

Principal cases in which service of claim form out of jurisdiction is permissible **E+W**

<sup>F198</sup>**Rule 1** .....

**Textual Amendments**

**F198** Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 8](#) (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

The period for filing an acknowledgment of service or filing or serving an admission where the claim form is served under rule 1(2) **E+W**

<sup>F198</sup>**Rule1A** .....

**Textual Amendments**

**F198** Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 8](#) (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

The period for filing a defence where the claim form is served under rule 1(2) **E+W**

<sup>F198</sup>**Rule1B** .....

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**Textual Amendments**

**F198** Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

**F198** .....

**Textual Amendments**

**F198** Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

**F198** .....

**Textual Amendments**

**F198** Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

**F198** .....

**Textual Amendments**

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**E+W**

**F198** .....

**Textual Amendments**

**F198** Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

**F198** .....

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**E+W**

F198 .....

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**Textual Amendments**  
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**E+W**

F198 .....

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**Textual Amendments**  
**F198** Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F198 .....

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**Textual Amendments**  
**F198** Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F198 .....

.....  
**Textual Amendments**  
**F198** Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

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## RSC ORDER 15 **E+W**

### CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES

#### Proceedings against estates **E+W**

##### <sup>F199</sup>Rule 6A .....

###### Textual Amendments

**F199** Sch. 1 RSC Order 15 rule 6A revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

#### Change of parties by reason of death, etc. **E+W**

##### <sup>F200</sup>Rule 7 .....

###### Textual Amendments

**F200** Sch. 1 RSC Order 15 rule 7 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

#### Failure to proceed after death of party **E+W**

**Rule 9.**—(1) If after the death of a claimant or defendant in any claim the cause of action survives, but no order <sup>F201</sup>... is made substituting as claimant any person in whom the cause of claim vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the claim is proceeded with within such time as may be specified in the order the claim shall be struck out as against the claimant or defendant, as the case may be, who has died; but where it is the claimant who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased claimant and to any other interested persons who, in the opinion of the Court, should be notified.

###### Textual Amendments

**F201** Words in Sch. 1 RSC Order 15 rule 9 omitted (2.5.2000) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2000 \(S.I. 2000/940\)](#), rules 1, **12**

#### Relator actions **E+W**

##### <sup>F202</sup>Rule 11 .....

###### Textual Amendments

**F202** Sch. 1 RSC Order 15 rule 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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**Representative proceedings** **E+W**

<sup>F203</sup>**Rule 12** .....

**Textual Amendments**  
**F203** Sch. 1 RSC Order 15 rule 12 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**Derivative claims** **E+W**

<sup>F204</sup>**Rule 12A** .....

**Textual Amendments**  
**F204** Sch. 1 RSC Order 15 rule 12A revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**Representation of interested persons who cannot be ascertained, etc.** **E+W**

<sup>F205</sup>**Rule 13** .....

**Textual Amendments**  
**F205** Sch. 1 RSC Order 15 rule 13 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**Notice of claim to non—parties** **E+W**

<sup>F206</sup>**Rule 13A** .....

**Textual Amendments**  
**F206** Sch. 1 RSC Order 15 rule 13A omitted (26.3.2001) by virtue of [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **19**

**Representation of beneficiaries by trustees, etc.** **E+W**

**Rule 14.**—(1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first—mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order [<sup>F207</sup>under CPR rule 19.7].

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**Textual Amendments**

**F207** Words in Sch. 1 RSC Order 15 rule 14(2) substituted (15.10.2001) by [The Civil Procedure \(Amendment No. 4\) Rules 2001 \(S.I. 2001/2792\)](#), rules 1(a), 7 (with rule 24)

**Representation of deceased person interested in proceedings** **E+W**

**F208** **Rule 15** .....

**Textual Amendments**

**F208** Sch. 1 RSC Order 15 rule 15 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**Declaratory judgment** **E+W**

**F209** **Rule 16** .....

**Textual Amendments**

**F209** Sch. 1 RSC Order 15 rule 16 omitted (26.3.2001) by virtue of [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **19**

**Conduct of proceedings** **E+W**

**F210** **Rule 17** .....

**Textual Amendments**

**F210** Sch. 1 RSC Order 15 rule 17 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**RSC ORDER 17** **E+W**

**INTERPLEADER**

**Entitlement to relief by way of interpleader** **E+W**

**Rule 1.**—(1) Where—

- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto; or
- (b) claim is made to any money, goods or chattels taken or intended to be taken by a sheriff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued,

the person under liability as mentioned in sub-paragraph (a) or (subject to rule 2) the sheriff, may apply to the Court for relief by way of interpleader.

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(2) References in this Order to a sheriff shall be construed as including references to any other officer charged with the execution of process by or under the authority of the High Court.

### **Claim to goods, etc., taken in execution** **E+W**

**Rule 2.**—(1) Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such goods or chattels, must give notice of his claim to the sheriff charged with the execution of the process and must include in his notice a statement of his address, and that address shall be his address for service.

(2) On receipt of a claim made under this rule the sheriff must forthwith give notice thereof to the execution creditor and the execution creditor must, within seven days after receiving the notice, give notice to the sheriff informing him whether he admits or disputes the claim. An execution creditor who gives notice in accordance with this paragraph admitting a claim shall only be liable to the sheriff for any fees and expenses incurred by the sheriff before receipt of that notice.

(3) Where—

- (a) the sheriff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph, to give the required notice; and
- (b) the claim made under this rule is not withdrawn,

the sheriff may apply to the Court for relief under this Order.

(4) A sheriff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this rule shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this Order of the following kind, that is to say, an order restraining the bringing of a claim against him for or in respect of his having taken possession of that money or those goods or chattels.

### **Claim in respect of goods protected from seizure** **E+W**

**Rule 2A.**—(1) Where a judgment debtor whose goods have been seized, or are intended to be seized, by a sheriff under a writ of execution claims that such goods are not liable to execution by virtue of section 138(3A) of the Act(76), he must within 5 days of the seizure give notice in writing to the sheriff identifying all those goods in respect of which he makes such a claim and the grounds of such claim in respect of each item.

(2) Upon receipt of a notice of claim under paragraph (1), the sheriff must forthwith give notice thereof to the execution creditor and to any person who has made a claim to, or in respect of, the goods under rule 2 (1) and the execution creditor and any person who has made claim must, within 7 days of receipt of such notice, inform the sheriff in writing whether he admits or disputes the judgment debtor's claim in respect of each item.

(3) The sheriff shall withdraw from possession of any goods in respect of which the judgment debtor's claim is admitted or if the execution creditor or any person claiming under rule 2 (1) fails to notify him in accordance with paragraph (2) and the sheriff shall so inform the parties in writing.

(4) Where the sheriff receives notice from—

- (a) the execution creditor; or
- (b) any such person to whom notice was given under paragraph (2), that the claim or any part thereof is disputed, he must forthwith seek the directions of the Court and may include

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(76) Section 138 was amended by the Administration of Justice Act 1985 (c. 61), sections 55 and 67(2); and by the Courts and Legal Services Act 1990 (c. 41), section 125(2), schedule 17, paragraph 17.



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therein an application for an order restraining the bringing of any claim against him for, or in respect of, his having seized any of those goods or his having failed so to do.

(5) The sheriff's application for directions under paragraph (4) shall be made by an application in accordance with CPR Part 23 and, on the hearing of the application, the Court may—

- (a) determine the judgment debtor's claim summarily; or
- (b) give such directions for the determination of any issue raised by such claim as may be just.

(6) A master and a district judge of a district registry shall have power to make an order of the kind referred to in paragraph (4) and the reference to master shall be construed in accordance with rule 4.

### **Mode of application** E+W

**Rule 3.**—(1) An application for relief under this Order must be made by claim form unless made in an existing claim, in which case it must be made by accordance with CPR Part 23.

(2) Where the applicant is a sheriff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2 (4) the claim form must be served on any person who made a claim under that rule to or in respect of that money or those goods or chattels, and that person may attend the hearing of the application.

(4) Subject to paragraph (5) a claim form or application notice under this rule must be supported by evidence that the applicant—

- (a) claims no interest in the subject—matter in dispute other than for charges or costs;
- (b) does not collude with any of the claimants to that subject—matter; and
- (c) is willing to pay or transfer that subject—matter into Court or to dispose of it as the Court may direct.

(5) Where the applicant is a sheriff, he shall not provide such evidence as is referred to in paragraph (4) unless directed by the Court to do so.

(6) Any person who makes a claim under rule 2 and who is served with a claim form under this rule shall within 14 days serve on the execution creditor and the sheriff a witness statement or affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.

(7) Where the applicant is a sheriff a claim form under this rule must give notice of the requirement in paragraph (6).

### **To whom Sheriff may apply for relief** E+W

**Rule 4** An application to the Court for relief under this Order may, if the applicant is a sheriff, be made—

- (a) where the claim in question is proceeding in the Royal Courts of Justice, to a Master or, if the execution to which the application relates has been or is to be levied in the district of a District Registry, either to a Master or to the District Judge of that Registry;
- (b) where the claim in question is proceeding in a District Registry, to the District Judge of that Registry or, if such execution has been or is to be levied in the district of some other District Registry or outside the district of any District Registry, either to the said the District Judge or to the District Judge of that other Registry or to a Master as the case may be.

Where the claim in question is proceeding in the Admiralty Court or the Family Division, references in this rule to a Master shall be construed as references to the Admiralty Registrar or to a Registrar of that Division.

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### **Powers of Court hearing claim** **E+W**

**Rule 5.**—(1) Where on the hearing of a claim under this Order all the persons by whom adverse claims to the subject—matter in dispute (hereafter in this Order referred to as “the interpleader claimants”) appear, the Court may order—

- (a) that any interpleader claimant be made a defendant in any claim pending with respect to the subject—matter in dispute in substitution for or in addition to the applicant for relief under this Order; or
  - (b) that an issue between the interpleader claimants be stated and tried and may direct which of the interpleader claimants is to be claimant and which defendant.
- (2) Where—
- (a) the applicant under this Order is a sheriff; or
  - (b) all the interpleader claimants consent or any of them so requests; or
  - (c) the question at issue between the interpleader claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the interpleader claimants and make an order accordingly on such terms as may be just.

(3) Where an interpleader claimant, having been duly served with a claim form under this Order, does not appear at the hearing or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the interpleader claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the interpleader claimants as between themselves.

### **Power to order sale of goods taken in execution** **E+W**

**Rule 6** Where an application for relief under this Order is made by a sheriff who has taken possession of any goods or chattels in execution under any process, and an interpleader claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court may order those goods or chattels or any part thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

### **Power to stay proceedings** **E+W**

**Rule 7** Where a defendant to a claim applies for relief under this Order in the claim, the Court may by order stay all further proceedings in the claim.

### **Other powers** **E+W**

**Rule 8.**—<sup>[F211]</sup>(1) Subject to the foregoing rules of this Order, the Court may in or for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

<sup>[F212]</sup>(2) Where the interpleader claimant fails to appear at the hearing, the Court may direct that the sheriff’s and execution creditor’s costs shall be assessed by a master or, where the hearing was heard in a district registry, by a district judge of that registry and the following CPR rules shall apply—

- (a) 44.4 (basis of assessment);
- (b) 44.5 (factors to be taken into account in deciding the amount of costs);
- (c) 48.4 (limitations on court’s power to award costs in favour of trustee or personal representative); and

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(d) 48.6 (litigants in person).

(3) Where the claim in question is proceeding in the Admiralty Court or the Family Division, references in this rule to a Master shall be construed as references to the Admiralty Registrar or to a Registrar of that Division.]

**Textual Amendments**

**F211** Sch. 1 RSC Order 17 rule 8 renumbered as RSC Order 17 rule 8(1) (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **27(a)**

**F212** Sch. 1 RSC Order 17 rule 8(2)(3) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **27(b)**

**One order in several proceedings** **E+W**

**Rule 9** Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several proceedings pending in several Divisions, or before different Judges of the same Division, the Court may make such an order; and the order shall be entitled in all those causes or matters and shall be binding on all the parties to them.

**Disclosure** **E+W**

**Rule 10** CPR Parts 31 and 18 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other proceedings.

**Trial of interpleader issue** **E+W**

**Rule 11.**—(1) CPR Part 39 shall, with the necessary modifications, apply to the trial of an interpleader issue as it applies to the trial of a claim.

(2) The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

**RSC ORDER 23** **E+W**

**SECURITY FOR COSTS**

**Order to apply to High Court and County Court** **E+W**

<sup>F213</sup>**Rule A1** .....

**Textual Amendments**

**F213** [Sch.1 RSC Order 23](#) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

**E+W**

<sup>F213</sup> .....

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**Textual Amendments**  
**F213** Sch.1 RSC Order 23 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F213 .....

**Textual Amendments**  
**F213** Sch.1 RSC Order 23 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F213 .....

**Textual Amendments**  
**F213** Sch.1 RSC Order 23 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**RSC ORDER 30 E+W**

**RECEIVERS**

**Order to apply to High Court and County Court E+W**

**Rule A1** This Order applies to proceedings both in the High Court and the county court.

**Application for receiver and injunction E+W**

**Rule 1.**—(1) An application for the appointment of a receiver made in existing proceedings must be made in accordance with CPR Part 23 and the Practice Direction supplementing that Part.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) The relevant Practice Direction will apply to an application for the immediate grant of such an injunction.

**Giving of security by receiver E+W**

**Rule 2.**—(1) A judgment or order directing the appointment of a receiver may include such directions as the Court thinks fit as to the giving of security by the person appointed.

(2) Where by virtue of any judgment or order appointing a person named therein to be receiver a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee.

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(4) The guarantee must be filed in the office or Registry of the Court in which the claim is proceeding and it shall be kept as of record until duly vacated.

#### **Remuneration of receiver** **E+W**

**Rule 3.**—(1) A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorised by the Court.

(2) The Court may direct that such remuneration shall be—

- (a) fixed by reference to such scales or rates of professional charges as it thinks fit; or
- (b) assessed by a costs judge or a district judge.

(3) Where remuneration is assessed by a costs judge or district judge following a direction under paragraph 2(b), CPR rules 44.4(1) and (2) and 44.5(1) will apply as though the remuneration were costs directed to be assessed on the standard basis.

(4) An appeal shall lie from the assessment in accordance with Section 8 of CPR Part 47 (CPR Rules 47.21 to 47.27)

#### **Service of order and notice** **E+W**

**Rule 4** A copy of the judgment or order appointing a receiver shall be served by the party having conduct of the proceedings on the receiver and all other parties to the proceedings in which the receiver has been appointed.

#### **Receiver's accounts** **E+W**

**Rule 5.**—(1) A receiver shall submit such accounts to such parties at such intervals or on such dates as the Court may direct.

(2) Any party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to such accounts.

(3) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within not less than 14 days to file his accounts with the Court and a copy of such notice shall be filed in the office or Registry of the Court dealing with the proceedings.

(4) Following an examination by or on behalf of the Court of an item or items in an account to which objection is taken the result of such examination must be certified by a Master, the Admiralty Registrar, a District Judge of the Family Division or a District Judge, as the case may be, and an order may thereupon be made as to the incidence of any costs or expenses incurred.

#### **Payment into Court by receiver** **E+W**

**Rule 6** The Court may fix the amounts and frequency of payments into Court to be made by a receiver.

#### **Default by receiver** **E+W**

**Rule 7.**—(1) Where a receiver fails to attend for the examination of any account of his, or fails to submit any account, provide access to any books or papers or do any other thing which he is required to submit, provide or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend the Court<sup>F214</sup>... to show cause for the failure, and the Court may<sup>F215</sup>... give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

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(2) Without prejudice to paragraph (1) where a receiver fails to attend for the examination of any account of his or fails to submit any account or fails to pay into Court on the date fixed by the Court any sum required to be so paid, the Court may disallow any remuneration claimed by the receiver and may, where he has failed to pay any such sum into Court, charge him with interest at the rate currently payable in respect of judgment debts in the High Court on that sum while in his possession as receiver.

**Textual Amendments**  
**F214** Words in Sch. 1 RSC Order 30 rule 7(1) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **28(a)**  
**F215** Words in Sch. 1 RSC Order 30 rule 7(1) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **28(b)**

**Directions to receivers** **E+W**

**Rule 8** A receiver may at any time request the Court to give him directions and such request shall state in writing the matters with regard to which directions are required.

**RSC ORDER 31** **E+W**

**SALES, ETC. OF LAND BY ORDER OF COURT:  
CONVEYANCING COUNSEL OF THE COURT**

**Order to apply to High Court and County Court** **E+W**

<sup>F216</sup>**Rule A1** .....

**Textual Amendments**  
**F216** Sch. 1 RSC Order 31 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

**E+W**

<sup>F216</sup> .....

**Textual Amendments**  
**F216** Sch. 1 RSC Order 31 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

<sup>F216</sup> .....

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**Textual Amendments**

**F216** Sch. 1 RSC Order 31 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F216 .....

**Textual Amendments**

**F216** Sch. 1 RSC Order 31 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F216 .....

**Textual Amendments**

**F216** Sch. 1 RSC Order 31 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

**E+W**

F216 .....

**Textual Amendments**

**F216** Sch. 1 RSC Order 31 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F216 .....

**Textual Amendments**

**F216** Sch. 1 RSC Order 31 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F216 .....

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**Textual Amendments**

**F216** Sch. 1 RSC Order 31 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

RSC ORDER 44 **E+W**

PROCEEDINGS UNDER JUDGMENTS AND ORDERS: CHANCERY DIVISION

**Application to Orders** **E+W**

**Rule 1** In this order references to a judgment include references to an order.

**Service of notice of judgment on person not a party** **E+W**

**Rule 2.**—(1) Where in a claim for—

- (a) the administration of the estate of a deceased person; or
- (b) the execution of a trust; or
- (c) the sale of any property,

the Court gives a judgment or makes a direction which affects persons not parties to the claim, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any such person and any person so served shall, subject to paragraph (4), be bound by the judgment as if he had originally been a party to the claim.

(2) If it appears that it is not practicable to serve notice of a judgment on a person directed to be served the Court may dispense with service and may also order that such person be bound by the judgment.

(3) Every notice of a judgment for service under this rule must be indorsed with a memorandum in Form No. 52A in the relevant Practice Direction and accompanied by a form of acknowledgment of service <sup>F217</sup>... with such modifications as may be appropriate and the copy of the notice to be served shall be a sealed copy.

(4) A person served with notice of a judgment may, within one month after service of the notice on him, and after acknowledging service apply to the Court to discharge, vary or add to the judgment.

(5) A person served with notice of a judgment may, after acknowledging service of the notice, attend the proceedings under the judgment.

(6) CPR Part 10 except for CPR Rule 10.2 shall apply in relation to the acknowledgment of service of a notice of judgment as if the judgment were a claim form, the person by whom the notice is served were the claimant and the person on whom it is served were a defendant.

**Textual Amendments**

**F217** Words in [Sch. 1 RSC Order 44 rule 2\(3\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **30(a)**

**Directions by the Court** **E+W**

**Rule 3.**—(1) Where a judgment given in a proceedings in the Chancery Division contains directions which make it necessary to proceed in private under the judgment the Court may, when



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giving the judgment or at any time during proceedings under the judgment, give further directions for the conduct of those proceedings, including, in particular, directions with respect to—

- (a) the manner in which any account or inquiry is to be prosecuted;
  - (b) the evidence to be adduced in support thereof;
  - (c) the preparation and service on the parties to be bound thereby of the draft of any deed or other instrument which is directed by the judgment to be settled by the Court and the service of any objections to the draft;
  - (d) the parties required to attend all or any part of the proceedings;
  - (e) the representation by the same solicitors of parties who constitute a class and by different solicitors of parties who ought to be separately represented; and
  - (f) the time within which each proceeding is to be taken, and may fix a day or days for the further attendance of the parties.
- (2) The Court may revoke or vary any directions given under this rule.

#### **Application of rules 5 to 8** **E+W**

**Rule 4** Rules 5 to 8 apply—

- (a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other ascertained claimants to be made; and
- (b) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made,

and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs an account of debts or other liabilities to be taken or any inquiry to be made.

#### **Advertisements for creditors and other claimants** **E+W**

**Rule 5** The Court may, when giving a judgment or at any stage of proceedings under a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

#### **Examination of claims** **E+W**

**Rule 6.**—(1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must—

- (a) examine the claims of persons claiming to be creditors of the estate;
- (b) determine, so far as he is able, to which of such claims the estate is liable; and
- (c) at least seven clear days before the time appointed for adjudicating on claims, make a witness statement or affidavit stating his findings and his reasons for them and listing all the other debts of the deceased which are or may still be due.

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must—

- (a) examine the claims;
- (b) determine, so far as he is able, which of them are valid; and
- (c) at least seven clear days before the time appointed for adjudicating on claims, make a witness statement or affidavit stating his findings and his reasons for them.

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(3) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the witness statement or affidavit required by this rule.

#### **Adjudication on claims** E+W

**Rule 7** For the purpose of adjudicating on claims the Court may—

- (a) direct any claim to be investigated in such manner as it thinks fit;
- (b) require any claimant to attend and prove his claim or to furnish further particulars or evidence of it; or
- (c) allow any claim after or without proof thereof.

#### **Notice of adjudication** E+W

**Rule 8** The Court shall give directions that there be served on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

#### **Interest on debts** E+W

**Rule 9.**—(1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased’s estate is insolvent or the Court otherwise orders, interest shall be allowed—

- (a) on any such debt as carries interest, at the rate it carries; and
- (b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with paragraph (1) (b) out of any assets which may remain after satisfying the costs of the proceedings, the debts which have been established and the interest on such of those debts as by law carry interest.

(3) For the purpose of this rule “debt” includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1) (b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

#### **Interest on legacies** E+W

**Rule 10** Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the rate of 6 per cent. per annum beginning at the expiration of one year after the testator’s death.

#### **Master’s order** E+W

**Rule 11.**—(1) The result of proceedings before a Master under a judgment shall be stated in the form of an order.

(2) Subject to any direction of the Master under paragraph (3) or otherwise an order under this rule shall have effect as a final order disposing of the proceedings in which it is made.

(3) An order under this rule shall contain such directions as the Master thinks fit as to the further consideration<sup>F218</sup> ... of the proceedings in which it is made.

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(4) Every order made under this rule shall have immediate binding effect on the parties to the proceedings in which it is made and copies of the order shall be served on such of the parties as the Master may direct.

**Textual Amendments**  
**F218** Words in Sch. 1 RSC Order 44 rule 11(3) omitted (26.4.1999) by virtue of The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **30(b)**

**Appeal against Master’s order** **E+W**

<sup>F219</sup>**Rule 12** .....

**Textual Amendments**  
**F219** Sch. 1 RSC Order 44 rule 12 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**RSC ORDER 45** **E+W**

**ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL**

**Enforcement of judgment, etc., for payment of money** **E+W**

**Rule 1.**—(1) Subject to the provisions of these rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into Court, may be enforced by one or more of the following means, that is to say—

- (a) writ of fieri facias;
- (b) garnishee proceedings;
- (c) a charging order;
- (d) the appointment of a receiver;
- (e) in a case in which rule 5 applies, an order of committal;
- (f) in such a case, writ of sequestration.

(2) Subject to the provisions of these rules, a judgment or order for the payment of money into Court may be enforced by one or more of the following means, that is to say—

- (a) the appointment of a receiver;
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(3) Paragraphs (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the power of a Court under the Debtors Acts 1869 and 1878(77), to commit to prison a person who makes default in paying money adjudged or ordered to be paid by him, or to the right of a person prosecuting a judgment or order for the payment of money to a person to apply under section 105 (1) of the County Courts Act 1984, to have the judgment or order enforced in a county Court, or to the enactments relating to bankruptcy or the winding up of companies.

(77) 1869 c. 62; 1878 c. 54.

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(4) In this Order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

#### Notice of seizure **E+W**

**Rule 2** When first executing a writ of fieri facias, the Sheriff or his officer shall deliver to the debtor or leave at each place where execution is levied a notice in Form No. 55 in the relevant Practice Direction informing the debtor of the execution.

#### Enforcement of judgment for possession of land **E+W**

**Rule 3.**—(1) Subject to the provisions of these rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say—

- (a) writ of possession;
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the permission of the Court except where the judgment or order was given or made in <sup>F220</sup>... [<sup>F221</sup>proceedings by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being proceedings in which there is a claim for—

- (a) payment of moneys secured by the mortgage;
- (b) sale of the mortgaged property;
- (c) foreclosure;
- (d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is alleged to be in possession of the property;
- (e) redemption;
- (f) reconveyance of the land or its release from the security; or
- (g) delivery of possession by the mortgagee]

[<sup>F222</sup>(2A) In paragraph (2) “mortgage” includes a legal or equitable mortgage and a legal or equitable charge, and reference to a mortgagor, a mortgagee and mortgaged land is to be interpreted accordingly.]

(3) Such permission [<sup>F223</sup>as is referred to in paragraph (2)] shall not be granted unless it is shown—

- (a) that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled; and
- (b) if the operation of the judgment or order is suspended by subsection (2) of section 16 of the Landlord and Tenant Act, 1954(78), that the applicant has not received notice in writing from the tenant that he desires that the provisions of paragraphs (a) and (b) of that subsection shall have effect.

(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

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### Textual Amendments

- F220** Words in Sch. 1 RSC Order 45 rule 3(2) omitted (15.10.2001) by virtue of The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(d), **20(a)(i)**
- F221** Words in Sch. 1 RSC Order 45 rule 3(2) inserted (15.10.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(d), **20(a)(ii)**
- F222** Sch. 1 RSC Order 45 rule 3(2A) inserted inserted (15.10.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(d), **20(b)**
- F223** Words in Sch. 1 RSC Order 45 rule 3(3) inserted (15.10.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(d), **20(c)**

### Enforcement of judgment for delivery of goods **E+W**

**Rule 4.**—(1) Subject to the provisions of these rules, a judgment or order for the delivery of any goods which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means, that is to say—

- (a) writ of delivery to recover the goods without alternative provision for recovery of the assessed value thereof (hereafter in this rule referred to as a “writ of specific delivery”);
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) Subject to the provisions of these rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means, that is to say—

- (a) writ of delivery to recover the goods or their assessed value;
- (b) by order of the Court, writ of specific delivery;
- (c) in a case in which rule 5 applies, writ of sequestration.

An application for an order under sub-paragraph (b) shall be made in accordance with CPR Part 23, which must be served on the defendant against whom the judgment or order sought to be enforced was given or made.

(3) A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

(4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

### Enforcement of judgment to do or abstain from doing any act **E+W**

**Rule 5.**—(1) Where—

- (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under a court order or CPR rule 2.11; or
- (b) a person disobeys a judgment or order requiring him to abstain from doing an act, then, subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say—
  - (i) with the permission of the Court, a writ of sequestration against the property of that person;

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- (ii) where that person is a body corporate, with the permission of the Court, a writ of sequestration against the property of any director or other officer of the body;
- (iii) subject to the provisions of the Debtors Act 1869 and 1878(79), an order of committal against that person or, where that person is a body corporate, against any such officer.

(2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to the order made under rule 6.

(3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1), but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in the order, and that order may be so enforced.

#### **Judgment, etc. requiring act to be done: order fixing time for doing it** E+W

**Rule 6.**—(1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.

(2) Where, a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

(3) An application for an order under this rule must be made in accordance with CPR Part 23 and the application notice must be served on the person required to do the act in question.

#### **Service of copy of judgment, etc., prerequisite to enforcement under r.5** E+W

**Rule 7.**—(1) In this rule references to an order shall be construed as including references to a judgment.

(2) Subject to paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless—

- (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and
- (b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.

(3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5 (1)(b)(ii) or (iii) unless—

- (a) a copy of the order has also been served personally on the officer against whose property permission is sought to issue a writ of sequestration or against whom an order of committal is sought; and
- (b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.

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(79) 1869 c. 62; 1878 c. 54.

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(4) There must be prominently displayed on the front of the copy of an order served under this rule a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by imprisonment of any individual responsible.

(5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order or agreement under CPR rule 2.11 extending or abridging the time for doing the act and, where the first—mentioned order was made under rule 5 (3) or 6 of this Order, a copy of the previous order requiring the act to be done.

(6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that pending such service, the person against whom or against whose property is sought to enforce the order has had notice thereof either—

- (a) by being present when the order was made; or
- (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

(7) The Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

#### **Court may order act to be done at expense of disobedient party** E+W

**Rule 8** If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers under section 39 of the Act and its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

#### **Execution by or against person not being a party** E+W

**Rule 9.**—(1) Any person, not being a party to proceedings, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

(2) Any person, not being a party to proceedings, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

#### **Conditional judgment: waiver** E+W

**Rule 10** A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

#### **Matters occurring after judgment: stay of execution, etc.** E+W

**Rule 11** Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other



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relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

### Forms of writs **E+W**

**Rule 12.**—(1) A writ of fieri facias must be in such of the Forms Nos. 53 to 63 in the relevant Practice Direction as is appropriate in the particular case.

(2) A writ of delivery must be in Form No. 64 or 65 in the relevant Practice Direction, whichever is appropriate.

(3) A writ of possession must be in Form No. 66 or 66A in the relevant Practice Direction, whichever is appropriate.

(4) A writ of sequestration must be in Form No. 67 in the relevant Practice Direction.

### Enforcement of judgments and orders for recovery of money, etc. **E+W**

**Rule 13.**—(1) Rule 1 (1) of this Order, with the omission of sub-paragraphs (e) and (f) thereof, and Orders 46 to 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money.

(2) Rule 3 of this Order, with the omission of paragraphs (1)(b) and (c) thereof, and Order 47, rule 3 (2) shall apply in relation to a judgment or order for the recovery of possession of land as they apply in relation to a judgment or order for the giving or delivery of possession of land.

(3) Rule 4 of this Order, with the omission of paragraph 1 (b) and (c) and (2)(c) thereof, and Order 47, rule 3 (2) shall apply in relation to a judgment or order that a person do have a return of any goods and to a judgment or order that a person do have a return of any goods or do recover the assessed value thereof as they apply in relation to a judgment or order for the delivery of any goods and a judgment or order for the delivery of any goods or payment of the assessed value thereof respectively.

### Enforcement of decisions of Value Added Tax Tribunals **E+W**

**Rule 14.**—(1) An application under section 29 of the Finance Act 1985<sup>(80)</sup> for registration of a decision of a Value Added Tax Tribunal on an appeal under section 83 of the Value Added Tax Act 1994<sup>(81)</sup> shall be made by a request in writing to the head clerk of the Crown Office—

- (a) exhibiting the decision or a duly authenticated copy thereof;
- (b) stating, so far as is known to the witness, the name and occupation and the usual or last known address or place of business of the person against whom it is sought to enforce the decision; and
- (c) stating, to the best of the information and belief of the witness, the amount which as a result of the decision is, or is recoverable as, tax from such person at the date of the application and the amount then remaining unpaid of any costs awarded to the Commissioners of Customs and Excise by the decision.

(2) Notice of the registration of a decision must be served on the person against whom it is sought to enforce the decision by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such manner as the Court may direct.

(3) There shall be kept in the Central Office under the direction of the Senior Master a register of the decisions registered under section 29 of the Finance Act 1985, and there shall be included in the register particulars of any execution issued on a decision so registered.

<sup>(80)</sup> 1985 c. 54.

<sup>(81)</sup> 1994 c. 23.



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## RSC ORDER 46 **E+W**

### WRITS OF EXECUTION: GENERAL

#### **Definition** **E+W**

**Rule 1** In this Order, unless the context otherwise requires, “writ of execution” includes a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

#### **When permission to issue any writ of execution is necessary** **E+W**

**Rule 2.**—(1) A writ of execution to enforce a judgment or order may not issue without the permission of the Court in the following cases, that is to say:—

- (a) where six years or more have elapsed since the date of the judgment or order;
- (b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;
- (c) where the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against such assets;
- (d) where under the judgment or order any person is entitled to a remedy subject to the fulfilment of any condition which it is alleged has been fulfilled;
- (e) where any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

(2) Paragraph (1) is without prejudice to section 2 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (**82**), or any other enactment or rule by virtue of which a person is required to obtain the permission of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.

(3) Where the Court grants permission, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such permission, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

#### **Permission required for issue of writ in aid of other writ** **E+W**

**Rule 3** A writ of execution in aid of any other writ of execution shall not issue without the permission of the Court.

#### **Application for permission to issue writ** **E+W**

**Rule 4.**—(1) An application for permission to issue a writ of execution may be made in accordance with CPR Part 23 but the application notice need not be served on the respondent unless the Court directs.

- (2) Such an application must be supported by a witness statement or affidavit—
  - (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date the application notice is filed;

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- (b) stating, where the case falls within rule 2 (1)(a) the reasons for the delay in enforcing the judgment or order;
- (c) stating where the case falls within rule 2 (1)(b) the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;
- (d) stating, where the case falls within rule 2 (1)(c) or (d) that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so;
- (e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.

(3) The Court hearing such application may grant permission in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in proceedings may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

#### **Application for permission to issue writ of sequestration** E+W

**Rule 5.**—(1) Notwithstanding anything in rules 2 and 4, an application for permission to issue a writ of sequestration must be made in accordance with CPR Part 23 and be heard by a Judge.

(2) Subject to paragraph (3) the application notice, stating the grounds of the application and accompanied by a copy of the witness statement or affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.

(3) The Court may dispense with service of the application notice under this rule if it thinks it just to do so.

(4) The judge hearing an application for permission to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 6 but, except in such a case, the application shall be heard in public.

#### **Issue of writ of execution** E+W

**Rule 6.**—(1) Issue of a writ of execution takes place on its being sealed by a court officer of the appropriate office.

(2) Before such a writ is issued a praecipe for its issue must be filed.

(3) The praecipe must be signed by or on behalf of the solicitor of the person entitled to execution or, if that person is acting in person, by him.

(4) No such writ shall be sealed unless at the time of the tender thereof for sealing—

(a) the person tendering it produces—

- (i) the judgment or order on which the writ is to issue, or an office copy thereof;
- (ii) where the writ may not issue without the permission of the Court, the order granting such permission or evidence of the granting of it;
- (iii) where judgment on failure to acknowledge service has been entered against a State, as defined in section 14 of the State Immunity Act 1978(83), evidence that the State has been served in accordance with CPR rule 40.10 and that the judgment has taken effect; and

(b) the court officer authorised to seal it is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.

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(83) 1978 c. 33.

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- (5) Every writ of execution shall bear the date of the day on which it is issued.
- (6) In this rule “the appropriate office” means—
  - (a) where the proceedings in which execution is to issue are in a District Registry, that Registry;
  - (b) where the proceedings are in the Principal Registry of the Family Division, that Registry;
  - (c) where the proceedings are Admiralty proceedings or commercial proceedings which are not in a District Registry, the Admiralty and Commercial Registry;
  - (ca) where the proceedings are in the Chancery Division, Chancery Chambers;
  - (d) in any other case, the Central Office of the Supreme Court.

### **Duration and renewal of writ of execution** **E+W**

**Rule 8.**—(1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.

(2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of 12 months at any one time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any, as the Court may allow.

(3) Before a writ the validity of which had been extended under paragraph (2) is executed either the writ must be sealed with the seal of the office out of which it was issued showing the date on which the order extending its validity was made or the applicant for the order must serve a notice (in Form No. 71 in the relevant Practice Direction) sealed as aforesaid, on the sheriff to whom the writ is directed informing him of the making of the order and the date thereof.

(4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the sheriff.

(5) The production of a writ of execution, or of such a notice as is mentioned in paragraph (3) purporting in either case to be sealed as mentioned in that paragraph, shall be evidence that the validity of that writ, or, as the case may be, of the writ referred to in that notice, has been extended under paragraph (2).

(6) If, during the validity of a writ of execution, an interpleader summons is issued in relation to an execution under that writ, the validity of the writ shall be extended until the expiry of 12 months from the conclusion of the interpleader proceedings.

### **Return to writ of execution** **E+W**

**Rule 9.**—(1) Any party at whose instance or against whom a writ of execution was issued may serve a notice on the sheriff to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.

(2) If a sheriff on whom such a notice is served fails to comply with it the party by whom it was served may apply to the Court for an order directing the sheriff to comply with the notice.

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## RSC ORDER 47 **E+W**

### WRITS OF FIERI FACIAS

#### **Power to stay execution by writ of fieri facias **E+W****

**Rule 1.**—(1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution—

- (a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or
- (b) that the applicant is unable from any cause to pay the money,

then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the Court thinks fit.

(2) An application under this rule, if not made at the time the judgment is given or order made, must be made in accordance with CPR Part 23 and may be so made notwithstanding that the party liable to execution did not acknowledge service of the claim form or serve a defence or take any previous part in the proceedings.

(3) The grounds on which an application under this rule is made must be set out in the application notice and be supported by a witness statement or affidavit made by or on behalf of the applicant substantiating the said grounds and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his income, the nature and value of any property of his and the amount of any other liabilities of his.

(4) The application notice and a copy of the supporting witness statement or affidavit must, not less than 4 clear days before the hearing, be served on the party entitled to enforce the judgment or order.

(5) An order staying execution under this rule may be varied or revoked by a subsequent order.

#### **Two or more writs of fieri facias **E+W****

**Rule 2.**—(1) A party entitled to enforce a judgment or order by writ of fieri facias may issue two or more such writs, directed to the sheriffs of different counties, at either the same time or different times, to enforce that judgment or order, but no more shall be levied under all those writs together than is authorised to be levied under one of them.

(2) Where a party issues two or more writs of fieri facias directed to the sheriffs of different counties to enforce the same judgment or order he must inform each sheriff of the issue of the other writ or writs.

#### **Separate writs to enforce payment of costs, etc. **E+W****

**Rule 3.**—(1) Where only the payment of money, together with costs to be assessed in accordance with CPR Part 47 (detailed costs assessment), is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been assessed, the party entitled to enforce that judgment or order may issue a writ of fieri facias to enforce payment of the sum (other than for costs) adjudged or ordered and, not less than 8 days after the issue of that writ, he may issue a second writ to enforce payment of the assessed costs.

(2) A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if he so elects, issue a separate writ of fieri facias to enforce payment of any damages or costs awarded to him by that judgment or order.

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#### **No expenses of execution in certain cases** **E+W**

**Rule 4** Where a judgment or order is for less than £600 and does not entitle the claimant to costs against the person against whom the writ of fieri facias to enforce the judgment or order is issued, the writ may not authorise the sheriff to whom it is directed to levy any fees, poundage or other costs of execution.

#### **Writ of fieri facias de bonis ecclesiasticis, etc.** **E+W**

**Rule 5.**—(1) Where it appears upon the return of any writ of fieri facias that the person against whom the writ was issued has no goods or chattels in the county of the sheriffs to whom the writ was directed but that he is the incumbent of a benefice named in the return, then, after the writ and return have been filed, the party by whom the writ of fieri facias was issued may issue a writ of fieri facias de bonis ecclesiasticis or a writ of sequestrari de bonis ecclesiasticis directed to the bishop of the diocese within which that benefice is.

(2) Any such writ must be delivered to the bishop to be executed by him.

(3) Only such fees for the execution of any such writ shall be taken by or allowed to the bishop or any diocesan officer as are for the time being authorised by or under any enactment, including any measure of the General Synod.

#### **Order for sale otherwise than by auction** **E+W**

**Rule 6.**—(1) An order of the Court under section 145 of the Bankruptcy Act 1883<sup>(84)</sup>, that a sale under an execution may be made otherwise than by public auction may be made on the application of the person at whose instance the writ of execution under which the sale is to be made was issued or the person against whom that writ was issued (in this rule referred to as “the judgment debtor”) or the sheriff to whom it was issued.

(2) Such an application must be made in accordance with CPR Part 23 and the application notice must contain a short statement of the grounds of the application.

(3) Where the applicant for an order under this rule is not the sheriff, the sheriff must, on the demand of the applicant, send to the applicant a list containing the name and address of every person at whose instance any other writ of execution against the goods of the judgment debtor was issued and delivered to the sheriff (in this rule referred to as “the sheriff’s list”); and where the sheriff is the applicant, he must prepare such a list.

(4) Not less than 4 clear days before the hearing the applicant must serve the application notice on each of the other persons by whom the application might have been made and on every person named in the sheriff’s list.

(5) Service of the application notice on a person named in the sheriff’s list is notice to him for the purpose of section 12 of the Bankruptcy Act 1890<sup>(85)</sup> (which provides that the Court shall not consider an application for permission to sell privately goods taken in execution until notice directed by rules of Court has been given to any other execution creditor).

(6) The applicant must produce the sheriff’s list to the Court on the hearing of the application.

(7) Every person on whom the application notice was served may attend and be heard on the hearing of the application.

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<sup>(84)</sup> 1883 c. 52.

<sup>(85)</sup> 1890 c. 71.

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## RSC ORDER 48 **E+W**

### EXAMINATION OF JUDGMENT DEBTOR, ETC.

#### Order for examination of judgment debtor **E+W**

**Rule 1.**—(1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as “the judgment debtor”) of money, the Court may, on an application made without notice being served on any other party by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer thereof, to attend before such Master, Registrar, District Judge or nominated officer as the Court may appoint and be orally examined on the questions—

- (a) whether any and, if so, what debts are owing to the judgment debtor; and
- (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order;

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

In this paragraph “district judge” includes the district judge of a district registry or county court, and where the Court appoints such a district judge without specifying him personally, the examination may, if he thinks fit, be conducted on his behalf by a nominated officer of that registry or county court.

(2) An order under this rule must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.

(3) Any difficulty arising in the course of an examination under this rule before a nominated officer, including any dispute with respect to the obligation of the person being examined to answer any question put to him, may be referred to the Senior Master or Practice Master (or, in the case of an examination at the principal registry of the Family Division, a district registry or a county court, a district judge of that registry, district registry or county court respectively) and he may determine it or give such directions for determining it as he thinks fit.

(4) In this rule “nominated officer” in relation to an examination which is to take place at the Central Office of the Supreme Court, the principal registry of the Family Division, a district registry or a county court means such of the officers of that Office, registry or county court<sup>F224</sup>... as may be nominated for the purposes of this rule by the Senior Master, the Senior District Judge of the Family Division or the district judge of that district registry or county court respectively.

#### Textual Amendments

**F224** Words in Sch. 1 RSC Order 48 rule 1(4) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 31

#### Examination of party liable to satisfy other judgment **E+W**

**Rule 2** Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.



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### **Examiner to make record of debtor's statement** **E+W**

**Rule 3** The officer conducting the examination shall take down, or cause to be taken down, in writing the statement made by the judgment debtor or other person at the examination, read it to him and ask him to sign it; and if he refuses the officer shall sign the statement.

## **RSC ORDER 49** **E+W** **GARNISHEE PROCEEDINGS**

### **Attachment of debt due to judgment debtor** **E+W**

**Rule 1.**—(1) Where a person (in this Order referred to as “the judgment creditor”) has obtained a judgment or order for the payment by some other person (in this Order referred to as “the judgment debtor”) of a sum of money amounting in value to at least £50, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as “the garnishee”) is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1) or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

(3) Among the conditions mentioned in section 40 of the Supreme Court Act 1981<sup>(86)</sup> (which enables any sum standing to the credit of a person in certain types of account to be attached notwithstanding that certain conditions applicable to the account in question have not been satisfied) there shall be included any condition that a receipt for money deposited in the account must be produced before any money is withdrawn.

(4) An order under this rule shall not require a payment which would reduce below £1 the amount standing in the name of the judgment debtor in an account with a building society or a credit union.

### **Application for order** **E+W**

**Rule 2.**—(1) An application for an order under rule 1 must be made in accordance with CPR Part 23 but the application notice need not be served on the judgment debtor.

(2) An application must be supported by a witness statement or affidavit—

- (a) stating the name and last known address of the judgment debtor;
- (b) identifying the judgment or order to be enforced and stating the amount of such judgment or order and the amount remaining unpaid under it at the time of the application;
- (c) stating that to the best of the information or belief of the witness the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the witness's information or the grounds for his belief; and
- (d) stating, where the garnishee is a deposit-taking institution having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held and the number of that account or, if it be the case, that all or part of this information is not known to the witness.

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<sup>(86)</sup> 1981 c. 54; section 40 was amended by the Banking Act 1987 (c. 22) section 108(1), schedule 6.

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### **Service and effect of order to show cause** **E+W**

**Rule 3.**—(1) Unless the Court otherwise directs, an order under rule 1 to show cause must be served—

- (a) on the garnishee personally, at least 15 days before the time appointed thereby for the further consideration of the matter; and
- (b) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the time appointed by the order for the further consideration of the matter.

(2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

### **No appearance or dispute of liability by garnishee** **E+W**

**Rule 4.**—(1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may make an order absolute under rule 1 against the garnishee.

(2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

### **Dispute of liability by garnishee** **E+W**

**Rule 5** Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in proceedings may be tried, without, if it orders trial before a Master, the need for any consent by the parties.

### **Claims of third persons** **E+W**

**Rule 6.**—(1) If in garnishee proceedings it is brought to the notice of the Court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the Court may order that person to attend before the Court and state the nature of his claim with particulars thereof.

(2) After hearing any person who attends before the Court in compliance with an order under paragraph (1) the Court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 5.

### **Discharge of garnishee** **E+W**

**Rule 8** Any payment made by a garnishee in compliance with an order absolute under this Order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose reversed.

### **Money in Court** **E+W**

**Rule 9.**—(1) Where money is standing to the credit of the judgment debtor in Court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply



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to the Court in accordance with CPR Part 23 for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) On filing an application notice under this rule the applicant must produce the application notice at the office of the Accountant General and leave a copy at that office, and the money to which the application relates shall not be paid out of Court until after the determination of the application. If the application is dismissed, the applicant must give notice of that fact to the Accountant General.

(3) Unless the Court otherwise directs, the application notice must be served on the judgment debtor at least 7 days before the hearing.

(4) Subject to Order 75, rule 24, the Court hearing an application under this rule may make such order with respect to the money in Court as it thinks just.

#### Costs **E+W**

**Rule 10** The costs of any application for an order under rule 1 or 9, and of any proceedings arising therefrom or incidental thereto, shall, unless the Court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt.

## RSC ORDER 50 **E+W**

### CHARGING ORDERS, STOP ORDERS, ETC.

#### Order imposing a charge on a beneficial interest **E+W**

**Rule 1.**—(1) The power to make a charging order under section 1 of the Charging Orders Act 1979<sup>(87)</sup> (referred to in this Order as “the Act”) shall be exercisable by the Court.

(2) An application by a judgment creditor for a charging order in respect of a judgment debtor’s beneficial interest must be in accordance with CPR Part 23, but the application notice need not be served on the judgment debtor, and any order made on such an application shall in the first instance be an order, made in Form No. 75 in the relevant Practice Direction, to show cause, specifying the time and place for further consideration of the matter and imposing the charge in any event until that time.

(3) The application shall be supported by a witness statement or affidavit—

- (a) identifying the judgment or order to be enforced and stating the amount unpaid at the date of the application;
- (b) stating the name of the judgment debtor and of any creditor of his whom the applicant can identify;
- (c) giving full particulars of the subject matter of the intended charge, including, in the case of securities other than securities in Court, the full title of the securities, their amount and the name in which they stand and, in the case of funds in Court, the number of the account; and
- (d) verifying that the interest to be charged is owned beneficially by the judgment debtor.

(4) Unless the Court otherwise directs, a witness statement or affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(5) An application may be made for a single charging order in respect of more than one judgment or order against the debtor.

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<sup>(87)</sup> 1979 c. 53; section 1 was amended by the Administration of Justice Act 1982 (c. 53) sections 34(3), 37, schedule 3, Part II, paragraphs 2, 3, 6; and by the County Courts Act 1984 (c. 28), section 148(1), schedule 2, Part V.

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### **Service of notice of order to show cause** **E+W**

**Rule 2.**—(1) On the making of an order to show cause, notice of the order shall, unless the Court otherwise directs, be served as follows—

- (a) a copy of the order, together with a copy of the witness statement or affidavit in support, shall be served on the judgment debtor;
- (b) where the order relates to securities other than securities in Court, copies of the order shall also be served—
  - (i) in the case of government stock for which the Bank of England keeps the Register, on the Bank of England;
  - (ii) in the case of government stock to which (i) does not apply, on the keeper of the register;
  - (iii) in the case of stock of any body incorporated within England and Wales, on that body, or, where the register is kept by the Bank of England, on the Bank of England;
  - (iv) in the case of stock of any body incorporated outside England and Wales or of any state or territory outside the United Kingdom, being stock registered in a register kept in England and Wales, on the keeper of the register;
  - (v) in the case of units of any unit trust in respect of which a register of the unit holders is kept in England and Wales, on the keeper of the register;
- (c) where the order relates to a fund in Court, a copy of the order shall be served on the Accountant General at the Court Funds Office; and
- (d) where the order relates to an interest under a trust, copies of the order shall be served on such of the trustees as the Court may direct.

(2) Without prejudice to the provisions of paragraph (1), the Court may, on making the order to show cause, direct the service of copies of the order, and of the witness statement or affidavit in support, on any other creditor of the judgment debtor or on any other interested person as may be appropriate in the circumstances.

(3) Documents to be served under this rule must be served at least seven days before the time appointed for the further consideration of the matter.

### **Order made on further considerations** **E+W**

**Rule 3.**—(1) On the further consideration of the matter the Court shall either make the order absolute, with or without modifications, or discharge it.

(2) Where the order is made absolute, it shall be made in Form No. 76 in the relevant practice direction, and where it is discharged, the provisions of rule 7, regarding the service of copies of the order of discharge, shall apply.

### **Order imposing a charge on an interest held by a trustee** **E+W**

**Rule 4.**—(1) Save as provided by this rule, the provisions of rules 1, 2 and 3 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest.

(2) Instead of verifying the judgment debtor's beneficial ownership of the interest to be charged, the witness statement or affidavit required by rule 1 (3) shall state the ground on which the application is based and shall verify the material facts.

(3) On making the order to show cause, the Court shall give directions for copies of the order, and of the witness statement or affidavit in support, to be served on such of the trustees and beneficiaries, if any, as may be appropriate.

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(4) Rules 5, 6 and 7 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest, except that, where the order is made under sub—section (ii) or (iii) of section 2 (1)(b) of the Act references in those rules to “the judgment debtor” shall be references to the trustee.

(5) Forms No. 75 and 76 in the relevant Practice Direction shall be modified so as to indicate that the interest to be charged is held by the debtor as trustee or, as the case may be, that it is held by a trustee (to be named in the order) on trust for the debtor beneficially.

#### **Effect of order in relation to securities out of Court** **E+W**

**Rule 5.**—(1) No disposition by the judgment debtor of his interest in any securities to which an order to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.

(2) Until such order is discharged or made absolute, the Bank of England (or other person or body served in accordance with rule 2 (1)(b)), shall not permit any transfer of any of the securities specified in the order, or pay any dividend, interest or redemption payment in relation thereto, except with the authority of the Court, and, if it does so, shall be liable to pay the judgment creditor the value of the securities transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.

(3) If the Court makes the order absolute, a copy of the order, including a stop notice as provided in Form No. 76 in the relevant Practice Direction, shall be served on the Bank of England, or on such other person or body specified in rule 2 (1)(b) as may be appropriate and, save as provided in rule 7 (5), rules 11 to 14 shall apply to such a notice as they apply to a stop notice made and served under rule 11.

(4) This rule does not apply to orders in respect of securities in Court.

#### **Effect of order in relation to funds in Court** **E+W**

**Rule 6.**—(1) Where an order to show cause has been made in relation to funds in Court (including securities in Court) and a copy thereof has been served on the Accountant General in accordance with rule 2, no disposition by the judgment debtor of any interest to which the order relates, made after the making of that order, shall, so long as the order remains in force, be valid as against the judgment creditor.

(2) If the Court makes the order absolute, a copy of the order shall be served on the Accountant General at the Court Funds Office.

#### **Discharge, etc., of charging order** **E+W**

**Rule 7.**—(1) Subject to paragraph (2), on the application of the judgment debtor or any other person interested in the subject matter of the charge, the Court may, at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs or otherwise as it thinks just.

(2) Where an application is made for the discharge of a charging order in respect of the judgment debtor's land on the ground that the judgment debt has been satisfied, the applicant shall state in his application, and the Court shall specify in its order, the title number of the land in the case of registered land, and the entry number of any relevant land charge in the case of unregistered land.

(3) The application notice seeking the discharge or variation of the order shall be served on such interested parties as the Court may direct.

(4) Where an order is made for the discharge or variation of a charging order in respect of funds in Court, a copy thereof shall be served on the Accountant General at the Court Funds Office.

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(5) Where an order is made for the discharge or variation of a charging order in respect of securities other than securities in Court, a copy thereof shall be served on the Bank of England or on such other person or body specified in rule 2 (1)(b) as may be appropriate, and the service thereof shall discharge, or, as the case may be, vary, any stop notice in respect of such securities which may be in force pursuant to the original order.

#### **Jurisdiction of Master, etc., to grant injunction** **E+W**

**Rule 9** A master and the Admiralty Registrar and a district judge of the Family Division shall have power to grant an injunction if, and only so far as, it is ancillary or incidental to an order under rule 1, 3 or 4 and an application for an injunction under this rule may be joined with the application for the order under rule 1, 3 or 4 to which it relates.

#### **Enforcement of charging order by sale** **E+W**

**Rule 9A.**—(1) Proceedings for the enforcement of a charging order by sale of the property charged must be begun by a claim form issued out of Chancery Chambers or out of one of the Chancery District Registries.

(2) The provisions of Order 88 shall apply to all such proceedings.

#### **Funds in Court: stop order** **E+W**

**Rule 10.**—(1) The Court, on the application of any person—

- (a) who has a mortgage or charge on the interest of any person in funds in Court; or
- (b) to whom that interest has been assigned; or
- (c) who is a judgment creditor of the person entitled to that interest, may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant.

(2) An application for an order under this rule must, if there are existing proceedings, be made in accordance with CPR Part 23 by filing an application notice relating to the funds in Court, or, if there are no such proceedings, by a claim.

(3) The application notice or claim form must be served on every person whose interest may be affected by the order applied for and on the Accountant-General but shall not be served on any other person.

(4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the proceedings relating to the funds in question, or of any person interested in those funds, occasioned by the application.

#### **Securities not in Court: stop notice** **E+W**

**Rule 11.**—(1) Any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 2 (2)(b) of the Act, other than securities in Court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.

(2) A person claiming to be so entitled must file in Chancery Chambers or in a District Registry—

- (a) a witness statement or affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises; and
- (b) a notice in Form No. 80 in the relevant Practice Direction (a stop notice) signed by the witness who made the witness statement or affidavit, and annexed to it, addressed to the Bank of England or, as the case may be, the body, state, territory or unit trust concerned, and must serve an office copy of the witness statement or affidavit, and a copy of the notice

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sealed with the seal of Chancery Chambers or the District Registry, on the Bank or other person or body, as provided in rule 2 (1)(b).

(3) There must be indorsed on the witness statement or affidavit filed under this rule a note stating the address to which any such notice as is referred to in rule 12 is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the witness statement or affidavit is filed.

(4) A person on whose behalf a witness statement or affidavit under this rule is filed may change his address for service for the purpose of rule 12 by serving on the Bank of England, or other person or body, a notice to that effect, and, as from the date of service of such a notice the address stated therein shall for the purpose of that rule be the address for service of that person.

#### **Effect of stop notice** E+W

**Rule 12** Where a stop notice has been served in accordance with rule 11, then, so long as the stop notice is in force, the Bank of England or other person or body on which it is served shall not register a transfer of the securities or take any other step restrained by the stop notice until 14 days after sending notice thereof, by ordinary first class post, to the person on whose behalf the stop notice was filed, but shall not by reason only of that notice refuse to register a transfer, or to take any other step, after the expiry of that period.

#### **Amendment of stop notice** E+W

**Rule 13** If any securities are incorrectly described in a stop notice which has been filed and of which a sealed copy has been served in accordance with rule 11, an amended stop notice may be filed and served in accordance with the same procedure and shall take effect as a stop notice on the day on which the sealed copy of the amended notice is served.

#### **Withdrawal etc. of stop notice** E+W

**Rule 14.**—(1) The person on whose behalf a stop notice was filed may withdraw it by serving a request for its withdrawal on the Bank of England or other person or body on whom the notice was served.

(2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising solicitor.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a stop notice relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made in the Chancery Division by a claim form, and the claim form must be served on the person on whose behalf a stop notice was filed.

#### **Order prohibiting transfer, etc. of securities** E+W

**Rule 15.**—(1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 2 (2)(b) of the Act may by order prohibit the Bank of England or other person or body concerned from registering any transfer of the securities or taking any other step to which section 5 (5) of the Act applies. The order shall specify the securities to which the prohibition relates, the name in which they stand and the steps which may not be taken, and shall state whether the prohibition applies to the securities only or to the dividends or interest as well.

(2) An application for an order under this rule must be made by claim form or if made in existing proceedings in accordance with CPR Part 23 in the Chancery Division.

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(3) The Court, on the application of any person claiming to be entitled to an interest in any securities to which an order under this rule relates, may vary or discharge the order on such terms (if any) as to costs or otherwise as it thinks fit.

## RSC ORDER 51 **E+W**

### RECEIVERS: EQUITABLE EXECUTION

#### [<sup>F225</sup>Order to apply to High Court and County Courts **E+W**

**Rule A1.** This Order applies to proceedings both in the High Court and in county courts.]

#### Textual Amendments

**F225** Words in Sch. 1 RSC Order 51 inserted (15.10.2001) by The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rules 1(a), **8(a)** (with rule 24)

#### Appointment of receiver by way of equitable execution **E+W**

**Rule 1** Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.

#### Masters etc. may appoint receiver **E+W**

**Rule 2** [<sup>F226</sup>A Master, the Admiralty Registrar, a district judge of the Family Division and a district judge] shall have power to make an order for the appointment of a receiver by way of equitable execution and to grant an injunction if, and only so far as, the injunction is ancillary or incidental to such an order.

#### Textual Amendments

**F226** Words in Sch. 1 RSC Order 51 rule 2 substituted (15.10.2001) by The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rules 1(a), **8(b)** (with rule 24)

#### Application of rules as to appointment of receiver, etc. **E+W**

**Rule 3** An application for the appointment of a receiver by way of equitable execution may be made in accordance with Order 30, rule 1, and rules 2 to 6 of that Order shall apply in relation to a receiver appointed by way of equitable execution as they apply in relation to a receiver appointed for any other purpose.



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## RSC ORDER 52 **E+W**

### COMMITTAL

#### Committal for contempt of court **E+W**

**Rule 1.**—(1) The power of the High Court or Court of Appeal to punish for contempt of court may be exercised by an order of committal.

- (2) Where contempt of court—
- (a) is committed in connection with—
    - (i) any proceedings before a Divisional Court of the Queen’s Bench Division; or
    - (ii) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court; or
    - (iii) proceedings in an inferior court; or
  - (b) is committed otherwise than in connection with any proceedings, then, subject to paragraph (4), an order of committal may be made only by a Divisional Court of the Queen’s Bench Division.

This paragraph shall not apply in relation to contempt of the Court of Appeal.

(3) Where contempt of court is committed in connection with any proceedings in the High Court, then, subject to paragraph (2), an order of committal may be made by a single judge of the Queen’s Bench Division except where the proceedings were assigned or subsequently transferred to some other Division, in which case the order may be made only by a single judge of that other Division.

The reference in this paragraph to a single judge of the Queen’s Bench Division shall, in relation to proceedings in any court the judge or judges of which are, when exercising the jurisdiction of that court, deemed by virtue of any enactment to constitute a court of the High Court, be construed as a reference to a judge of that court.

(4) Where by virtue of any enactment the High Court has power to punish or take steps for the punishment of any person charged with having done anything in relation to a court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of that Court, an order of committal may be made by a single judge of the Queen’s Bench Division.

#### Application to Divisional Court **E+W**

**Rule 2.**—(1) No application to a Divisional Court for an order of committal against any person may be made unless permission to make such an application has been granted in accordance with this rule.

(2) An application for such permission must be made without notice to a Divisional Court, except in vacation when it may be made to a judge in chambers and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for permission not later than the preceding day to the Crown Office and must at the same time lodge in that office copies of the statement and affidavit.

(4) Where an application for permission under this rule is refused by a judge in chambers, the applicant may make a fresh application for such permission to a Divisional Court.

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(5) An application made to a Divisional Court by virtue of paragraph (4) must be made within 8 days after the judge's refusal to give permission or, if a Divisional Court does not sit within that period, on the first day on which it sits thereafter.

#### **Application for order after leave to apply granted** **E+W**

**Rule 3.**—(1) When permission has been granted under rule 2 to apply for an order of committal, the application for the order must be made to a Divisional Court and, unless the court or judge granting permission has otherwise directed, there must be at least 14 clear days between the service of the claim form and the day named therein for the hearing.

(2) Unless within 14 days after such permission was granted, the claim form is issued the permission shall lapse.

(3) Subject to paragraph 4, the claim form, accompanied by a copy of the statement and affidavit in support of the application for permission, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the court or judge under Part 6 of the CPR, the court or judge may dispense with service under this rule if it or he thinks it just to do so.

#### **Application to Court other than Divisional Court** **E+W**

**Rule 4.**—(1) Where an application for an order of committal may be made to a court other than a Divisional Court, the application must be made by claim form or application notice and be supported by an affidavit.

(2) Subject to paragraph (3) the claim form or application notice, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person sought to be committed.

(3) Without prejudice to its powers under Part 6 of the CPR, the Court may dispense with service under this rule if it thinks it just to do so.

(4) This rule does not apply to committal applications which under rules 1(2) and 3(1) should be made to a Divisional Court but which, in vacation, have been properly made to a single judge in accordance with Order 64, rule 4.

#### **Saving for power to commit without application for purpose** **E+W**

**Rule 5** Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the High Court or Court of Appeal to make an order of committal of its own initiative against a person guilty of contempt of court.

#### **Provisions as to hearing** **E+W**

**Rule 6.**—(1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say—

- (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
- (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act 1983<sup>(88)</sup>;

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(88) 1983 c. 20.



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- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
- (d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private;

but, except as aforesaid, the application shall be heard in [<sup>F227</sup>public].

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in [<sup>F227</sup>public] state—

- (a) the name of that person,
- (b) in general terms the nature of the contempt of Court in respect of which the order of committal is being made, and
- (c) the length of the period for which he is being committed.

(3) Except with the permission of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under rule 2 or, as the case may be, in the claim form or application notice under rule 4.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

#### Textual Amendments

**F227** Word in [Sch. 1 RSC Order 52 rule 6](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1](#), [32](#)

#### Power to suspend execution of committal order **E+W**

**Rule 7.**—(1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

#### Discharge of person committed **E+W**

**Rule 8.**—(1) The Court may, on the application of any person committed to prison for any contempt of Court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in Court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

(RSC Order 46, rule 5 contains rules relating to writs of sequestration)

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**Saving for other powers** **E+W**

**Rule 9** Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the High Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

**F228 RSC ORDER 53 APPLICATIONS FOR JUDICIAL REVIEW** **E+W**

**Textual Amendments**

**F228** Sch. 1 RSC Order 53 revoked (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), [rules 1, 23](#) (with [rule 30](#))

**Cases appropriate for application for judicial review** **E+W**

**Rule 1** <sup>F228</sup> .....

**Joinder of claims for relief** **E+W**

**Rule 2** <sup>F228</sup> .....

**Grant of leave to apply for judicial review** **E+W**

**Rule 3** <sup>F228</sup> .....

**Delay in applying for relief** **E+W**

**Rule 4** <sup>F228</sup> .....

**Mode of applying for judicial review** **E+W**

**Rule 5** <sup>F228</sup> .....

**Statements and evidence** **E+W**

**Rule 6** <sup>F228</sup> .....

**Claim for damages** **E+W**

**Rule 7** <sup>F228</sup> .....

**Application for disclosure, further information, cross—examination, etc.** **E+W**

**Rule 8** <sup>F228</sup> .....

**Hearing of application for judicial review** **E+W**

**Rule 9** <sup>F228</sup> .....

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**Saving for person acting in obedience to mandamus** **E+W**

**Rule 10** <sup>F228</sup> .....

**Proceedings for disqualification of member of local authority** **E+W**

**Rule 11** <sup>F228</sup> .....

**Consolidation of applications** **E+W**

**Rule 12** <sup>F228</sup> .....

**Appeal from Judge's order** **E+W**

**Rule 13** <sup>F228</sup> .....

**Meaning of "Court"** **E+W**

**Rule 14** <sup>F228</sup> .....

**RSC ORDER 54** **E+W**

**APPLICATIONS FOR WRIT OF HABEAS CORPUS**

**Application for writ of habeas corpus ad subjiciendum** **E+W**

**Rule 1.**—(1) Subject to rule 11, an application for a writ of habeas corpus ad subjiciendum shall be made to a judge in Court, except that—

- (a) it shall be made to a Divisional Court of the Queen's Bench Division if the Court so directs;
- (b) it may be made to a judge otherwise than in court at any time when no judge is sitting in court; and
- (c) any application on behalf of a child must be made in the first instance to a judge otherwise than in court.

(2) An application for such writ may be made without notice being served on any other party and, subject to paragraph (3) must be supported by a witness statement or affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the witness statement or affidavit required by paragraph (2) the witness statement or affidavit may be made by some other person on his behalf and that witness statement or affidavit must state that the person restrained is unable to make the witness statement or affidavit himself and for what reason.

**Power of Court to whom application made without notice being served on any other party** **E+W**

**Rule 2.**—(1) The Court or judge to whom an application under rule 1 is made without notice being served on any other party may make an order forthwith for the writ to issue, or may—

- (a) where the application is made to a judge otherwise than in court, direct the issue of a claim form seeking the writ, or that an application therefor be made by claim form to a Divisional Court or to a judge in court;

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- (b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given, or direct that an application be made by claim form to a Divisional Court;
- (c) where the application is made to a Divisional Court, adjourn the application so that notice thereof may be given.

(2) The claim form must be served on the person against whom the issue of the writ is sought and on such other persons as the Court or judge may direct, and, unless the Court or judge otherwise directs, there must be at least 8 clear days between the service of the claim form and the date named therein for the hearing of the application.

#### **Copies of witness statement or affidavits to be supplied** **E+W**

**Rule 3** Every party to an application under rule 1 must supply to every other party on demand and on payment of the proper charges copies of the witness statement or affidavits which he proposes to use at the hearing of the application.

#### **Power to order release of person restrained** **E+W**

**Rule 4.**—(1) Without prejudice to rule 2 (1), the Court or judge hearing an application for a writ of habeas corpus ad subjiciendum may in its or his discretion order that the person restrained be released, and such order shall be a sufficient warrant to any governor of a prison, constable or other person for the release of the person under restraint.

(2) Where such an application in criminal proceedings is heard by a judge and the judge does not order the release of the person restrained, he shall direct that the application be made by claim form to a Divisional Court of the Queen’s Bench Division.

#### **Directions as to return to writ** **E+W**

**Rule 5** Where a writ of habeas corpus ad subjiciendum is ordered to issue, the Court or judge by whom the order is made shall give directions as to the Court or judge before whom, and the date on which, the writ is returnable.

#### **Service of writ and notice** **E+W**

**Rule 6.**—(1) Subject to paragraphs (2) and (3), a writ of habeas corpus ad subjiciendum must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to a governor of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice (in Form No. 90 in the relevant Practice Direction) stating the Court or judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

#### **Return to the writ** **E+W**

**Rule 7.**—(1) The return to a writ of habeas corpus ad subjiciendum must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

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(2) The return may be amended, or another return substituted therefor, by permission of the Court or judge before whom the writ is returnable.

**Procedure at hearing of writ** E+W

**Rule 8** When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then the counsel for the Crown, and then one counsel for the person restrained in reply.

**Bringing up prisoner to give evidence, etc.** E+W

**Rule 9.**—(1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum must be made on witness statement or affidavit to a Judge <sup>F229</sup> ....

(2) An application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any proceedings, civil or criminal, before any Court, tribunal or justice, must be made on witness statement or affidavit to a Judge <sup>F230</sup> ....

**Textual Amendments**

**F229** Words in Sch. 1 RSC Order 11 52 rule 9(1) omitted (26.4.1999) by virtue of The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, 62(a)

**F230** Words in Sch. 1 RSC Order 11 52 rule 9(2) omitted (26.4.1999) by virtue of The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, 62(a)

**Form of writ** E+W

**Rule 10** A writ of habeas corpus must be in Form No. 89, 91 or 92 in the relevant Practice Direction, whichever is appropriate.

**Applications relative to the custody, etc., of child** E+W

**Rule 11** An application by a parent or guardian of a child for a writ of habeas corpus ad subjiciendum relative to the custody, care or control of the child must be made in the Family Division, and this Order shall accordingly apply to such applications with the appropriate modifications.

**RSC ORDER 55** E+W

**APPEALS TO HIGH COURT FROM COURT,  
TRIBUNAL OR PERSON: GENERAL**

**Application** E+W

<sup>F231</sup>**Rule 1** .....

**Textual Amendments**

**F231** Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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**E+W**

F231 .....

**Textual Amendments**  
F231 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F231 .....

**Textual Amendments**  
F231 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F231 .....

**Textual Amendments**  
F231 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F231 .....

**Textual Amendments**  
F231 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F231 .....

**Textual Amendments**  
F231 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F231 .....

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**Textual Amendments**

**F231** Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F231 .....

**Textual Amendments**

**F231** Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F231 .....

**Textual Amendments**

**F231** Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**RSC ORDER 56** **E+W**

**APPEALS, ETC., TO HIGH COURT BY CASE STATED: GENERAL**

**Appeals from the Crown Court by case stated** **E+W**

<sup>F232</sup>**Rule 1** .....

**Textual Amendments**

**F232** Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F232 .....

**Textual Amendments**

**F232** Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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**E+W**

F232 .....

**Textual Amendments**  
F232 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F232 .....

**Textual Amendments**  
F232 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F232 .....

**Textual Amendments**  
F232 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F232 .....

**Textual Amendments**  
F232 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F232 .....

**Textual Amendments**  
F232 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F232 .....



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**Textual Amendments**

**F232** Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F232 .....

**Textual Amendments**

**F232** Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F232 .....

**Textual Amendments**

**F232** Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F232 .....

**Textual Amendments**

**F232** Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F232 .....

**Textual Amendments**

**F232** Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F232 .....

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**Textual Amendments**

**F232** Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**F233** RSC ORDER 57 DIVISIONAL COURT PROCEEDINGS, ETC.: SUPPLEMENTARY PROVISIONS **E+W**

**Textual Amendments**

**F233** Sch. 1 RSC Order 57 revoked (2.10.2000) by The Civil Procedure (Amendment No. 4) Rules 2000 (S.I. 2000/2092), rules 1, 24

**Application** **E+W**

**Rule 1** <sup>F233</sup> .....

**Entry of claims** **E+W**

**Rule 2** <sup>F233</sup> .....

**Issue, etc., of claim form** **E+W**

**Rule 3** <sup>F233</sup> .....

**Filing of witness statement or affidavits and drawing up of orders** **E+W**

**Rule 4** <sup>F233</sup> .....

**Issue of writs** **E+W**

**Rule 5** <sup>F233</sup> .....

**Custody of records** **E+W**

**Rule 6** <sup>F233</sup> .....

**RSC ORDER 58** **E+W**

**APPEALS FROM MASTERS, REGISTRARS, REFEREES AND JUDGES**

**Appeals from certain decisions of Masters, etc. to Judge sitting in private** **E+W**

<sup>F234</sup>**Rule 1** .....

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**Textual Amendments**

**F234** Sch. 1 RSC Order 58 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

**F234** .....

**Textual Amendments**

**F234** Sch. 1 RSC Order 58 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

**F234** .....

**Textual Amendments**

**F234** Sch. 1 RSC Order 58 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

**F234** .....

**Textual Amendments**

**F234** Sch. 1 RSC Order 58 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**RSC ORDER 59** **E+W**

**APPEALS TO THE COURT OF APPEAL**

**Application of Order to appeals** **E+W**

**F235** **Rule 1** .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

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**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F235 .....

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

**Textual Amendments**

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**E+W**

**E+W**

F235 .....

**Textual Amendments**

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**Textual Amendments**

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F235 .....

**Textual Amendments**

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F235 .....

**Textual Amendments**

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**Textual Amendments**

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**E+W**

F235 .....

**Textual Amendments**

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**E+W**

F235 .....

**Textual Amendments**

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**E+W**

F235 .....

**Textual Amendments**

**F235** Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**RSC ORDER 60 E+W**

**APPEALS TO COURT OF APPEAL FROM THE RESTRICTIVE PRACTICES COURT**

**Appeal to be brought by notice of appeal E+W**

<sup>F236</sup>**Rule 1** .....

**Textual Amendments**

**F236** Sch. 1 RSC Order 60 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

**E+W**

F236 .....

**Textual Amendments**  
F236 Sch. 1 RSC Order 60 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F236 .....

**Textual Amendments**  
F236 Sch. 1 RSC Order 60 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F236 .....

**Textual Amendments**  
F236 Sch. 1 RSC Order 60 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**RSC ORDER 61 E+W**

**APPEALS FROM TRIBUNALS TO COURT OF APPEAL BY CASE STATED**

**Statement of case by Lands Tribunal E+W**

F237 **Rule 1** .....

**Textual Amendments**  
F237 Sch. 1 RSC Order 61 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F237 .....

**Textual Amendments**  
F237 Sch. 1 RSC Order 61 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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**E+W**

F237

**Textual Amendments**

**F237** Sch. 1 RSC Order 61 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

RSC ORDER 62 **E+W**

COSTS

APPENDIX 3

*Fixed Costs*

The scale of costs set out in this Appendix shall apply in the cases to which the Appendix refers.

*Part II*

**Costs on judgment without trial for possession of land** **E+W**

- 1.—(1) Where the claim is for the possession of land, and the claimant obtains judgment—
- (a) under CPR Part 12 (default judgment); or
  - (c) under CPR Part 24 (summary judgment),

for possession of the land and costs, then, subject to sub-paragraph (2), there shall be allowed the costs prescribed by paragraph 2 of this Part of this Appendix.

(2) Where the claimant is also entitled under the judgment to damages to be assessed, or where the plaintiff claims any remedy of the nature specified in [<sup>F238</sup>Order 45, rule 3(2)], this Part of this Appendix shall not apply.

**Textual Amendments**

**F238** Words in Sch. 1 RSC Order 62 Appendix 3 Pt. 2 para. 1(2) substituted (15.10.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(d), **21**

2. The costs to be allowed under this Part of this Appendix shall be £143.75, together with any court fee, and additional costs where appropriate set out the Table below.

**Textual Amendments**

**F238** Words in Sch. 1 RSC Order 62 Appendix 3 Pt. 2 para. 1(2) substituted (15.10.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(d), **21**

**Additional Costs**

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
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## B. Additional Costs

<i>Amount to be allowed</i>	<i>£</i>
(1) Where there is more than one defendant, in respect of each additional defendant served	£13.75
(2) Where service by an alternative method is ordered and effected, in respect of each defendant served	£53.25
(3) Where service out of the jurisdiction is ordered and effected, in the case of service—	£68.25
(a) in Scotland, Northern Ireland, the Isle of Man or the Channel Islands	
(b) (b) in any other place out of the jurisdiction	£77.00
(4) In the case of default judgment under CPR Part 12 or summary judgment under CPR Part 24 the claimant makes an affidavit of service for the purpose of a judgment where the defendant failed to respond to the claim form (the allowance to include the search fee)	£20.50
(5) In the case of summary judgment under CPR Part 24 where an affidavit of service of the Part 23 application is required	£20.50
(6) In the case of summary judgment under CPR Part 24 for each adjournment of the application	£20.50

### *Part III*

#### **Miscellaneous**

This Part shows the amount to be allowed in respect of enforcement costs.

**2.** Where a certificate in respect of money provisions contained in a judgment is registered in the High Court in the Register of United Kingdom judgments under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982<sup>(89)</sup>, there shall be allowed—

Costs of registration ... ..

**2A.** Where costs are allowed under the following paragraphs of this Part, the appropriate court fees shall be allowed in addition.

**3.** Where, upon the application of any person who has obtained a judgment or order against a debtor for the recovery or payment of money,

<sup>(89)</sup> 1982 c. 27.

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a garnishee order is made under Order 49 rule 1, against a garnishee attaching debts due or accruing due from the debtor, the following costs shall be allowed—

- (a) to the garnishee to be deducted by him from any debt due by him as aforesaid before payment to the applicant ... ..
- (b) (b) to the applicant, to be retained, one half of the amount recovered unless the Court otherwise orders, out of the money recovered by him under the garnishee order and in priority to the amount of the debt owing to him under the judgment or order—

(i) Basic costs

If the amount recovered by the applicant from the garnishee is—  
less than £150 ... ..

not less than £150 ... .. £98.50

(ii) Additional costs £18.00

Where the garnishee fails to attend the hearing of the application and an affidavit of service is required ... ..

4. Where a charging order is granted and made absolute there shall be allowed— £110.00

Basic costs ... ..

Additional costs where an affidavit of service is required ... .. £18.00

together with such reasonable disbursements in respect of search fees and the registration of the order as the Court may allow.

5. Where leave is given under Order 45, rule 3, to enforce a judgment or order for the giving of possession of land by writ of possession, if the costs are allowed on the judgment or order there shall be allowed the following costs, which shall be added to the judgment or order— £42.50

Basic costs ... ..

Where notice of the proceedings has been given to more than one person, in respect of each additional person ... .. £2.75

6. Where a writ of execution within the meaning of Order 46, rule 1, is issued against any party, there shall be allowed— £51.75

Costs of issuing execution ... ..

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
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## RSC ORDER 64 **E+W**

### SITTINGS, VACATIONS AND OFFICE HOURS

#### Divisional Court business during vacation **E+W**

**Rule 4** Proceedings which require to be immediately or promptly heard and which by virtue of the following provisions must be brought in a Divisional Court may, in vacation, be brought before a single judge:

- (a) Order 52, rules 1 (2) and 3 (1);
- <sup>F239</sup>(b) .....
- <sup>F240</sup>(c) .....
- <sup>F240</sup>(d) .....

#### Textual Amendments

- F239** Sch. 1 RSC Order 64 rule 4(b) revoked (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **25**
- F240** Sch. 1 RSC Order 64 rule 4(c)(d) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

## RSC ORDER 69 **E+W**

### SERVICE OF FOREIGN PROCESS

#### Definitions **E+W**

**Rule 1** In this Order—

- “a convention country” means a foreign country in relation to which there subsists a civil procedure convention providing for service in that country of process of the High Court, and includes a country which is a party to the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at the Hague on 15 November 1965;
- “officer of the county court” means any clerk or bailiff in the service of a county court;
- “process” includes a citation;
- “process server” means the process server appointed under rule 4 or his authorised agent;

#### Applications **E+W**

**Rule 2** This Order applies to the service on a person in England or Wales of any process in connection with civil or commercial proceedings in a foreign court or tribunal where the Senior Master receives a written request for service—

- (a) from Her Majesty’s Principal Secretary of State for Foreign and Commonwealth Affairs, with a recommendation by him that service should be effected; or
- (b) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country.

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### Service of process **E+W**

**Rule 3.**—(1) The request shall be accompanied by a translation thereof in English, two copies of the process and, unless the foreign court or tribunal certifies that the person to be served understands the language of the process, two copies of a translation thereof.

(2) Subject to paragraphs (3) and (5) and to any enactment providing for the manner of service of documents on corporate bodies, the process shall be served by the process server’s leaving a copy of the process and a copy of the translation or certificate, as the case may be, with the person to be served.

(3) The provisions of CPR rule 6.2(1)(c) and CPR rule 6.7 regarding service by leaving at a place specified in CPR rule 6.5, shall apply to the service of foreign process as they apply to the service of claim form, except that service may be proved by a witness statement or affidavit or by a certificate or report in such form as the Senior Master may direct.

(4) The process server shall send to the Senior Master a copy of the process and a witness statement or affidavit, certificate or report proving due service of process or stating the reason why service could not be effected, as the case may be, and shall, if the Court so directs, specify the costs incurred in effecting or attempting to effect service.

(5) CPR rule 6.8 (Service by an alternative method) shall apply to the service of foreign process as it applies to the service of claim forms, except that the Senior Master may make an order for alternative service of foreign process on the basis of the process server’s witness statement or affidavit, certificate or report, without an application being made to him in that behalf.

(6) The Senior Master shall send a certificate, together with a copy of the process, to the consular or other authority or the Secretary of State, as the case may be, stating—

- (i) when and how service was effected or the reason why service could not be effected, as the case may be;
- (ii) where appropriate, the amount certified by the costs judge to be the costs of effecting or attempting to effect service.

(7) The certificate under paragraph (6) shall be sealed with the seal of the Supreme Court for use out of the jurisdiction.

### Appointment of process server **E+W**

**Rule 4** The Lord Chancellor may appoint a process server for the purposes of this Order.

## RSC ORDER 70 **E+W**

### OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.

#### Interpretation and exercise of jurisdiction **E+W**

**Rule 1.**—(1) In this Order “the Act of 1975” means the Evidence (Proceedings in Other Jurisdictions) Act 1975(90) and expressions used in this Order which are used in that Act shall have the same meaning as in that Act.

(2) The power of the High Court to make an order under section 2 of the Act of 1975 may be exercised by a master of the Queen’s Bench Division.

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(90) 1975 c. 34.

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### **Application for order** E+W

**Rule 2.**—(1) Subject to paragraph (3) and rule 3 an application for an order under the Act of 1975 must be made without notice being served on any other party and must be supported by witness statement or affidavit.

(2) There shall be exhibited to the witness statement or affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.

(3) Where on an application under section 1 of the Act of 1975 as applied by section 92 of the Patents Act 1977<sup>(91)</sup> an order is made for the examination of witnesses the Court may allow an officer of the European Patent Office to attend the examination and examine the witnesses or request the Court or the examiner before whom the examination takes place to put specified questions to them.

### **Application by Treasury Solicitor in certain cases** E+W

**Rule 3.** Where a request

- (a) is received by the Secretary of State and sent by him to the Senior Master with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in England of any party to the matter pending or contemplated before the foreign court or tribunal; or
- (b) is received by the Senior Master in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in England or Wales for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such party,

the Senior Master shall send the document to the Treasury Solicitor and the Treasury Solicitor may, with the consent of the Treasury, make an application for an order under the Act of 1975, and take such other steps as may be necessary, to give effect to the request.

### **Person to take and manner of taking examination** E+W

**Rule 4.**—(1) Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before an examiner of the Court or before such other qualified person as to the Court seems fit.

(2) Subject to rule 6 and to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in manner provided by CPR rules 34.9 and 34.10 and an order may be made under CPR rule 34.14, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

### **Dealing with deposition** E+W

**Rule 5** Unless any order made in pursuance of this Order for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Senior Master, and the Senior Master shall—

- (a) give a certificate sealed with the seal of the Supreme Court for use out of the jurisdiction identifying the documents annexed thereto, that is to say, the request, the order of the Court for examination and the deposition taken in pursuance of the order; and

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(91) 1977 c. 37.



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- (b) send the certificate with the documents annexed thereto to the Secretary of State, or, where the request was sent to the Senior Master by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to the court or tribunal out of the jurisdiction requesting the examination.

### **Claim to privilege** **E+W**

**Rule 6.**—(1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 3 (1)(b) of the Act of 1975 is not supported or conceded as mentioned in subsection (2) of that section.

(2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so, the Court may do so, on the application without notice being served on any other party of the person who obtained the order under section 2.

(3) If such evidence is taken—

- (a) it must be contained in a document separate from the remainder of the deposition of the witness;
- (b) the examiner shall send to the Senior Master with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;
- (c) on receipt of the statement the Senior Master shall, notwithstanding anything in rule 5, retain the document containing the part of the witness' evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;
- (d) if the claim is rejected by the foreign court or tribunal, the Senior Master shall send to that court or tribunal the document containing that part of the witness' evidence to which the claim relates, but if the claim is upheld he shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 2 of the court or tribunal's determination.

## **RSC ORDER 71** **E+W**

### **RECIPROCAL ENFORCEMENT OF JUDGMENTS AND ENFORCEMENT OF EUROPEAN COMMUNITY JUDGMENTS AND RECOMMENDATIONS ETC. UNDER THE MERCHANT SHIPPING (LINER CONFERENCES) ACT 1982(92)**

#### **I. Reciprocal Enforcement: the Administration of Justice Act 1920(93) and the Foreign Judgments (Reciprocal Enforcement) Act 1933(94)** **E+W**

#### **Powers under relevant Acts exercisable by judge or master** **E+W**

**Rule 1** The powers conferred on the High Court by Part II of the Administration of Justice Act 1920 (in this Part of this Order referred to as the “Act of 1920”) or Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (in this Part of this Order referred to as the “Act of 1933”) may be exercised by a judge and a master of the Queen’s Bench Division <sup>F241</sup>....

(92)

1982 c. 37.

(93) 1920 c. 81.

(94) 1933 c. 13, section 2 was amended by the Administration of Justice Act 1977 (c. 38), section 4, 32(4), schedule 5, Part 1; section 4 was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), section 54, schedule 14.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

### Textual Amendments

**F241** Words in Sch. 1 RSC Order 71 rule 1 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **62(e)**

### Application for registration **E+W**

**Rule 2.**—(1) An application—

- (a) under section 9 of the Act of 1920, in respect of a judgment obtained in a superior court in any part of Her Majesty’s dominions or other territory to which Part II of that Act applies; or
- (b) under section 2 of the Act of 1933, in respect of a judgment to which Part I of that Act applies,

to have the judgment registered in the High Court may be made without notice being served on any other party, but the Court hearing the application may direct that a claim form be filed and served.

### Evidence in support of application **E+W**

**Rule 3.**—(1) An application for registration must be supported by a witness statement or affidavit—

- (a) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof, and where the judgment is not in the English language, a translation thereof in that language certified by a notary public or authenticated by witness statement or affidavit;
- (b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the witness;
- (c) stating to the best of the information or belief of the witness—
  - (i) that the judgment creditor is entitled to enforce the judgment;
  - (ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or the amount in respect of which it remains unsatisfied;
  - (iii) where the application is made under the Act of 1920, that the judgment does not fall within any of the cases in which a judgment may not be ordered to be registered under section 9 of that Act;
  - (iv) where the application is made under the Act of 1933, that at the date of the application the judgment can be enforced by execution in the country of the original court and that, if it were registered, the registration would not be, or be liable to be, set aside under section 4 of that Act;
- (d) specifying, where the application is made under the Act of 1933, the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration;
- (e) verifying that the judgment is not a judgment to which section 5 of the Protection of Trading Interests Act 1980(**95**) applies.

(2) Where a judgment sought to be registered under the Act of 1933 is in respect of different matters, and some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the witness statement or affidavit must state the provisions in respect of which it is sought to register the judgment.

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(95) 1980 c. 11.

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(3) In the case of an application under the Act of 1933, the witness statement or affidavit must be accompanied by such other evidence with respect to the enforceability of the judgment by execution in the country of the original court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the Order in Council extending that Act to that country.

#### **Security for costs** E+W

**Rule 4** Save as otherwise provided by any relevant Order in Council, the Court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

#### **Order for registration** E+W

**Rule 5.**—(1) An order giving permission to register a judgment must be drawn up by, or on behalf of, the judgment creditor.

(2) Except where the order is made by claim form, no such order need be served on the judgment debtor.

(3) Every such order shall state the period within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.

(4) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

#### **Register of judgments** E+W

**Rule 6.**—(1) There shall be kept in the Central Office of the Supreme Court under the direction of the Senior Master a register of the judgments ordered to be registered under the Act of 1920 and a register of the judgments ordered to be registered under the Act of 1933.

(2) There shall be included in each such register particulars of any execution issued on a judgment ordered to be so registered.

#### **Notice of registration** E+W

**Rule 7.**—(1) Notice of the registration of a judgment must be served on the judgment debtor by delivering it to him personally or by sending it to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(2) Permission is not required to serve such a notice out of the jurisdiction, and [F242CPR rules 6.24, 6.25 and 6.29], shall apply in relation to such a notice as they apply in relation to a claim form.

(3) The notice of registration must state—

- (a) full particulars of the judgment registered and the order for registration;
- (b) the name and address of the judgment creditor or of his solicitor or agent on whom, and at which, any application notice or other document issued by the judgment debtor may be served;
- (c) the right of the judgment debtor to apply to have the registration set aside; and
- (d) the period within which an application to set aside the registration may be made.

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**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

### Textual Amendments

**F242** Words in Sch. 1 RSC Order 71 rule 7(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **22(a)**

### Application to set aside registration **E+W**

**Rule 9.**—(1) An application to set aside the registration of a judgment must be made in accordance with CPR Part 23 and be supported by witness statement or affidavit.

(2) The Court hearing such application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in a claim may be ordered to be tried.

(3) Where the Court hearing an application to set aside the registration of a judgment registered under the Act of 1920 is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under s.9 of that Act or that it is not just or convenient that the judgment should be enforced in England or Wales or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

### Issue of execution **E+W**

**Rule 10.**—(1) Execution shall not issue on a judgment registered under the Act of 1920 or the Act of 1933 until after the expiration of the period which, in accordance with rule 5 (3) is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the Court, until after the expiration of that period as so extended.

(2) If an application is made to set aside the registration of a judgment, execution on the judgment shall not issue until after such application is finally determined.

(3) Any party wishing to issue execution on a judgment registered under the Act of 1920 or the Act of 1933 must produce to the court officer a witness statement or affidavit of service of the notice of registration of the judgment and any order made by the Court in relation to the judgment.

### Determination of certain questions **E+W**

**Rule 11** If, in any case under the Act of 1933, any question arises whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, that question shall be determined in accordance with the provisions in that behalf contained in the Order in Council extending Part I of that Act to that country.

### Rules to have effect subject to Orders in Council **E+W**

**Rule 12** The foregoing rules shall, in relation to any judgment registered or sought to be registered under the Act of 1933, have effect subject to any such provisions contained in the Order in Council extending Part I of that Act to the country of the original court as are declared by the Order to be necessary for giving effect to the agreement made between Her Majesty and that country in relation to matters with respect to which there is power to make those rules.

### Certified copy of High Court judgment **E+W**

**Rule 13.**—(1) An application under section 10 of the Act of 1920 or section 10 of the Act of 1933 for a certified copy of a judgment entered in the High Court must be made without notice being

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served on any other party on witness statement or affidavit to a master or, in the case of a judgment given in proceedings in the Family Division, to a district judge of that Division.

(2) A witness statement or affidavit by which an application under section 10 of the Act of 1920 is made must give particulars of the judgment, show that the judgment creditor wishes to secure the enforcement of the judgment in a part (stating which) of Her Majesty's dominions outside the United Kingdom to which Part II of that Act extends and state the name, trade or business and the usual or last known place of abode of the judgment creditor and the judgment debtor respectively, so far as known to the witness.

(3) A witness statement or affidavit by which an application under section 10 of the Act of 1933 is made must—

- (a) give particulars of the proceedings in which the judgment was obtained;
- (b) have annexed to it a copy of the claim form by which the proceedings were begun, the evidence of service thereof on the defendant, copies of the statements of case or pleadings, if any, and a statement of the grounds on which the judgment was based;
- (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;
- (d) show that the judgment is not subject to any stay of execution;
- (e) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been entered; and
- (f) state the rate at which the judgment carries interest.

(4) The certified copy of the judgment shall be an office copy sealed with the seal of the Supreme Court and indorsed with a certificate signed by a master or, where appropriate, a district judge or a registrar certifying that the copy is a true copy of a judgment obtained in the High Court of England and that it is issued in accordance with section 10 of the Act of 1920 or section 10 of the Act of 1933, as the case may be.

(5) Where the application is made under section 10 of the Act of 1933 there shall also be issued a certificate (signed by a master or, where appropriate, a district judge or a registrar and sealed with the seal of the Supreme Court) having annexed to it a copy of the claim form or other process by which the proceedings were begun, and stating—

- (a) the manner in which the claim form was served on the defendant or that the defendant acknowledged service thereof;
- (b) what objections, if any, were made to the jurisdiction;
- (c) what statements of case, if any, were served;
- (d) the grounds on which the judgment was based;
- (e) that the time for appealing has expired or, as the case may be, the date on which it will expire;
- (f) whether notice of appeal against the judgment has been entered; and
- (g) such other particulars as it may be necessary to give to the court in the foreign country in which it is sought to obtain execution of the judgment,

and a certificate (signed and sealed as aforesaid) stating the rate at which the judgment carries interest.

## II. Enforcement of European Community Judgments **E+W**

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## Interpretation **E+W**

**Rule 15** In this Part of this Order “the Order in Council” means the European Communities (Enforcement of Community Judgments) Order 1972(96), and expressions used in the Order in Council shall, unless the context otherwise requires, have the same meanings as in that Order.

## Functions under Order in Council exercisable by judge or master **E+W**

**Rule 16** The functions assigned to the High Court by the Order in Council may be exercised by a judge and a master of the Queen’s Bench Division <sup>F243</sup>....

### Textual Amendments

**F243** Words in [Sch. 1 RSC Order 71 rule 16](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [62\(e\)](#)

## Application for registration of Community judgment, etc. **E+W**

**Rule 17** An application for the registration in the High Court of a Community judgment or Euratom inspection order may be made without notice being served on any other party.

## Evidence in support of application **E+W**

**Rule 18.**—(1) An application for registration must be supported by a witness statement or affidavit exhibiting—

- (a) the Community judgment and the order for its enforcement or, as the case may be, the Euratom inspection order or, in either case, a duly authenticated copy thereof, and
- (b) where the Community judgment or Euratom inspection order is not in the English language, a translation into English certified by a notary public or authenticated by witness statement or affidavit.

(2) Where the application is for registration of a Community judgment under which a sum of money is payable, the witness statement or affidavit shall also state—

- (a) the name and occupation and the usual or last known place of abode or business of the judgment debtor, so far as known to the witness; and
- (b) to the best of the witness’s information and belief that at the date of the application the European Court has not suspended enforcement of the judgment and that the judgment is unsatisfied or, as the case may be, the amount in respect of which it remains unsatisfied.

## Register of judgments and orders **E+W**

**Rule 19.**—(1) There shall be kept in the Central Office of the Supreme Court under the direction of the Senior Master a register of the Community judgments and Euratom inspection orders registered under the Order in Council.

(2) There shall be included in the register particulars of any execution issued on a judgment so registered.

(96) [S.I. 1972/1590](#) as amended by [S.I. 1998/1259](#).

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### Notice of registration **E+W**

**Rule 20.**—(1) Upon registering a Community judgment or Euratom inspection order, the court shall forthwith send notice of the registration to every person against whom the judgment was given or the order was made.

(2) The notice of registration shall have annexed to it a copy of the registered Community judgment and the order for its enforcement or, as the case may be, a copy of the Euratom inspection order, and shall state the name and address of the person on whose application the judgment or order was registered or of his solicitor or agent on whom process may be served.

(3) Where the notice relates to a Community judgment under which a sum of money is payable, it shall also state that the judgment debtor may apply within 28 days of the date of the notice, or thereafter with the permission of the Court, for the variation or cancellation of the registration on the ground that the judgment had been partly or wholly satisfied at the date of registration.

### Issue of execution **E+W**

**Rule 21** Execution shall not issue without the permission of the Court on a Community judgment under which a sum of money is payable until the expiration of 28 days after the date of notice of registration of the judgment or, as the case may be, until any application made within that period for the variation or cancellation of the registration has been determined.

### Application to vary or cancel registration **E+W**

**Rule 22** An application for the variation or cancellation of the registration of a Community judgment on the ground that the judgment had been wholly or partly satisfied at the date of registration shall be made [<sup>F244</sup>in accordance with CPR Part 23 and] supported by witness statement or affidavit.

#### Textual Amendments

**F244** Words in Sch. 1 RSC Order 71 rule 22 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **22(b)**

### Application for registration of suspension order **E+W**

**Rule 23** An application for the registration in the High Court of an order of the European Court that enforcement of a registered Community judgment be suspended may be made without notice being served on any other party by lodging a copy of the order in the Central Office of the Supreme Court.

### Application for enforcement of Euratom inspection order **E+W**

**Rule 24** An application for an order under Article 6 of the Order in Council for the purpose of ensuring that effect is given to a Euratom inspection order may, in case of urgency, be made without notice being served on any other party on witness statement or affidavit but, except as aforesaid, shall be made by claim form.

## III. Reciprocal Enforcement: the Civil Jurisdiction and Judgments Act 1982(97) **E+W**

(97) [1982 c. 27](#); section 1 was amended by [S.I. 1989/1346](#), [1990/2591](#), and by the Civil Jurisdiction and Judgments Act [1991 \(c. 12\)](#), section 2.



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## Interpretation **E+W**

**Rule 25.**—(1) In this Part of this Order—

“the Act of 1982” means the Civil Jurisdiction and Judgments Act 1982:

“Convention territory” means the territory or territories of any Contracting State, as defined by s.1 (3) of the Act of 1982, to which the Brussels Convention or the Lugano Convention as defined in s.1 (1) of the Act of 1982 apply;

“judgment” is to be construed in accordance with the definition of “judgment” in s.50 of the Act of 1982;

“money provision” means a provision for the payment of one or more sums of money;

“non-money provision” means a provision for any relief or remedy not requiring payment of a sum of money;

“protective measures” means the protective measures referred to in Art 39 of Schedule 1 or of Schedule 3C to the Act of 1982.

(2) For the purposes of this Part of this Order domicile is to be determined in accordance with the provisions of ss.41 to 46 of the Act of 1982.

## Assignment of business and exercise of powers **E+W**

**Rule 26** Any application to the High Court under the Act of 1982 shall be assigned to the Queen’s Bench Division.

## Application for registration **E+W**

**Rule 27** An application for registration of a judgment under s.4 of the Act of 1982 shall be made without notice being served on any other party.

## Evidence in support of application **E+W**

**Rule 28.**—(1) An application for registration under s.4 of the Act of 1982 must be supported by a witness statement or affidavit—

(a) exhibiting—

- (i) the judgment or a verified or certified or otherwise duly authenticated copy thereof together with such other document or documents as may be requisite to show that, according to the law of the State in which it has been given, the judgment is enforceable and has been served;
- (ii) in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document;
- (iii) where it is the case, a document showing that the party making the application is in receipt of legal aid in the State in which the judgment was given;
- (iv) where the judgment or document is not in the English language, a translation thereof into English certified by a notary public or a person qualified for the purpose in one of the Contracting States or authenticated by witness statement or affidavit;

(b) stating—

- (i) whether the judgment provides for the payment of a sum or sums of money;
- (ii) whether interest is recoverable on the judgment or part thereof in accordance with the law of the State in which the judgment was given, and if such be the case, the



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- rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue;
- (c) giving an address within the jurisdiction of the Court for service of process on the party making the application and stating, so far as is known to the witness, the name and the usual or last known address or place of business of the person against whom judgment was given;
  - (d) stating to the best of the information or belief of the witness—
    - (i) the grounds on which the right to enforce the judgment is vested in the party making the application;
    - (ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or the part or amount in respect of which it remains unsatisfied.
- (2) Where the party making the application does not produce the documents referred to in paragraphs (1)(a)(ii) and (iii) of this rule, the Court may—
- (a) fix a time within which the documents are to be produced; or
  - (b) accept equivalent documents; or
  - (c) dispense with production of the documents.

#### Security for costs **E+W**

**Rule 29** Notwithstanding the provisions of [<sup>F245</sup>Section II of CPR Part 25] a party making an application for registration under section 4 of the Act of 1982 shall not be required solely on the ground that he is not domiciled or resident within the jurisdiction, to give security for costs of the application.

#### Textual Amendments

**F245** Words in [Sch. 1 RSC Order 71 rule 29](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **22(c)**

#### Order for registration **E+W**

**Rule 30.**—(1) An order giving permission to register a judgment under section 4 of the Act of 1982 must be drawn up by or on behalf of the party making the application for registration.

(2) Every such order shall state the period within which an appeal may be made against the order for registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.

(3) The notification referred to in paragraph (2) shall not prevent any application for protective measures pending final determination of any issue relating to enforcement of the judgment.

#### Register of judgments registered under s.4 of the Act of 1982 **E+W**

**Rule 31** There shall be kept in the Central Office of the Supreme Court under the direction of the Senior Master a register of the judgments ordered to be registered under section 4 of the Act of 1982.

#### Notice of registration **E+W**

**Rule 32.**—(1) Notice of the registration of a judgment must be served on the person against whom judgment was given by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the Court may direct.

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(2) Permission is not required to serve such a notice out of the jurisdiction and [F246CPR rules 6.24, 6.25 and 6.29] shall apply in relation to such a notice as they apply in relation to a claim form.

(3) The notice of registration must state—

- (a) full particulars of the judgment registered and the order for registration;
- (b) the name of the party making the application and his address for service within the jurisdiction;
- (c) the right of the person against whom judgment was given to appeal against the order for registration; and
- (d) the period within which an appeal against the order for registration may be made.

#### Textual Amendments

**F246** Words in Sch. 1 RSC Order 71 rule 32(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **22(d)**

### Appeals **E+W**

**Rule 33.**—(1) An appeal under Article 37 or Article 40 of Schedule 1 or 3C to the Act of 1982 must be made to a judge by application in accordance with CPR Part 23.

(2) [F247An application notice] in an appeal to which this rule applies must be served—

- (a) in the case of an appeal under the said Article 37 of Schedule 1 or 3C, within one month of service of notice of registration of the judgment, or two months of service of such notice where that notice was served on a party not domiciled within the jurisdiction;
- (b) in the case of an appeal under the said Article 40 of Schedule 1 or 3C, within one month of the determination of the application under rule 27.

(3) If the party against whom judgment was given is not domiciled in a Convention territory and an application is made within two months of service of notice of registration, the Court may extend the period within which an appeal may be made against the order for registration.

#### Textual Amendments

**F247** Words in Sch. 1 RSC Order 71 rule 33(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **22(e)**

### Issue of execution **E+W**

**Rule 34.**—(1) Execution shall not issue on a judgment registered under s.4 of the Act of 1982 until after the expiration of the period specified in accordance with rule 30 (2) or, if that period has been extended by the Court, until after the expiration of the period so extended.

(2) If an appeal is made under rule 33 (1) execution on the judgment shall not issue until after such appeal is determined.

(3) Any party wishing to issue execution on a judgment registered under section 4 of the Act of 1982 must produce to the court officer a witness statement or affidavit of service of the notice of registration of the judgment and of any order made by the Court in relation to the judgment.

(4) Nothing in this rule shall prevent the Court from granting protective measures pending final determination of any issue relating to enforcement of the judgment.

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### **Application for recognition** **E+W**

**Rule 35.**—(1) Registration of the judgment under these rules shall serve for the purposes of the second paragraph of Article 26 of Schedule 1 or 3C to the Act of 1982 as a decision that the judgment is recognised.

(2) Where it is sought to apply for recognition of a judgment, the foregoing rules of this Order shall apply to such application as they apply to an application for registration under section 4 of the Act, with the exception that the applicant shall not be required to produce a document or documents which establish that according to the law of the State in which it has been given the judgment is enforceable and has been served, or the document referred to in rule 28 (1)(a)(iii).

### **Enforcement of High Court judgments in other Contracting States** **E+W**

**Rule 36.**—(1) An application under section 12 of the Act of 1982 for a certified copy of a judgment entered in the High Court must be made without notice being served on any other party on witness statement or affidavit to the Court.

(2) a witness statement or affidavit by which an application under section 12 of the Act of 1982 is made must—

- (a) give particulars of the proceedings in which the judgment was obtained;
- (b) have annexed to it a copy of the claim form, by which the proceedings were begun, the evidence of service thereof on the defendant, copies of the statements of case, if any, and a statement of the grounds on which the judgment was based together, where appropriate, with any document under which the applicant is entitled to legal aid or assistance by way of representation for the purposes of the proceedings;
- (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;
- (d) show that the judgment has been served in accordance with CPR Part 6 and CPR rule 40.4 and is not subject to any stay of execution;
- (e) state that the time for appealing has expired, or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been given; and
- (f) state—
  - (i) whether the judgment provides for the payment of a sum or sums of money;
  - (ii) whether interest is recoverable on the judgment or part thereof and if such be the case, the rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue.

(3) The certified copy of the judgment shall be an office copy sealed with the seal of the Supreme Court and there shall be issued with the copy of the judgment a certificate in Form 110, signed by a High Court judge, the Admiralty Registrar, a master or a district judge and sealed with the seal of the Supreme Court, having annexed to it a copy of the claim form by which the proceedings were begun.

### **Enforcement of United Kingdom judgments in other parts of the United Kingdom: money provisions** **E+W**

**Rule 37.**—(1) An application for registration in the High Court of a certificate in respect of any money provisions contained in a judgment given in another part of the United Kingdom to which section 18 of the Act of 1982 applies may be made by producing at the Central Office of the Supreme Court, within six months from the date of its issue, a certificate in the appropriate form prescribed under that Act together with a copy thereof certified by the applicant's solicitor to be a true copy.

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(2) A certificate under paragraph (1) must be filed in the Central Office of the Supreme Court and the certified copy thereof, sealed by an officer of the office in which the certificate is filed, shall be returned to the applicant's solicitor.

(3) A certificate in respect of any money provisions contained in a judgment of the High Court to which section 18 of the Act of 1982 applies may be obtained by producing the form of certificate prescribed in Form 111 at the office in which the judgment is entered, together with a witness statement or affidavit made by the party entitled to enforce the judgment—

- (a) giving particulars of the judgment, stating the sum or aggregate of the sums (including any costs or expenses) payable and unsatisfied under the money provisions contained in the judgment, the rate of interest, if any, payable thereon and the date or time from which any such interest began to accrue;
- (b) verifying that the time for appealing against the judgment has expired, or that any appeal brought has been finally disposed of and that enforcement of the judgment is not stayed or suspended; and
- (c) stating to the best of the information or belief of the witness the usual or last known address of the party entitled to enforce the judgment and of the party liable to execution on it.

#### **Enforcement of United Kingdom judgments in other parts of the United Kingdom: non-money provisions** E+W

**Rule 38.**—(1) An application for registration in the High Court of a judgment which contains non-money provisions, being a judgment given in another part of the United Kingdom to which section 18 of the Act of 1982 applies, may be made without notice being served on any other party, but the Court hearing the application may direct a claim form to be filed and served to which <sup>F248</sup> ... rule 2 shall apply.

(2) An application under paragraph (1) must be accompanied by a certified copy of the judgment issued under Schedule 7 to the Act of 1982 and a certificate in the appropriate form prescribed for the purposes of paragraph 4 (1)(b) of that Schedule issued not more than six months before the date of application.

(3) Rules 30 and 32 of this Order shall apply to judgments registered under Schedule 7 to the Act of 1982 as they apply to judgments registered under section 4 of that Act.

(4) Paragraphs (1) and (2) of rule 9 shall apply to applications to set aside registration of a judgment under Schedule 7 to the Act of 1982 as they apply to judgments registered under the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933.

(5) A certified copy of a judgment of the High Court to which section 18 of the Act of 1982 applies and which contains any non-money provision may be obtained by an application on witness statement or affidavit to the Court.

(5A) An application referred to in paragraph (5) need not be served on any other party.

(6) The requirements in paragraph (3) of rule 37 shall apply with the necessary modifications to a witness statement or affidavit made in an application under paragraph (5) of this rule.

(7) A certified copy of a judgment shall be an office copy sealed with the seal of the Supreme Court to which shall be annexed a certificate in Form 112.

#### **Textual Amendments**

**F248** Words in [Sch. 1 RSC Order 71 rule 38\(1\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 38

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## Register of United Kingdom judgments **E+W**

**Rule 39** There shall be kept in the Central Office of the Supreme Court under the direction of the Senior Master a register of the certificates in respect of judgments and of the judgments ordered to be registered in the Central Office of the Supreme Court under Schedule 6, or, as the case may be, Schedule 7 to the Act.

## Authentic Instruments and Court Settlements **E+W**

**Rule 39A** Rules 27 to 35 inclusive (except rule 28 (1)(a)(ii)) shall apply to:

(1) an authentic instrument to which either article 50 of Schedule 1 to the Act of 1982 or article 50 of Schedule 3C to the Act applies; and

(2) a settlement to which either article 51 of Schedule 1 to the Act of 1982 or article 51 of Schedule 3C to that Act applies,

as they apply to a judgment subject to any necessary modifications.

## IV. Enforcement of Recommendations etc. Under the Merchant Shipping (Liner Conferences) Act 1982(98) **E+W**

### Exercise of powers **E+W**

**Rule 40** The powers conferred on the High Court under the Merchant Shipping (Liner Conferences) Act 1982 (in this Part of this Order referred to as “the Act of 1982”) may be exercised by a Commercial Judge.

### Application for registration **E+W**

**Rule 41** An application under section 9 of the Act of 1982 for the registration of a recommendation, determination or award, shall be made by claim form.

### Evidence in support of application **E+W**

**Rule 42.**—(1) An application under section 9 of the Act of 1982 for the registration of a recommendation must be supported by a witness statement or affidavit—

- (a) exhibiting a verified or certified or otherwise duly authenticated copy of the recommendation and the reasons therefor and of the record of settlement;
- (b) where the recommendation and reasons or the record of settlement is not in the English language, a translation thereof into English certified by a notary public or authenticated by witness statement or affidavit;
- (c) exhibiting copies of the acceptance of the recommendation by the parties upon whom it is binding, where the acceptance was in writing, or otherwise verifying the acceptance;
- (d) giving particulars of the failure to implement the recommendation; and
- (e) verifying that none of the grounds which would render the recommendation unenforceable under section 9(2) of the Act of 1982 is applicable.

(2) An application under section 9 of the Act of 1982 for the registration of a determination or award as to costs must be supported by a witness statement or affidavit—

- (a) exhibiting a verified or certified or otherwise duly authenticated copy of the recommendation or other document containing the pronouncement on costs; and

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(b) stating that such costs have not been paid.

**Order for registration** E+W

**Rule 43.**—(1) An order giving permission to register a recommendation, determination or award under section 9 of the Act of 1982 must be drawn up by or on behalf of the party making the application for registration.

(2) Such an order shall contain a provision that the reasonable costs of registration be taxed.

**Register of recommendations etc.** E+W

**Rule 44.**—(1) There shall be kept in the Admiralty and Commercial Registry under the direction of the Senior Master a register of the recommendations, determinations and awards ordered to be registered under section 9 of the Act of 1982.

(2) There shall be included in such register particulars of the enforcement of a recommendation, determination or award so registered.

**RSC ORDER 74** E+W  
**APPLICATIONS AND APPEALS UNDER  
THE MERCHANT SHIPPING ACT 1995(99)**

**Assignment of proceedings** E+W

**Rule 1.**—(1) Subject to paragraph (2), proceedings by which any application is made to the High Court under the Merchant Shipping Act 1995 shall be assigned to the Queen’s Bench Division and taken by the Admiralty Court.

**Appeals and re-hearings** E+W

<sup>F249</sup>**Rule 2** .....

**Textual Amendments**  
**F249** Sch. 1 RSC Order 74 rule 2 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

**RSC ORDER 77** E+W  
**PROCEEDINGS BY AND AGAINST THE CROWN**

**Application and interpretation** E+W

**Rule 1.**—(1) These rules apply to civil proceedings to which the Crown is a party subject to the following rules of this Order.

(2) In this Order—

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“civil proceedings by the Crown”, “civil proceedings against the Crown” and “civil proceedings by or against the Crown” have the same respective meanings as in Part II of the Crown Proceedings Act 1947(100), and do not include any of the proceedings specified in section 23(3) of that Act;

“civil proceedings to which the Crown is a party” has the same meaning as it has for the purposes of Part IV of the Crown Proceedings Act 1947, by virtue of section 38 (4) of that Act;

“order against the Crown” means any order (including an order for costs) made in any civil proceedings by or against the Crown or in any proceedings on the Crown side of the Queen’s Bench Division, or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a government department or against an officer of the Crown as such;

“order” includes a judgment, decree, rule, award or declaration.

### **Transfer of proceedings** E+W

**Rule 2.**—(1) Subject to paragraph (2) in civil proceedings by or against the Crown no order shall be made under CPR Part 30 for the transfer of the proceedings, or of any application therein, from the Royal Courts of Justice to a district registry, except with the consent of the Crown.

(2) In any civil proceedings against the Crown begun by the issue of a claim form out of a district registry the Crown may acknowledge service of the claim form either in the district registry or, at the option of the Crown, in the appropriate office of the Supreme Court at the Royal Courts of Justice, and where service is acknowledged in an office of the Supreme Court at the Royal Courts of Justice the claim shall thereafter proceed in the Royal Courts of Justice and no order shall be made under CPR Part 30 for the transfer of any proceedings before the trial from the Royal Courts of Justice to a district registry.

### **Particulars to be included in claim form** E+W

**Rule 3.**—(1) In the case of a claim form which begins civil proceedings against the Crown the contents of the claim form required by CPR rule 16.2 shall include a statement of the circumstances in which the Crown’s liability is alleged to have arisen and as to the government department and officers of the Crown concerned.

(2) If in civil proceedings against the Crown a defendant considers that the claim form does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for acknowledging service of the claim form, apply to the claimant by notice for a further and better statement containing such information as may be specified in the notice.

(3) Where a defendant gives a notice under this rule, the time limited for acknowledging service of the claim form shall not expire until 4 days after the defendant has notified the claimant in writing that the defendant is satisfied with the statement supplied in compliance with the notice or 4 days after the Court has, on the application of the claimant in accordance with CPR Part 23, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.

(3A) An application notice under paragraph (3) shall be served on the defendant not less than 7 days before the hearing.

### **Service on the Crown** E+W

**Rule 4.**—(1) Order 11 and any other provision of these rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown are begun.

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(100)1947 c. 44.



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(2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Crown service on the Crown must be effected—

- (a) by leaving the document at the office of the person who is in accordance with section 18 of the Crown Proceedings Act 1947, to be served, or of any agent whom that person has nominated for the purpose, but in either case with a member of the staff of that person or agent; or
- (b) by posting it in a prepaid envelope addressed to the person who is to be served as aforesaid or to any such agent as aforesaid.

(3) Any document (other than a claim form) service of which is effected under paragraph 2(a) between 12 noon on a Saturday and midnight on the following day or after 4 in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Saturday or on the day following that other weekday, as the case may be.

(4) Where by virtue of these rules any document is required to be served on any person but is not required to be served personally and at the time when service is to be effected that person is in default as to acknowledgment of service or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these rules otherwise provides.

- (a) (5) (a) No process shall be served or executed within the jurisdiction on a Sunday except, in case of urgency, with the permission of the Court.
- (b) For the purposes of this rule “process” includes a claim form, judgment, application or other notice, order, petition, or warrant.

### Counterclaim and set-off **E+W**

**Rule 6.**—(1) A person may not in any proceedings by the Crown make any counterclaim or claim a set-off in his statement of case if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.

(2) No counterclaim may be made, or set-off claimed in its statements of case, without the permission of the Court, by the Crown in proceedings against the Crown, or by any person in proceedings by the Crown—

- (a) if the Crown is sued or sues in the name of a Government department and the subject-matter of the counterclaim or set-off does not relate to that department; or
- (b) if the Crown is sued or sues in the name of the Attorney-General.

(3) Any application for permission under this rule must be made by in accordance with CPR Part 23.

### Summary judgment **E+W**

**Rule 7.**—(1) No application shall be made against the Crown—

- (a) under CPR Part 24 <sup>F250</sup> ... in any proceedings against the Crown,
- (b) for summary judgment on a counterclaim under CPR Part 24 in any proceedings by the Crown.

(2) Where an application is made by the Crown under CPR Part 24 <sup>F250</sup> ... the affidavit or witness statement required in support of the application must be made by—

- (a) the solicitor acting for the Crown, or
- (b) an officer duly authorised by the solicitor so acting or by the department concerned



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and the witness statement or affidavit shall be sufficient if it states that in the belief of the witness the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

#### Textual Amendments

**F250** Words in [Sch. 1 RSC Order 77 rule 7](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **39(a)**

### Summary applications to the Court in certain revenue matters **E+W**

**Rule 8.**—(1) This rule applies to applications under section 14 of the Crown Proceedings Act 1947**(101)**.

(2) An application to which this rule applies shall be made by claim form.

(3) The person from whom any account or information or payment is claimed or by whom any books are required to be produced must be made a defendant to the application.

(4) A claim form under this rule—

(a) must be entitled in the matter or matters out of which the need for the application arises and in the matter of the Crown Proceedings Act 1947; and

(b) must refer to the enactment under which the account or information or payment or the production of books is claimed and, where information is claimed, must show (by appropriate questions or otherwise) what information is required.

(5) Upon any application to which this rule applies, a witness statement or affidavit by a duly authorised officer of the Government department concerned setting out the state of facts upon which the application is based and stating that he has reason to think that those facts exist shall be evidence of those facts; and if evidence is filed disputing any of those facts, further evidence may be filed and the Court may either decide the matter upon the witness statements or affidavits (after any cross-examination that may have been ordered) or may direct that it be decided by oral evidence in Court.

(6) An order in favour of the Crown on an application to which this rule applies shall, unless the Court otherwise determines, name a time within which each of its terms is to be complied with.

(8) Nothing in this rule shall, in relation to any case in which the only remedy claimed by the Crown is the payment of money, be construed as requiring the Crown to proceed by way of an application to which this rule applies or as preventing the Crown from availing itself of any other procedure which is open to it under these rules.

### Joinder of Commissioners of Inland Revenue **E+W**

**Rule 8A** Nothing in CPR rule 19.3 shall be construed as enabling the Commissioners of Inland Revenue to be added as a party to any proceedings except with their consent signified in writing or in such manner as may be authorised.

### Judgment in default **E+W**

**Rule 9.**—(1) Except with the permission of the Court, no judgment in default under CPR Part 12 shall be entered against the Crown in civil proceedings against the Crown.

(2) Except with the permission of the Court, a defendant shall not enter default judgment against the Crown as a third party.

**(101)** [1947 c. 44](#); section 14 was amended by the Finance Act [1975 \(c. 7\)](#), section 52(1), schedule 12, paragraph 28; by the Inheritance Tax Act [1984 \(c. 51\)](#), section 276, schedule 8, paragraph 2; and by the Finance Act [1972 \(c. 41\)](#), section 55.

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(3) An application for permission under this rule may be made by an application in accordance with CPR Part 23 and the application notice must be served not less than 7 days before the return day.

### Third party notices **E+W**

**Rule 10.**—(1) A Part 20 claim for service on the Crown, where the Crown is not already a party shall not be issued without the permission of the Court, and the application for the grant of such permission must be made by application in accordance with CPR Part 23, and the application notice must be served on the claimant and the Crown.

(2) Permission to issue such a claim for service on the Crown shall not be granted unless the Court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

### Interpleader: application for order against Crown **E+W**

**Rule 11** No order shall be made against the Crown under Order 17, rule 5 (3) except [<sup>F251</sup>by application, notice of which must be] served not less than 7 days before the return day.

#### Textual Amendments

**F251** Words in [Sch. 1 RSC Order 77 rule 11](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **39(b)**

### Disclosure and further information **E+W**

**Rule 12.**—(3) Where in any proceedings an order of the Court directs that a list of documents made in answer to an order for disclosure against the Crown shall be verified by witness statement or affidavit, the witness statement or affidavit shall be made by such officer of the Crown as the Court may direct.

(4) Where in any proceedings an order is made under the said section 28 for further information to be provided by the Crown, the Court shall direct by what officer of the Crown the further information is to be provided.

### Place of trial **E+W**

**Rule 13.**—(1) Civil proceedings by or against the Crown shall not, except with the consent of the Crown, be directed to be tried elsewhere than at the Royal Courts of Justice.

(2) Nothing in any of these rules shall prejudice the right of the Crown to demand a local venue for the trial of any proceedings in which the Attorney General has waived his right to a trial at bar.

### Evidence **E+W**

**Rule 14.**—(1) Civil proceedings against the Crown may be instituted to perpetuate any testimony in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.

(2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects.

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## Execution and satisfaction of orders **E+W**

**Rule 15.**—(1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Crown.

(2) An application under the proviso to subsection (1) of section 25 of the Crown Proceedings Act 1947, for a direction that a separate certificate shall be issued under that subsection with respect to the costs (if any) ordered to be paid to the applicant, may be made to the Court without notice being served on any other party.

(3) Any such certificate must be in Form No. 95 or 96 in the relevant Practice Direction, whichever is appropriate.

## Attachment of debts, etc. **E+W**

**Rule 16.**—(1) No order—

- (a) for the attachment of debts under Order 49, or
- (b) for the appointment of a sequestrator under Order 45, or
- (c) for the appointment of a receiver under Order 30 or 51,

shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown.

(1A) No application shall be made under paragraph (2) unless the order of the court to be enforced is for a sum of money amounting in value to at least £50.

(2) Every application to the Court for an order under section 27 (1) of the Crown Proceedings Act 1947<sup>(102)</sup> restraining any person from receiving money payable to him by the Crown and directing payment of the money to the applicant or some other person must be made by claim form and, unless the Court otherwise directs, served—

- (a) on the Crown at least 15 days before the return day, and
- (b) on the person to be restrained or his solicitor at least 7 days after the claim form has been served on the Crown and at least 7 days before the return day.

(2A) An application under paragraph (2) must be supported by a witness statement or affidavit—

- (a) setting out the facts giving rise to the application;
- (b) stating the name and last known address of the person to be restrained;
- (c) identifying the order to be enforced and stating the amount of such order and the amount remaining unpaid under it at the time of the application, and
- (d) identifying the particular debt from the Crown in respect of which the application is made.

(2B) Where the debt from the Crown in respect of which the application is made is money payable by the Crown to a person on account of a deposit in the National Savings Bank, the witness statement or affidavit must state the name and address of the branch<sup>F252</sup>... at which the account is believed to be held and the number of that account or, if it be the case, that all or part of this information is not known to the witness.

(2C) A Master, the Admiralty Registrar and a district judge of the Family Division shall have power to hear an application under paragraph (2).

(3) Order 49, rules 5 and 6, shall apply in relation to such an application as is mentioned in paragraph (2) for an order restraining a person from receiving money payable to him by the Crown as those rules apply to an application under Order 49, rule 1, for an order for the attachment of a debt owing to any person from a garnishee, except that the Court shall not have power to order execution to issue against the Crown.

<sup>(102)</sup>1947 c. 44; section 27(1) was amended by the Supreme Court Act 1981 (c. 54), section 139(1) and schedule 7.

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**Textual Amendments**

**F252** Words in Sch. 1 RSC Order 77 rule 16(2B) revoked (26.3.2001) by The Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001 (S.I. 2001/1149), art. 1(2), Sch. 2 (with art. 4(11))

**Proceedings relating to postal packets** **E+W**

**Rule 17.**—(1) An application by any person under [<sup>F253</sup>section 92 of the Postal Services Act 2000], for permission to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives must be made by claim form in the Queen’s Bench Division.

(2) The Crown and the person in whose name the applicant seeks to bring proceedings must be made defendants to a claim under this rule.

**Textual Amendments**

**F253** Words in Sch. 1 RSC Order 77 rule 17 substituted (26.3.2001) by The Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001 (S.I. 2001/1149), art. 1(2), Sch. 1 para. 123(2)

**Applications under ss.17 and 29 of Crown Proceedings Act** **E+W**

**Rule 18.**—(1) Every application to the Court under section 17 (4) of the Crown Proceedings Act 1947, must be made by claim form.

(2) An application such as is referred to in section 29 (2) of the Crown Proceedings Act 1947, may be made to the Court at any time before trial in accordance with CPR Part 23, or may be made at the trial of the proceedings.

**RSC ORDER 79** **E+W**  
**CRIMINAL PROCEEDINGS**

**Estreat of recognizances** **E+W**

**Rule 8.**—(1) No recognizance acknowledged in or removed into the Queen’s Bench Division shall be estreated without the order of a judge.

(2) Every application to estreat a recognizance in the Queen’s Bench Division must be made by claim form and will be heard by a judge <sup>F254</sup>...and must be supported by a witness statement or affidavit showing in what manner the breach has been committed and proving that the claim form was duly served.

(2A) When it issues the claim form the court will fix a date for the hearing of the application.

(3) A claim form under this rule must be served at least 2 clear days before the day named therein for the hearing.

(4) On the hearing of the application the judge may, and if requested by any party shall, direct any issue of fact in dispute to be tried by a jury.

(5) If it appears to the judge that a default has been made in performing the conditions of the recognizance, the judge may order the recognizance to be estreated.

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### Textual Amendments

**F254** Words in Sch. 1 RSC Order 79 rule 8(2) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **62(f)**

### Bail **E+W**

**Rule 9.**—(1) Subject to the provisions of this rule, every application to the High Court in respect of bail in any criminal proceeding—

- (a) where the defendant is in custody, must be made by claim form to a judge <sup>F255</sup>... to show cause why the defendant should not be granted bail;
- (b) where the defendant has been admitted to bail, must be made by claim form to a judge <sup>F255</sup>... to show cause why the variation in the arrangements for bail proposed by the applicant should not be made.

(2) Subject to paragraph (5), the claim form (in Form No. 97 or 97A in the relevant practice direction) must, at least 24 hours before the day named therein for the hearing, be served—

- (a) where the application was made by the defendant, on the prosecutor and on the Director of Public Prosecutions, if the prosecution is being carried on by him;
- (b) where the application was made by the prosecutor or a constable under section 3 (8) of the Bail Act 1976(**103**), on the defendant.

(3) Subject to paragraph (5), every application must be supported by witness statement or affidavit.

(4) Where a defendant in custody who desires to apply for bail is unable through lack of means to instruct a solicitor, he may give notice in writing to the [<sup>F256</sup>court] stating his desire to apply for bail and requesting that the official solicitor shall act for him in the application, and the [<sup>F257</sup>court may] assign the official solicitor to act for the applicant accordingly.

(5) Where the official solicitor has been so assigned the [<sup>F258</sup>court may] dispense with the requirements of paragraphs (1) to (3) and deal with the application in a summary manner.

(6) Where the [<sup>F259</sup>court] grants the defendant bail, the order must be in Form No. 98 in the relevant Practice Direction and a copy of the order shall be transmitted forthwith—

- (a) where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced or otherwise dealt with, to the appropriate officer of the Crown Court;
- (b) in any other case, to the [<sup>F260</sup>justices' chief executive for] the court which committed the defendant.

(6A) The recognizance of any surety required as a condition of bail granted as aforesaid may, where the defendant is in a prison or other place of detention, be entered into before the governor or keeper of the prison or place as well as before the persons specified in section 8 (4) of the Bail Act 1976.

(6B) Where under section 3 (5) or (6) of the Bail Act 1976(**104**)[<sup>F261</sup>the court] imposes a requirement to be complied with before a person's release on bail, [<sup>F262</sup>it] may give directions as to the manner in which and the person or persons before whom the requirement may be complied with.

(103) 1976 c. 63; section 3(8) was amended by the Criminal Law Act 1977 (c. 45), section 65(4), schedule 12.

(104) 1976 c. 63; section 3(6) was amended by the Criminal Justice and Public Order Act 1994 (c. 33), sections 27(2), 168(3), schedule 11.

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(7) A person who in pursuance of an order for the grant of bail made by [<sup>F263</sup>the court] under this rule proposes to enter into a recognizance or give security must, unless [<sup>F264</sup>the court] otherwise directs, give notice (in Form No. 100 in the relevant Practice Direction) to the prosecutor at least 24 hours before he enters into the recognizance or complies with the requirements as aforesaid.

(8) Where in pursuance of such an order as aforesaid a recognizance is entered into or requirement complied with before any person, it shall be the duty of that person to cause the recognizance or, as the case may be, a statement of the requirement complied with to be transmitted forthwith—

- (a) where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced or otherwise dealt with, to the appropriate officer of the Crown Court;
- (b) in any other case, to the [<sup>F265</sup>justices' chief executive for] the court which committed the defendant

and a copy of such recognizance or statement shall at the same time be sent to the governor or keeper of the prison or other place of detention in which the defendant is detained, unless the recognizance was entered into or the requirement complied with before such governor or keeper.

(10) An order <sup>F266</sup>... varying the arrangements under which the defendant has been granted bail shall be in Form 98A in the relevant practice direction and a copy of the order shall be transmitted forthwith—

- (a) where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced or otherwise dealt with, to the appropriate officer of the Crown Court;
- (b) in any other case, to the [<sup>F267</sup>justices' chief executive for] the court which committed the defendant.

(11) Where in pursuance of an order of [<sup>F268</sup>the High Court or the Crown Court] a person is released on bail in any criminal proceeding pending the determination of an appeal to the High Court or House of Lords or an application for an order of certiorari, then, upon the abandonment of the appeal or application, or upon the decision of the High Court or House of Lords being given, any justice (being a justice acting for the same petty sessions area as the magistrates' court by which that person was convicted or sentenced) may issue process for enforcing the decision in respect of which such appeal or application was brought or, as the case may be, the decision of the High Court or House of Lords.

(12) If an applicant to the High Court in any criminal proceedings is refused bail <sup>F269</sup>..., the applicant shall not be entitled to make a fresh application for bail to any other judge or to a Divisional Court.

(13) The record required by section 5 of the Bail Act 1976(**105**) to be made by the High Court shall be made by including in the file relating to the case in question a copy of the relevant order of the Court and shall contain the particulars set out in Form No. 98 or 98A in the relevant Practice Direction, whichever is appropriate, except that in the case of a decision to withhold bail the record shall be made by inserting a statement of the decision on the Court's copy of the relevant claim form and including it in the file relating to the case in question.

(14) In the case of a person whose return or surrender is sought under the Extradition Act 1989(**106**), this rule shall apply as if references to the defendant were references to that person and references to the prosecutor were references to the State seeking the return or surrender of that person.

(105) 1976 c. 63; section 5 was amended by the Criminal Justice Act 1982 (c. 48), section 60; and by the Criminal Law Act 1977 (c. 45), section 65(4), schedule 12; and by the Criminal Justice and Public Order Act 1994 (c. 33), section 27(4), schedule 3, paragraph 1.

(106) 1989 c. 33.



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**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

**Textual Amendments**

- F255** Words in Sch. 1 RSC Order 79 rule 9 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **62(f)**
- F256** Word in Sch. 1 RSC Order 79 rule 9(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(a)**
- F257** Words in Sch. 1 Order 79 rule 9(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(b)**
- F258** Words in Sch. 1 Order 79 rule 9(5) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(b)**
- F259** Word in Sch. 1 RSC Order 79 rule 9(6) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(c)**
- F260** Words in Sch. 1 RSC Order 79 rule 9(6)(b) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), **22**
- F261** Words in Sch. 1 RSC Order 79 rule 9(6B) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(d)(i)**
- F262** Word in Sch. 1 RSC Order 79 rule 9(6B) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(d)(ii)**
- F263** Words in Sch. 1 RSC Order 79 rule 9(7) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(e)(i)**
- F264** Words in Sch. 1 RSC Order 79 rule 9(7) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(e)(ii)**
- F265** Words in Sch. 1 RSC Order 79 rule 9(8)(b) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), **22**
- F266** Words in Sch. 1 RSC Order 79 rule 9(10) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(f)**
- F267** Words in Sch. 1 RSC Order 79 rule 9(10)(b) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), **22**
- F268** Words in Sch. 1 RSC Order 79 rule 9(11) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(g)**
- F269** Words in Sch. 1 RSC Order 79 rule 9(12) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(h)**

**Issue of witness summonses, etc.** **E+W**

<sup>F270</sup>**Rule 10** .....

**Textual Amendments**

- F270** Sch. 1 RSC Order 79 rules 10, 11 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **41**

**Application for warrant to arrest witness** **E+W**

<sup>F270</sup>**Rule 11** .....

**Textual Amendments**

- F270** Sch. 1 RSC Order 79 rules 10, 11 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **41**

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

## RSC ORDER 81 **E+W**

### PARTNERS

#### Claims by and against firms within jurisdiction **E+W**

**Rule 1** Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

#### Disclosure of partners' names **E+W**

**Rule 2.**—(1) Any defendant to a claim brought by partners in the name of a firm may serve on the claimant's or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the claimant's or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the claim be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made under paragraph (1) the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as claimants in the claim form.

(3) Paragraph (1) shall have effect in relation to a claim brought against partners in the name of a firm as it has effect in relation to a claim brought by partners in the name of a firm but with the substitution, for references to the defendant and the claimants, of references to the claimant and the defendants respectively, and with the omission of the words "or may order" to the end.

#### Acknowledgment of service in a claim against firm **E+W**

**Rule 4.**—(1) Where persons are sued as partners in the name of their firm, service may not be acknowledged in the name of the firm but only by the partners thereof in their own names, but the claim shall nevertheless continue in the name of the firm.

(2) Where in a claim against a firm the claim form by which the claim is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may acknowledge service of the claim form and state in his acknowledgment that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

An acknowledgment of service given in accordance with this paragraph shall, unless and until it is set aside, be treated as an acknowledgment by the defendant firm.

(3) Where an acknowledgment of service has been given by a defendant in accordance with paragraph (2) then—

- (a) the claimant may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;
- (b) the defendant may either apply to the Court to set aside the service of the claim form on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the claimant denying in respect of the claimant's claim either his liability as a partner or the liability of the defendant firm or both.



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(4) The Court may at any stage of the proceedings in a claim in which a defendant has acknowledged service in accordance with paragraph (2) on the application of the claimant or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

<sup>F271</sup>(5) .....

**Textual Amendments**

**F271** Sch. 1 RSC Order 81 rule 4(5) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **42**

**Enforcing judgment or order against firm** **E+W**

**Rule 5.**—(1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6, issue against any property of the firm within the jurisdiction.

(2) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6 and to the next following paragraph, issue against any person who—

- (a) acknowledged service of the claim form as a partner, or
- (b) having been served as a partner with the claim form, failed to acknowledge service of it, or
- (c) admitted in his statement of case that he is a partner, or
- (d) was adjudged to be a partner.

(3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the claim form was issued unless he—

- (a) acknowledged service of the claim form as a partner, or
- (b) was served within the jurisdiction with the claim form as a partner, or
- (c) was, with the permission of the Court given under [<sup>F272</sup>Section III of CPR Part 6], served out of the jurisdiction with the claim form, as a partner

and, except as provided by paragraph (1) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the claim form was issued.

(4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for permission to issue execution against that person, the application to be made in accordance with CPR Part 23 and the application notice must be served personally on that person.

(5) Where the person against whom an application under paragraph (4) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (3) give permission to issue execution against that person, and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in a claim may be tried and determined.

**Textual Amendments**

**F272** Words in Sch. 1 RSC Order 81 rule 5(3)(c) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **23**

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### **Enforcing judgment or order in actions between partners, etc.** E+W

**Rule 6.**—(1) Execution to enforce a judgment or order given or made in—

- (a) a claim by or against a firm in the name of the firm against or by a member of the firm, or
- (b) a claim by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue except with the permission of the Court.

(2) The Court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

### **Attachment of debts owed by firm** E+W

**Rule 7.**—(1) An order may be made under Order 49, rule 1, in relation to debts due or accruing due from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm is resident out of the jurisdiction.

(2) An order to show cause under the said rule 1 relating to such debts as aforesaid must be served on a member of the firm within the jurisdiction or on some other person having the control or management of the partnership business.

(3) Where an order made under the said rule 1 requires a firm to appear before the Court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

### **Application to person carrying on business in another name** E+W

**Rule 9** An individual carrying on business within the jurisdiction in a name or style other than his own name, may whether or not he is within the jurisdiction be sued in that name or style as if it were the name of a firm, and rules 2 to 8 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

### **Applications for orders charging partner's interest in partnership property, etc.** E+W

**Rule 10.**—(1) Every application to the Court by a judgment creditor of a partner for an order under section 23 of the Partnership Act 1890(107) (which authorises the High Court or a judge thereof to make certain orders on the application of a judgment creditor of a partner, including an order charging the partner's interest in the partnership property) and every application to the Court by a partner of the judgment debtor made in consequence of the first mentioned application must be made [<sup>F273</sup>in accordance with CPR Part 23].

(2) A Master or the Admiralty Registrar or a district judge may exercise the powers conferred on a judge by the said section 23.

(3) Every [<sup>F274</sup>application notice] issued by a judgment creditor under this rule, and every order made on such [<sup>F275</sup>an application], must be served on the judgment debtor and on such of his partners as are within the jurisdiction or, if the partnership is a cost book company, on the judgment debtor and the purser of the company.

(4) Every [<sup>F276</sup>application notice] issued by a partner of a judgment debtor under this rule, and every order made on such [<sup>F277</sup>an application], must be served—

- (a) on the judgment creditor, and
- (b) on the judgment debtor, and

(107) 1890 c. 39; section 23 was amended by the Statute Law Revision Act 1908 (c. 49); and by the Courts Act 1971 (c. 23), section 56(4), schedule 11, Part II.

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(c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction or, if the partnership is a cost book company, on the purser of the company.

(5) <sup>F278</sup> [An application notice] or order served in accordance with this rule on the purser of a cost book company or, in the case of a partnership not being such a company, on some only of the partners thereof, shall be deemed to have been served on that company or on all the partners of that partnership, as the case may be.

#### Textual Amendments

- F273** Words in Sch. 1 RSC Order 81 rule 10(1) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(a)**
- F274** Words in Sch. 1 RSC Order 81 rule 10(3) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(b)(i)**
- F275** Words in Sch. 1 RSC Order 81 rule 10(3) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(c)(i)**
- F276** Words in Sch. 1 RSC Order 81 rule 10(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(b)(ii)**
- F277** Words in Sch. 1 RSC Order 81 rule 10(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(c)(ii)**
- F278** Words in Sch. 1 RSC Order 81 rule 10(5) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(d)**

## <sup>F279</sup>RSC ORDER 82 **E+W** DEFAMATION CLAIMS

#### Textual Amendments

- F279** Sch. 1 RSC Order 82 revoked (28.2.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(a), **40**

#### Application **E+W**

**Rule 1** <sup>F279</sup> .....

#### Indorsement of claim in libel claim **E+W**

**Rule 2** <sup>F279</sup> .....

#### Obligation to give particulars **E+W**

**Rule 3** <sup>F279</sup> .....

#### Ruling on meaning **E+W**

**Rule 3A** <sup>F279</sup> .....

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**Provisions as to payment into Court** **E+W**

**Rule 4** <sup>F279</sup> .....

**Statement in open Court** **E+W**

**Rule 5** <sup>F279</sup> .....

**Further information not allowed in certain cases** **E+W**

**Rule 6** <sup>F279</sup> .....

**Fulfilment of offer of amends under s.4 of the Defamation Act 1952** **E+W**

**Rule 8** <sup>F279</sup> .....

**RSC ORDER 85** **E+W**

**ADMINISTRATION AND SIMILAR ACTIONS**

**Interpretation** **E+W**

**Rule 1** In this Order “administration claim” means a claim for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust.

**Determination of questions, etc., without administration** **E+W**

**Rule 2.**—(1) A claim may be issued for the determination of any question or for any remedy which could be determined or granted, as the case may be, in an administration claim and a claim need not be made for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the remedy is sought.

(2) Without prejudice to the generality of paragraph (1), a claim may be brought for the determination of any of the following questions:—

- (a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;
- (b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;
- (c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

(3) Without prejudice to the generality of paragraph (1), a claim may be brought for any of the following remedies:—

- (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
- (b) an order requiring the payment into court of money held by a person in his capacity as executor, administrator or trustee;
- (c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;

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- (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;
- (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court.

## Parties **E+W**

**Rule 3.**—(1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration claim or such a claim as is referred to in rule 2 relates must be parties to the proceedings, and where the proceedings are made by executors, administrators or trustees, any of them who does not consent to being joined as a claimant must be made a defendant.

(2) Notwithstanding anything in CPR Rule 19.2 and without prejudice to the powers of the Court under that CPR Part, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such a claim as is mentioned in paragraph (1) relates need not be parties to the proceedings; but the claimant may make such of those persons, whether all or any one or more of them, parties as, having regard to the nature of the remedy claimed in the proceedings, he thinks fit.

(3) Where, in proceedings under a judgment or order given or made in a claim for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the proceedings, no party other than the executors or administrators of the estate shall be entitled to appear in any proceedings relating to that claim without the permission of the Court, and the Court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

## Judgments and orders in administration claims **E+W**

**Rule 5.**—(1) A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the Court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.

(2) Where an administration claim is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the claimant alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may—

- (a) order that proceedings be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the claimant with proper accounts;
- (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the claim relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the permission of the judge in person.

## Conduct of sale of trust property **E+W**

**Rule 6** Where in an administration claim an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have the conduct of the sale unless the Court otherwise directs.

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## RSC ORDER 87 E+W

### DEBENTURE HOLDERS' CLAIMS : RECEIVER'S REGISTER

#### Receiver's register E+W

**Rule 1** Every receiver appointed by the Court in proceedings to enforce registered debentures or registered debenture stock shall, if so directed by the Court, keep a register of transfers of, and other transmissions of title to, such debentures or stock (in this Order referred to as “the receiver’s register”).

#### Registration of transfers, etc. E+W

**Rule 2.**—(1) Where a receiver is required by rule 1 to keep a receiver’s register, then, on the application made in accordance with CPR Part 23 of any person entitled to any debentures or debenture stock by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title in that register.

(2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by witness statement or affidavit, send by post to the registered holder of the debentures or debenture stock transferred at his registered address a notice stating—

- (a) that an application for the registration of the transfer has been made, and
- (b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,

and no transfer shall be registered until the period so specified has elapsed. The period to be specified in the notice shall in no case be less than 7 days after a reply from the registered holder would in the ordinary course of post reach the receiver if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

(3) On registering a transfer or other transmission of title under this rule the receiver must indorse a memorandum thereof on the debenture or certificate of debenture stock, as the case may be, transferred or transmitted, containing a reference to the proceedings and to the order appointing him receiver.

#### Application for rectification of receiver’s register E+W

**Rule 3.**—(1) Any person aggrieved by any thing done or omission made by a receiver under rule 2 may apply in accordance with CPR Part 23 to the Court for rectification of the receiver’s register, the application to be made in the proceedings in which the receiver was appointed.

(2) The copy of the application notice shall in the first instance be served only on the claimant or other party having the conduct of the proceedings but the Court may direct a copy of the application notice to be served on any other person appearing to be interested.

(3) The Court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name entered in or omitted from the receiver’s register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

#### Receiver's register evidence of transfers, etc. E+W

**Rule 4** Any entry made in the receiver’s register, if verified by a witness statement or affidavit made by the receiver or by such other person as the Court may direct, shall in all proceedings in which

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the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purpose of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the proceedings certifying the holders of the debentures or debenture stock certificates.

#### **Proof of title of holder of bearer debenture, etc.** **E+W**

**Rule 5.**—(1) This rule applies in relation to proceedings to enforce bearer debentures or to enforce debenture stock in respect of which the company has issued debenture stock bearer certificates.

(2) Notwithstanding that judgment has been given in the proceedings and that a certificate has been made therein certifying the holders of such debentures or certificates as are referred to in paragraph (1), the title of any person claiming to be such a holder shall (in the absence of notice of any defect in the title) be sufficiently proved by the production of the debenture or debenture stock certificate, as the case may be, together with a certificate of identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced and certifying the person (giving his name and address) who is the holder thereof.

(3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in Chancery Chambers, the solicitor of the claimant in the proceedings must cause to be indorsed thereon a notice stating—

- (a) that the person whose name and address is specified in the notice (being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2)) has been recorded in Chancery Chambers as the holder of the debenture or debenture stock certificate, as the case may be, and
- (b) that that person will, on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with paragraph (2), and
- (c) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.

(4) The solicitor of the claimant in the proceedings must preserve any certificates of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, must verify the record by witness statement or affidavit.

#### **Requirements in connection with payments** **E+W**

**Rule 6.**—(1) Where in proceedings to enforce any debentures or debenture stock an order is made for payment in respect of the debentures or stock, the Accountant-General shall not make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which paragraph (2) provides or the Court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.

(2) For the purpose of obtaining any such payment the debenture or debenture stock certificate must be produced to the solicitor of the claimant in the proceedings or to such other person as the Court may direct, and that solicitor or other person must indorse thereon a memorandum of payment and must make and sign a certificate certifying that the statement set out in the certificate has been indorsed on the debenture or debenture stock certificate, as the case may be, and send the certificate to the Accountant-General.



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## RSC ORDER 88 **E+W** MORTGAGE CLAIMS

### Application and Interpretation **E+W**

<sup>F280</sup>Rule 1 .....

#### Textual Amendments

**F280** Sch. 1 RSC Order 88 rules 1-5 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

### Assignment of certain actions to Chancery Division **E+W**

<sup>F280</sup>Rule 2 .....

#### Textual Amendments

**F280** Sch. 1 RSC Order 88 rules 1-5 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

### Commencement of claim **E+W**

<sup>F280</sup>Rule 3 .....

#### Textual Amendments

**F280** Sch. 1 RSC Order 88 rules 1-5 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

### Claim for possession: failure by a defendant to acknowledge service **E+W**

<sup>F280</sup>Rule 4 .....

#### Textual Amendments

**F280** Sch. 1 RSC Order 88 rules 1-5 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

### Claim in Chancery Division for possession or payment: evidence **E+W**

<sup>F280</sup>Rule 5 .....

#### Textual Amendments

**F280** Sch. 1 RSC Order 88 rules 1-5 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)



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**Claim for the enforcement of charging order by sale** **E+W**

**Rule 5A.**—(1) This rule applies to a mortgage claim in the Chancery Division to enforce a charging order by sale of the property charged.

- (2) The witness statement or affidavit in support of the claim must—
  - (a) identify the charging order sought to be enforced and the subject matter of the charge;
  - (b) specify the amount in respect of which the charge was imposed and the balance outstanding at the date of the witness statement or affidavit;
  - (c) verify, so far as known, the debtor’s title to the property charged;
  - (d) identify any prior incumbrancer on the property charged stating, so far as is known, the names and addresses of the incumbrancers and the amounts owing to them;
  - (e) set out the claimant’s proposals as to the manner of sale of the property charged together with estimates of the gross price which would be obtained on a sale in that manner and of the costs of such a sale; and
  - (f) where the property charged consists of land in respect of which the claimant claims delivery of possession—
    - (i) give particulars of every person who to the best of the claimant’s knowledge is in possession of the property charged or any part of it; and
    - (ii) state, in the case of a dwelling house, whether a land charge of Class F has been registered, or a notice or caution pursuant to section 2 (7) of the Matrimonial Homes Act 1967, or a notice pursuant to section 2 (8) of the Matrimonial Homes Act 1983 has been entered and, if so, on whose behalf, and whether he has served notice of the proceedings on the person on whose behalf the land charge is registered or the notice or caution entered.

**Foreclosure in redemption claim** **E+W**

<sup>F281</sup>**Rule 7** .....

**Textual Amendments**

**F281** Sch. 1 RSC Order 88 rule 7 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**RSC ORDER 91** **E+W**  
**REVENUE PROCEEDINGS**

**Assignment to Chancery Division, etc.** **E+W**

- Rule 1** The following proceedings, namely—
- (a) any case stated for the opinion of the High Court under—
    - (i) section 13 [<sup>F282</sup>and 13B] of the Stamp Act 1891(**108**), or
    - (ii) section 705A of the Income and Corporation Taxes Act 1988(**109**), or

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(**108**)1891 c. 39; section 13 was amended by the Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36), section 10(3), schedule 3.  
(**109**)1988 c. 1; section 705A was inserted by [S.I. 1994/1813](#).

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- (iii) regulation 22 of the General Commissioners (Jurisdiction and Procedure) Regulations 1994(110);
  - (b) any appeal to the High Court under—
    - (i) section 53, 56A or 100C (4) of the Taxes Management Act 1970(111), or
    - (ii) section 222 (3), 225, 249 (3) or 251 of the Inheritance Tax Act 1984(112), or
    - (iii) regulation 8 (3) or 10 of the Stamp Duty Reserve Tax Regulations 1986(113);
  - (c) any application for permission to appeal under the said section 222 (3) or the said regulation 8 (3); and
  - (d) proceedings to which the provisions of section 56A of the Taxes Management Act 1970(114) apply under any enactment or regulation,
- shall be assigned to the Chancery Division and heard and determined by a single judge.

**Textual Amendments**  
**F282** Words in Sch. 1 RSC Order 91 rule 1(a)(i) inserted (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rules 1(b), 24

**Appeal under section 222 of the Inheritance Tax Act 1984(115) E+W**

<sup>F283</sup>**Rule 2** .....

**Textual Amendments**  
**F283** Sch. 1 RSC Order 91 rule 2 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**Setting down case stated under Taxes Management Act 1970 E+W**

<sup>F284</sup>**Rule 3** .....

**Textual Amendments**  
**F284** Sch. 1 RSC Order 91 rule 3 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), Sch. 8 (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**Case stated: notice to be given of certain matters E+W**

<sup>F285</sup>**Rule 4** .....

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(110) S.I. 1994/1812.  
 (111) 1970 c. 9; sections 53 and 56A were substituted by S.I. 1994/1813. Section 100C was inserted by the Finance Act 1989 (c. 26).  
 (112) 1984 c. 51; sections 225 and 251 were substituted by S.I. 1994/1813.  
 (113) S.I. 1986/1711.  
 (114) 1970 c. 9; section 56A was substituted by S.I. 1994/1813.  
 (115) 1984 c. 51.

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

**Textual Amendments**

**F285** Sch. 1 RSC Order 91 rule 4 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**Appeals under section 53 and 100C (4) of the Taxes Management Act 1970** **E+W**

<sup>F286</sup>**Rule 5** .....

**Textual Amendments**

**F286** Rule 5, Sch. 1 RSC Order 91 rule 5 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**Appeals under section 56A of the Taxes Management Act 1970, section 225 of the Inheritance Tax Act 1984 and regulation 10 of the Stamp Duty Reserve Tax Regulations 1986** **E+W**

<sup>F287</sup>**Rule 5A** .....

**Textual Amendments**

**F287** Sch. 1 RSC Order 91 rule 5A revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**Appeals from value added tax tribunals** **E+W**

<sup>F288</sup>**Rule 6** .....

**Textual Amendments**

**F288** Sch. 1 RSC Order 91 rule 6 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**RSC ORDER 92** **E+W**

**LODGMET, INVESTMENT, ETC., OF FUNDS IN COURT: CHANCERY DIVISION**

**Payment into court by life assurance company** **E+W**

**Rule 1.**—(1) A company wishing to make a payment into court under the Life Assurance Companies (Payment into Court) Act, 1896(**116**) (hereinafter referred to as “the Act of 1896”) must file a witness statement or affidavit, made by its secretary or other authorised officer, setting out—

- (a) a short description of the policy in question and a statement of the persons entitled thereunder with their names and addresses so far as known to the company,

(116) 1896 c. 8.

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- (b) a short statement of the notices received by the company claiming an interest in or title to the money assured, or withdrawing any such claim, with the dates of receipt thereof and the names and addresses of the persons by whom they were given,
  - (c) a statement that, in the opinion of the board of directors of the company, no sufficient discharge can be obtained otherwise than by payment into court under the Act of 1896,
  - (d) the submission by the company to pay into court such further sum, if any, as the Court may direct and to pay any costs ordered by the Court to be paid by the company,
  - (e) an undertaking by the company forthwith to send to the Accountant General any notice of claim received by the company after the making of the witness statement or affidavit with a letter referring to the title of the witness statement or affidavit, and
  - (f) an address where the company may be served with any application, claim form, court order, or notice of any proceedings, relating to the money paid into court.
- (2) The company shall not deduct from the money payable by them under the policy any costs of or incidental to the payment into court.
- (3) No payment shall be made into court under the Act of 1896 where any proceedings to which the company is a party are pending in relation to the policy or moneys thereby assured except with the leave of the Court to be obtained by an application made in accordance with CPR Part 23.
- (4) Unless the Court otherwise directs, a CPR Part 23 application by which a claim with respect to money paid into court under the Act of 1896 is made shall not, except where the application includes an application for payment of a further sum of costs by the company who made the payment, be served on that company, but it must be served on every person who appears by the witness statement or affidavit on which the payment into court was made to be entitled to, or interested in, the money in court or to have a claim upon it or who has given a notice of claim which has been sent to the Accountant General in accordance with the undertaking referred to in rule 1 (1)(e).

**Payment into court under Trustee Act 1925** E+W

**Rule 2.**—(1) Subject to paragraph (2) any trustee wishing to make a payment into court under section 63 of the Trustee Act 1925(117), must make and file a witness statement or affidavit setting out—

- (a) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose,
- (b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him,
- (c) his submission to answer all such inquiries relating to the application of such money or securities as the Court may make or direct, and
- (d) an address where he may be served with any application notice or order, or notice of any proceedings, relating to the money or securities paid into court.

(2) Where the money or securities represents a legacy, or residue or any share thereof, to which an child or a person resident outside the United Kingdom is absolutely entitled, no witness statement or affidavit need be filed under paragraph (1) and the money or securities may be paid into court in the manner prescribed by the Supreme Court Funds Rules for the time being in force.

**Payments into court under section 26, Banking Act 1987** E+W

<sup>F289</sup>**Rule 3A** .....

(117) 1925 c. 19; section 63 was amended by the Administration of Justice Act 1965 (c. 2), section 36(4), schedule 3.

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

### Textual Amendments

**F289** Sch. 1 RSC Order 92 rule 3A omitted (14.1.2002) by virtue of [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(a), 37

### Notice of lodgment **E+W**

**Rule 4** Any person who has lodged money or securities in court in accordance with rule 1, 2, or 3A must forthwith send notice of the lodgment to every person appearing from the witness statement or affidavit on which the lodgment was made to be entitled to, or to have an interest in, the money or securities lodged.

### Applications with respect to funds in court **E+W**

**Rule 5.**—(1) Where an application to the High Court—

- (a) for the payment or transfer to any person of any funds in court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds;
- (b) for the investment, or change of investment, of any funds in court;
- (c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or
- (d) for the payment or transfer out of court of any such funds as are mentioned in subparagraph (c),

is made in the Chancery Division the application may be disposed of by the court sitting in private.

(2) Subject to paragraph (3), any such application made in the Chancery Division must be made by the issue of a claim form, unless the application is made in pending proceedings or an application for the same purpose has previously been made by such a claim form.

(3) Where an application under paragraph (1)(d) is required to be made by a claim form, then, if the funds to which the application relates do not exceed £15,000 in value, and subject to paragraph (4), the application may be made to the chief master, or to such master as he may designate, and the master may dispose of the application or may direct it to be made by a claim form.

Unless otherwise directed, an application under this paragraph shall be made by witness statement or affidavit, and need not be served on any other person.

(4) Where the application to which paragraph (3) applies relates to funds lodged in court in a Chancery district registry, the application may be made to, and the power conferred by paragraph (3) on a master may be exercised by, the district judge of that registry.

(5) This rule does not apply to any application for an order under CPR Part 36 and CPR Part 37.

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## RSC ORDER 93 **E+W**

### APPLICATIONS AND APPEALS TO HIGH COURT UNDER VARIOUS ACTS: CHANCERY DIVISION

#### Notice of petition under section 55 of National Debt Act 1870(118) **E+W**

**Rule 1** Where a petition is presented under section 55 of the National Debt Act, 1870, the petitioner must, before the petition is heard, apply to a judge of the Chancery Division <sup>F290</sup>... for directions with respect to giving notice of the claim to which the petition relates, and the judge may direct that notice thereof be given by advertisement or in such other manner as he may direct or may dispense with the giving of such notice.

#### Textual Amendments

**F290** Words in Sch. 1 RSC Order 93 rule 1 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **62(g)**

#### Application under Public Trustee Act 1906(119) **E+W**

**Rule 2** Without prejudice to sections 10 (2) and 13 (7) of the Public Trustee Act, 1906, the jurisdiction of the High Court under that Act shall be exercised by a judge of the Chancery Division sitting in private.

#### Proceedings under Trustee Act 1925(120) **E+W**

**Rule 4** All proceedings brought in the High Court under the Trustee Act, 1925, shall be assigned to the Chancery Division.

#### Application under section 2(3) of Public Order Act 1936(121) **E+W**

**Rule 5.**—(1) Proceedings by which an application is made to the High Court under section 2 (3) of the Public Order Act 1936, shall be assigned to the Chancery Division.

(2) Such an application shall be made by claim form and the persons to be made defendants to the claim shall be such persons as the Attorney-General may determine.

(3) In the absence of other sufficient representation the Court may appoint the official solicitor to represent any interests which in the opinion of the Court ought to be represented on any inquiry directed by the Court under the said section 2 (3).

#### Application under Variation of Trusts Act 1958(122) **E+W**

**Rule 6.**—(1) Proceedings by which an application is made to the High Court under section 1 of the Variation of Trusts Act 1958, shall be assigned to the Chancery Division.

(2) Such an application shall be made by claim form and in addition to any other persons who are necessary and proper defendants to the claim, the settlor and any other person who provided

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(118) 1870 c. 71.  
 (119) 1906 c. 55.  
 (120) 1925 c. 19.  
 (121) 1936 c. 2.  
 (122) 1958 c. 53.

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property for the purposes of the trusts to which the application relates must, if still alive and not the claimant, be made a defendant unless the Court for some special reason otherwise directs.

**Right of appeal under Law of Property Act E+W**

**Rule 9** An appeal shall lie to the High Court against a decision of the Minister of Agriculture, Fisheries and Food under paragraph 16 of Schedule 15 to the Law of Property Act 1922(123).

**Determination of appeal or case stated under various Acts E+W**

**Rule 10.**—(1) An appeal to the High Court against an order of a county court made under the Land Registration Act 1925(124), shall be heard and determined by a Divisional Court of the Chancery Division.

- F291(2) .....
- F292(3) .....

**Textual Amendments**

- F291** Sch. 1 RSC Order 93 rule 10(2) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), [Sch. 8](#) (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))
- F292** Sch. 1 RSC Order 93 rule 10(3) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), [Sch. 8](#) (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

**Appeal under section 17 of Industrial Assurance Act 1923(125) E+W**

- F293 **Rule11** .....

**Textual Amendments**

- F293** Sch. 1 RSC Order 93 rule 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), [Sch. 8](#) (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

**Appeals, etc., affecting industrial and provident societies, etc. E+W**

- F294 **Rule12** .....

**Textual Amendments**

- F294** Sch. 1 RSC Order 93 rule 12 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), [Sch. 8](#) (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

**Application under section 19 or 27 of Leasehold Reform Act 1967(126) E+W**

- F295 **Rule 15** .....

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(123)1922 c. 16; Paragraph 16 was amended by the Law of Property (Amendment) Act 1924 (c. 5), section 2, schedule 2.  
(124)1925 c. 21.  
(125)1923 c. 8; section 17 was amended by the Friendly Societies Act 1971 (c. 66), sections 5(5), 14(2), schedule 3 and by the Friendly Societies Act 1992 (c. 40), section 100, schedule 19, Part I, paragraphs 1, 5 and 6.  
(126)1967 c. 88; section 19 was amended by the Local Land Charges Act 1975 (c. 76), section 17(2), schedule 1.



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**Textual Amendments**  
**F295** Sch. 1 RSC Order 93 rule 15 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Proceedings under the Commons Registration Act 1965(127) E+W**

**Rule 16.**—(1) Proceedings in the High Court under section 14 or 18 of the Commons Registration Act 1965 shall be assigned to the Chancery Division.

<sup>F296</sup>(2) .....

<sup>F297</sup>(3) .....

**Textual Amendments**  
**F296** Sch. 1 RSC Order 93 rule 16(2) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)  
**F297** Sch. 1 RSC Order 93 rule 16(3) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**Proceedings under section 21 or 25 of the Law of Property Act 1969(128) E+W**

**Rule 17** Proceedings in the High Court under section 21 or 25 of the Law of Property Act 1969 shall be assigned to the Chancery Division.

**Proceedings under section 86 of the Civil Aviation Act 1982(129) E+W**

**Rule 18.**—(1) Proceedings in the High Court for the amendment of any register of aircraft mortgages kept pursuant to an Order in Council made under section 86 of the Civil Aviation Act 1982 shall be assigned to the Chancery Division.

(2) Such proceedings shall be brought by claim form and every person, other than the claimant, appearing in the register as mortgagee or mortgagor of the aircraft in question shall be made a defendant to the claim.

(3) A copy of the claim form shall also be sent to the Civil Aviation Authority and the Authority shall be entitled to be heard in the proceedings.

**Proceedings under s.85 (7) of the Fair Trading Act 1973(130) and the Control of Misleading Advertisements Regulations 1988(131) E+W**

**Rule 19.**—(1) Proceedings to which this rule applies shall be assigned to the Chancery Division and may be begun by claim form.

(2) This rule applies to any application to the High Court for an order under s.85 (7) of the Fair Trading Act 1973, or under any provision to which that section applies or under the Control of Misleading Advertisements Regulations 1988.

(127)1965 c. 65.

(128)1969 c. 59; section 25 was amended by the Limitation Act 1980 (c. 58), section 40(2), schedule 3, paragraph 9; and by the Land Charges Act 1972 (c. 61), section 18, schedule 5.

(129)1982 c. 16; section 86 was amended by the Merchant Shipping Act 1995 (c. 21), section 314(2), schedule 13, paragraph 64.

(130)1973 c. 41.

(131)S.I. 1988/915.



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## Proceedings under section 50 of the Administration of Justice Act 1985(132) **E+W**

### <sup>F298</sup>Rule 20 .....

#### Textual Amendments

**F298** Sch. 1 RSC Order 93 rule 20 revoked (15.10.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(b), **15**

## Proceedings under section 48 of the Administration of Justice Act 1985 **E+W**

**Rule 21** Proceedings by which an application is made to the High Court under section 48 of the Administration of Justice Act 1985 shall be assigned to the Chancery Division and shall be begun by claim form but the claim need not be served on any other party.

## Proceedings under [<sup>F299</sup>the Financial Services and Markets Act 2000] **E+W**

**Rule 22.**—(1) In this rule “the Act” means [<sup>F300</sup>the Financial Services and Markets Act 2000] and a section referred to by number means the section so numbered in that Act.

(2) Proceedings in the High Court under the Act (other than application for mandamus) and actions for damages for breach of a statutory duty imposed by the Act shall be assigned to the Chancery Division.

(3) Such proceedings and actions shall be begun by claim form except for applications by petition by [<sup>F301</sup>the Financial Services Authority under section 367].

[<sup>F302</sup>(4) Where there is a question of the construction of any rule or other instrument made by or with the approval or consent of the Financial Services Authority under the Act, that Authority may make representations to the court.]

#### Textual Amendments

**F299** Words in Sch. 1 RSC Order 93 rule 22 heading substituted (14.1.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(a), **38(a)(i)**

**F300** Words in Sch. 1 RSC Order 93 rule 22(1) substituted (14.1.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(a), **38(a)(i)**

**F301** Words in Sch. 1 RSC Order 93 rule 22(3) substituted (14.1.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(a), **38(a)(ii)**

**F302** Sch. 1 RSC Order 93 rule 22(4) substituted (14.1.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(a), **38(a)(iii)**

## Proceedings under the Banking Act 1987(133) **E+W**

### <sup>F303</sup>Rule 23 .....

#### Textual Amendments

**F303** Sch. 1 RSC Order 93 rule 23 omitted (14.1.2002) by virtue of [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(a), **38(b)**

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
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## RSC ORDER 94 **E+W**

### APPLICATIONS AND APPEALS TO HIGH COURT UNDER VARIOUS ACTS: QUEEN'S BENCH DIVISION

#### **Jurisdiction of High Court to quash certain orders, schemes, etc. **E+W****

**Rule 1.**—(1) Where by virtue of any enactment the High Court has jurisdiction, on the application of any person, to quash or prohibit any order, scheme, certificate or plan, any amendment or approval of a plan, any decision of a Minister or government department or any action on the part of a Minister or government department, the jurisdiction shall be exercisable by a single judge of the Queen's Bench Division.

(2) The application must be made by claim form which must state the grounds of the application.

#### **Filing and service of claim form **E+W****

**Rule 2.**—(1) A claim form under rule 1 must be filed at the Crown Office, and served, within the time limited by the relevant enactment for making the application.

(2) Subject to paragraph (4) the claim form must be served on the appropriate Minister or government department, and—

- (a) if the application relates to a compulsory purchase order made by an authority other than the appropriate Minister or government department, or to a clearance order under the Housing Act 1985(**134**), on the authority by whom the order was made;
- (b) if the application relates to a scheme or order to which Schedule 2 to the Highways Act 1980(**135**), applies made by an authority other than the Secretary of State, on that authority;
- (c) if the application relates to a structure plan, local plan or other development plan within the meaning of the Town and Country Planning Act 1990(**136**), on the local planning authority who prepared the plan;
- (d) if the application relates to any decision or order, or any action on the part of a Minister of the Crown to which section 21 of the Land Compensation Act 1961(**137**), or section 288 of the Town and Country Planning Act 1990, applies, on the authority directly concerned with such decision, order or action or, if that authority is the applicant, on every person who would, if he were aggrieved by the decision, order or action, be entitled to apply to the High Court under the said section 21 or the said section 245, as the case may be;
- (e) if the application relates to a scheme to which Schedule 32 to the Local Government, Planning and Land Act 1980(**138**) applies, on the body which adopted the scheme.

(3) In paragraph (2) “the appropriate Minister or government department” means the Minister of the Crown or government department by whom the order, scheme, certificate, plan, amendment, approval or decision in question was or may be made, authorised, confirmed, approved or given or on whose part the action in question was or may be taken.

(4) Where the application relates to an order made under the Road Traffic Regulation Act 1984(**139**), the claim form must be served—

- (a) if the order was made by a Minister of the Crown, on that Minister;

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(134) 1985 c. 68.

(135) 1980 c. 66.

(136) 1990 c. 8.

(137) 1961 c. 33.

(138) 1980 c. 65.

(139) 1984 c. 27.

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- (b) if the order was made by a local authority with the consent, or in pursuance of a direction, of a Minister of the Crown, on that authority and also on that Minister;
- (c) in any other case, on the local authority by whom the order was made.

#### **Filing of witness statement or affidavits, etc.** E+W

**Rule 3.**—(1) Evidence at the hearing of an application under rule 1 shall be by witness statement or affidavit.

(2) Any witness statement or affidavit in support of the application must be filed by the applicant in the Crown Office within 14 days after service of the claim form and the applicant must, at the time of filing, serve a copy of the witness statement or affidavit and of any exhibit thereto on the respondent.

(3) Any witness statement or affidavit in opposition to the application must be filed by the respondent in the Crown Office within 21 days after the service on him under paragraph (2) of the applicant's witness statement or affidavit and the respondent must, at the time of filing, serve a copy of his witness statement or affidavit and of any exhibit thereto on the applicant.

(4) When filing a witness statement or affidavit under this rule a party must leave a copy thereof and of any exhibit thereto at the Crown Office for the use of the Court.

(5) Unless the Court otherwise orders, an application under rule 1 shall not be heard earlier than 14 days after the time for filing a witness statement or affidavit by the respondent has expired.

#### **Rectification of register of deeds of arrangement** E+W

**Rule 4.**—(1) Every application to the Court under section 7 of the Deeds of Arrangement Act, 1914(140), for an order—

- (a) that any omission to register a deed of arrangement within the time prescribed by that Act be rectified by extending the time for such registration, or
- (b) that any omission or mis-statement of the name, residence or description of any person be rectified by the insertion in the register of his true name, residence or description,

must be made by witness statement or affidavit without notice being served on any other party to a master of the Queen's Bench Division.

(2) The witness statement or affidavit must set out particulars of the deed of arrangement and of the omission or mis-statement in question and must state the grounds on which the application is made.

#### **Exercise of jurisdiction under Representation of the People Acts** E+W

**Rule 5.**—(1) Proceedings in the High Court under the Representation of the People Acts shall be assigned to the Queen's Bench Division.

(2) Subject to paragraphs (3) and (4) the jurisdiction of the High Court under the said Acts in matters relating to parliamentary and local government elections shall be exercised by a Divisional Court.

(3) Paragraph (2) shall not be construed as taking away from a single judge or a master any jurisdiction under the said Acts which, but for that paragraph, would be exercisable by a single judge or, as the case may be, by a Master.

(4) Where the jurisdiction of the High Court under the said Acts is by a provision of any of those Acts made exercisable in matters relating to parliamentary elections by a single judge, that

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(140) 1914 c. 47.

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jurisdiction in matters relating to local government elections shall also be exercisable by a single judge.

<sup>F304</sup>(5) .....

**Textual Amendments**  
**F304** Sch. 1 RSC Order 94 rule 5(5) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **47(a)**

**Appeal to High Court where Court’s decision is final** **E+W**

<sup>F305</sup>**Rule 6** .....

**Textual Amendments**  
**F305** Sch. 1 RSC Order 94 rule 6 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

**Reference of question of law by Agricultural Land Tribunal** **E+W**

<sup>F306</sup>**Rule 7** .....

**Textual Amendments**  
**F306** Sch. 1 RSC Order 94 rule 7 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

**Tribunals and Inquiries Act 1992(141): appeal from tribunal** **E+W**

[<sup>F307</sup>**Rule 8.**—(1) A person who was a party to proceedings before any such tribunal as is mentioned in section 11(1) of the Tribunals and Inquiries Act 1992 and is dissatisfied in point of law with the decision of the tribunal may appeal to the High Court.

- (2) The appellant’s notice must be served—
  - (a) on the chairman of the tribunal;
  - (b) in the case of a tribunal which has no chairman or member who acts as a chairman, on the member or members of that tribunal; or
  - (c) in the case of any such tribunal as is specified in paragraph 16 of Schedule 1 to the said Act of 1992, on the secretary of the tribunal.

(3) Where an appeal is against the decision of a tribunal constituted under section 46 of the National Health Service Act 1977 the appellants’s notice must be filed at the High Court within 14 days after the date of that decision.

(4) Where an appeal is against the decision of a tribunal established under section 1 of the Employment Tribunals Act 1996 the appellant’s notice must be filed at the High Court within 42 days after the date of that decision.]

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

**Textual Amendments**

**F307** Sch. 1 RSC Order 94 rule 8 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), **25(a)**

**Tribunals and Inquiries Act 1992: case stated by tribunal** **E+W**

**Rule 9.**—(1) Any such tribunal as is mentioned in section 11 (1) of the Tribunals and Inquiries Act 1992 may, of its own initiative or at the request of any party to proceedings before it, state in the course of proceedings before it in the form of a special case for the decision of the High Court any question of law arising in the proceedings.

(2) Any party to proceedings before any such tribunal who is aggrieved by the tribunal’s refusal to state such a case may apply to the High Court for an order directing the tribunal to do so.

(3) A case stated by any such tribunal which has no chairman or member who acts as a chairman must be signed by the member or members of the tribunal.

**Tribunals and Inquiries Act 1971(142): appeal from Minister of Transport** **E+W**

<sup>F308</sup>**Rule 10** .....

**Textual Amendments**

**F308** Sch. 1 RSC Order 94 rule 10 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

**Consumer Credit Act 1974(143): appeal from Secretary of State** **E+W**

<sup>F309</sup>**Rule 10A** .....

**Textual Amendments**

**F309** Sch. 1 RSC Order 94 rule 10A omitted (2.5.2000) by virtue of [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

**Case stated by Mental Health Review Tribunal** **E+W**

<sup>F310</sup>**Rule 11** .....

**Textual Amendments**

**F310** Sch. 1 RSC Order 94 rule 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

(142) 1971 c. 62.  
(143) 1974 c. 39.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

**Applications for permission under section 289 (6) of the Town and Country Planning Act 1990(144) and section 65 (5) of the Planning (Listed Buildings and Conservation Areas) Act 1990(145) **E+W****

**Rule 12.**—(1) An application for permission to appeal to the High Court under section 289 of the Town and Country Planning Act 1990 or section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990 shall be made within 28 days after the date on which notice of the decision was given to the applicant.

(2) An application shall—

- (a) include, where necessary, any application to extend the time for applying,
- (b) be in writing setting out the reasons why permission should be granted, and if the time for applying has expired, the reasons why the application was not made within that time,
- (c) be made by filing it in the Crown Office together with the decision, a draft [<sup>F311</sup>appellant’s notice], and a witness statement or affidavit verifying any facts relied on,
- (d) before being filed under sub-paragraph (c), be served together with the draft [<sup>F311</sup>appellant’s notice] and a copy of the witness statement or affidavit to be filed with the application, upon the persons who are referred to in rule 13 (5), and
- (e) be accompanied by a witness statement or affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the application and, if any person who ought to be served has not been served, the witness statement or affidavit must state that fact and the reason for it.

(3) An application shall be heard—

- (a) by a single judge <sup>F312</sup>...;
- (b) unless the Court otherwise orders, not less than 21 days after it was filed at the Crown Office.

Any person served with the application shall be entitled to appear and be heard.

(4) If on the hearing of an application the Court is of opinion that any person who ought to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the application may be served on that person.

(5) If the Court grants permission—

- (a) it may impose such terms as to costs and as to giving security as it thinks fit;
- (b) it may give directions; and
- (c) the [<sup>F311</sup>appellant’s notice] by which the appeal is to be brought shall be served and filed within 7 days of the grant.

(6) Any respondent who intends to use a witness statement or affidavit at the hearing shall file it in the Crown Office and serve a copy thereof on the applicant as soon as is practicable and in any event, unless the Court otherwise allows, at least 2 days before the hearing. The Court may allow the applicant to use a further witness statement or affidavit.

**Textual Amendments**

**F311** Words in [Sch. 1 RSC Order 94](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **25(b)**

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

**F312** Words in Sch. 1 RSC Order 94 rule 12(3)(a) omitted (26.4.1999) by virtue of The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **63(d)**

**Proceedings under sections 289 and 290 of the Town and Country Planning Act 1990 and under section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990** **E**  
**+W**

**Rule 13.**—(1) In this rule a reference to “section 65” is a reference to section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990, but, save as aforesaid, a reference to a section by number is a reference to the section so numbered in the Town and Country Planning Act 1990.

(2) An appeal shall lie to the High Court on a point of law against a decision of the Secretary of State under subsection (1) or (2) of section 289 or under subsection (1) of section 65 at the instance of any person or authority entitled to appeal under any of those subsections respectively.

(3) In the case of a decision to which section 290 applies, the person who made the application to which the decision relates, or the local planning authority, if dissatisfied with the decision in point of law, may appeal against the decision to the High Court.

(4) Any appeal under section 289 (1) or (2), section 65 (1) or section 290, and any case stated under section 289 (3) or section 65 (2), shall be heard and determined by a single judge unless the Court directs that the matter shall be heard and determined by a Divisional Court.

(5) The persons to be served with the [<sup>F313</sup>appellant’s notice] by which an appeal to the High Court is brought by virtue of section 289 (1) or (2), section 65 (1) or section 290 are—

- (a) the Secretary of State;
- (b) the local planning authority who served the notice or gave the decision, as the case may be, or, where the appeal is brought by that authority, the appellant or applicant in the proceedings in which the decision appealed against was given;
- (c) in the case of an appeal brought by virtue of section 289 (1) or section 65 (1), any other person having an interest in the land to which the notice relates, and;
- (d) in the case of an appeal brought by virtue of section 289 (2), any other person on whom the notice to which those proceedings related was served.

(6) The Court hearing any such appeal may remit the matter to the Secretary of State to the extent necessary to enable him to provide the Court with such further information in connection with the matter as the Court may direct.

(7) Where the Court is of opinion that the decision appealed against was erroneous in point of law, it shall not set aside or vary that decision but shall remit the matter to the Secretary of State with the opinion of the Court for re-hearing and determination by him.

<sup>F314</sup>(8) .....

(9) The Court may give directions as to the exercise, until an appeal brought by virtue of section 289 (1) is finally concluded and any re-hearing and determination by the Secretary of State has taken place, of the power to serve, and institute proceedings (including criminal proceedings) concerning—

- (a) a stop notice under section 183, and;
- (b) a breach of condition notice under section 187A.

**Textual Amendments**  
**F313** Words in Sch. 1 RSC Order 94 rule 13(5) substituted (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rules 1(b), **25(c)(i)**



**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

**F314** Sch. 1 RSC Order 94 rule 13(8) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 8](#) (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

### Applications under section 13 Coroners Act 1988(146) **E+W**

**Rule 14.**—(1) Any application under section 13 of the Coroners Act 1988 shall be heard and determined by a Divisional Court.

(2) The application must be made by claim form and the claim form must state the grounds of the application and, unless the application is made by the Attorney General, shall be accompanied by his fiat.

(3) The claim form must be filed in the Crown Office and served upon all persons directly affected by the application within six weeks after the grant of the fiat.

### Applications under section 42, Supreme Court Act 1981(147) **E+W**

**Rule 15.**—(1) Every application to the High Court by the Attorney General under section 42 of the Supreme Court Act 1981 shall be heard and determined by a Divisional Court.

(2) The application must be made by claim form which, together with a witness statement or affidavit in support, shall be filed in the Crown Office and served on the person against whom the order is sought.

### <sup>F315</sup>Proceedings under the Protection from Harassment Act 1997 **E+W**

**Rule 16.**—(1) In this rule, “the Act” means the Protection from Harassment Act 1997.

(2) This rule shall apply to injunctions granted on or after 1st September 1998 and injunctions granted before that date shall be treated as if this rule had not come into force.

(3) Proceedings in the High Court under section 3 of the Act shall be assigned to the Queen’s Bench Division.

(4) An application for the issue of a warrant for the arrest of the defendant under section 3(3) of the Act shall—

- (a) state that it is an application for the issue of a warrant for the arrest of the defendant;
- (b) set out the grounds for making the application and be supported by an affidavit or evidence on oath;
- (c) state whether the claimant has informed the police of the defendant’s conduct as described in sub-paragraph (b); and
- (d) state whether, to the claimant’s knowledge, criminal proceedings are being pursued.

(5) The Court before whom a person is brought following his arrest may—

- (a) determine whether the facts, and the circumstances which led to the arrest, amounted to disobedience of the injunction, or
- (b) adjourn the proceedings and, where such an order is made, the arrested person shall be released and—
  - (i) may be dealt with within 14 days of the day on which he was arrested; and
  - (ii) be given not less than 2 days’ notice of the adjourned hearing.

(6) This rule applies to proceedings under section 3 of the Act in a county court with the following modifications—

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(146) 1988 c. 13.  
 (147) 1981 c. 54.



**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
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- (a) Such proceedings in a county court shall be begun—
  - (i) in the court for the district in which the claimant resides or carries on business; or
  - (ii) in the court for the district in which the defendant resides or carries on business.
- (b) Where a county court—
  - (i) grants an injunction under section 3 of the Act; or
  - (ii) issues a warrant for the arrest of the defendant, the injunction or warrant shall be issued in the appropriate prescribed form.]

**Textual Amendments**

**F315** Sch. 1 RSC Order 94 rule 16 inserted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, 48

**RSC ORDER 95 E+W**

**BILLS OF SALE ACTS 1878(148) AND 1882(149) AND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT 1967(150)**

**Rectification of register E+W**

**Rule 1.**—(1) Every application to the Court under section 14 of the Bills of Sale Act 1878, for an order—

- (a) that any omission to register a bill of sale or a witness statement or affidavit of renewal thereof within the time prescribed by that Act be rectified by extending the time for such registration, or
- (b) that any omission or mis-statement of the name, residence or occupation of any person be rectified by the insertion in the register of his true name, residence or occupation,

must be made by witness statement or affidavit to a master of the Queen’s Bench Division, and a copy of the witness statement or affidavit need not be served on any other person.

(2) Every application for such an order as is described in paragraph (1) shall be supported by a witness statement or affidavit setting out particulars of the bill of sale and of the omission or mis-statement in question and stating the grounds on which the application is made.

**Entry of satisfaction E+W**

**Rule 2.**—(1) Every application under section 15 of the Bills of Sale Act 1878, to a master of the Queen’s Bench Division for an order that a memorandum of satisfaction be written on a registered copy of a bill of sale must [<sup>F316</sup>be made by claim form.]

<sup>F317</sup>(a) .....

<sup>F317</sup>(b) .....

[<sup>F318</sup>(1A) If a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale can be obtained, from claim form and the documents set out in paragraph (2) must not be served on any other person.]

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (2) [<sup>F319</sup>Where paragraph (1A) applies, the claim form] must be supported by—
- (a) particulars of the consent referred to in that paragraph; and
  - (b) a witness statement or affidavit by a witness who attested the consent verifying the signature on it.
- (3) [<sup>F320</sup>Where paragraph (1A) does not apply, the claim form] must be served on the person entitled to the benefit of the bill of sale and must be supported by evidence that the debt (if any) for which the bill of sale was made has been satisfied or discharged.

#### Textual Amendments

- F316** Words in Sch. 1 RSC Order 95 rule 2(1) inserted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **49(a)(ii)**
- F317** Sch. 1 RSC Order 95 rule 2(1)(a)(b) omitted (26.4.1999) by virtue of The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **49(a)(i)**
- F318** Sch. 1 RSC Order 95 rule 2(1A) inserted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **49(b)**
- F319** Words in Sch. 1 RSC Order 95 rule 2(2) substituted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **49(c)**
- F320** Words in Sch. 1 RSC Order 95 rule 2(3) substituted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **49(d)**

#### Restraining removal on sale of goods seized **E+W**

**Rule 3** An application to the Court under the proviso to section 7 of the Bills of Sale Act (1878) Amendment Act 1882 must be made by the issue of a claim form.

#### Search of register **E+W**

**Rule 4** Any master of the Queen’s Bench Division shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the register of bills of sale and issue a certificate of the result of the search.

#### Application under section 1 (5) of the Industrial and Provident Societies Act 1967(151) **E+W**

**Rule 5** Every application to the Court under section 1 (5) of the Industrial and Provident Societies Act 1967 for an order—

- (a) that the period for making an application for recording a charge be extended, or
- (b) that any omission from or misstatement in such an application be rectified,

must be made to a Master of the Queen’s Bench Division by witness statement or affidavit setting out particulars of the charge and of the omission or misstatement in question and stating the grounds of the application, and need not be served on any other person.

#### Assignment of book debts **E+W**

**Rule 6.**—(1) There shall continue to be kept in the Central Office, under the supervision of the registrar, a register of assignments of book debts.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
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(2) Every application for registration of an assignment of a book debt under section 344 of the Insolvency Act 1986(152) shall be made by producing at the Filing and Record Department of the Central Office—

- (a) a true copy of the assignment, and of every schedule thereto, and
- (b) a witness statement or affidavit verifying the date and the time, and the due execution of the assignment in the presence of the witness, and setting out the particulars of the assignment and the parties thereto.

(3) On an application being made in accordance with the preceding paragraph, the documents there referred to shall be filed, and the particulars of the assignment, and of the parties to it, shall be entered in the register.

(4) In this rule, “the registrar” has the meaning given in section 13 of the Bills of Sale Act 1878.

## RSC ORDER 96 **E+W**

### THE MINES (WORKING FACILITIES AND SUPPORT) ACT 1966(153), ETC.

#### Assignment to Chancery Division **E+W**

**Rule 1** Any proceedings in which the jurisdiction conferred on the High Court by section 1 of the Railway and Canal Commission (Abolition) Act 1949(154), is invoked shall be assigned to the Chancery Division and be begun by claim form which need not be served on any other party.

#### Reference by Secretary of State of certain applications **E+W**

**Rule 2** Where under any provision of the Mines (Working Facilities and Support) Act 1966, the Secretary of State refers any application to the High Court, he shall—

- (a) file the reference, signed by him or by an officer authorised by him for the purpose, in Chancery Chambers, together with all documents and plans deposited with him by the applicant, and
- (b) within 3 days after doing so give notice to the applicant of the filing of the reference.

#### Issue of claim form **E+W**

**Rule 3** Within 10 days after receipt of the notice mentioned in rule 2 (b) the applicant must issue a claim form which need not be served on any other party which must state the application of the applicant under the said Act of 1966 and any other relief sought.

#### Appointment for directions **E+W**

**Rule 4.**—(1) Within 7 days after issue of the claim form the applicant, having applied at Chancery Chambers for the name of the master assigned to hear the claim, must take an appointment before that master for the hearing of the claim and must forthwith serve notice of the appointment on the Secretary of State.

(2) Not less than 2 clear days before the day appointed for the first hearing of the claim, the applicant must leave at Chancery Chambers—

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(152) 1986 c. 45.

(153)

(154) 1949 c. 11.

1966 c. 4.

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
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- (a) a witness statement or affidavit of facts in support of the claim, giving particulars of all persons known to the applicant to be interested in or affected by the application, and
  - (b) a draft of any proposed advertisement or notice of the application.
- (3) On the appointment the master shall—
- (a) fix a time within which any notice of objection under rule 5 must be given,
  - (b) fix a date for the further hearing of the claim, and
  - (c) direct what, if any, advertisements and notices of the application and of the date fixed for the further hearing of the claim are to be inserted and given, and what persons, if any, are to be served with a copy of the application and of any other document in the proceedings.
- (4) Any such advertisement or notice must include a statement of the effect of rule 5.

### Objections to application **E+W**

**Rule 5.**—(1) Any person wishing to oppose the application must, within the time fixed by the master under rule 4 (3), serve on the applicant a notice of objection stating—

- (a) his name and address and the name and address of his solicitor, if any,
- (b) the grounds of his objection and any alternative methods of effecting the objects of the application which he alleges may be used, and
- (c) the facts on which he relies.

(2) Any notice required to be served on a person who has given notice of objection (hereafter in this Order referred to as “the objector”) may be served by delivering it or sending it by prepaid post—

- (a) where the name and address of a solicitor is stated in the notice of objection, to the solicitor at that address, and
- (b) in any other case, to the objector at his address stated in the notice of objection.

(3) An objector shall be entitled to appear in person or by a solicitor or counsel at the further hearing of the claim and to take such part in the proceedings as the master or judge thinks fit; but if he does not so appear his notice of objection shall be of no effect and he shall not be entitled to take any part in the proceedings unless the master or judge otherwise orders.

### List of objectors **E+W**

**Rule 6** Not less than 2 clear days before the day fixed for the further hearing of the claim, the applicant must leave at Chancery Chambers any notices of objection served on the applicant together with a list arranged in 3 columns stating—

- (a) in column 1, the names and addresses of the objectors,
- (b) in column 2, the names and addresses of their respective solicitors, if any, and
- (c) in column 3, short summaries of their respective grounds of objection.

### Directions on further hearing **E+W**

**Rule 7** At the further hearing of the claim the master shall—

- (a) give directions as to the procedure to be followed before the claim is set down for hearing, including, if he thinks fit, a direction—
  - (i) that further particulars be given of any of the grounds or facts relied on in support of or in opposition to the application made by the claim,
  - (ii) that the applicant may serve a reply to any notice of objection,
  - (iii) that any particular fact be proved by witness statement or affidavit,

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(iv) that statements of case or points of claim or defence be served, and  
[<sup>F321</sup>(b) adjourn the claim for hearing before the judge in such manner as he shall think best adapted to secure the just, expeditious and economical disposal of the proceedings]

**Textual Amendments**

**F321** Sch. 1 RSC Order 96 rule 7(b) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **50**

**Other applications** **E+W**

**Rule 8** Rules 2 to 7 shall, so far as applicable and with the necessary adaptations, apply in relation to any other application to the High Court falling within rule 1 as they apply in relation to an application under the Mines (Working Facilities and Support) Act 1966.

**RSC ORDER 97** **E+W**

THE LANDLORD AND TENANT ACTS 1927(**155**), 1954(**156**) AND 1987(**157**)

**Interpretation** **E+W**

<sup>F322</sup>**Rule 1** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Assignment of proceedings to Chancery Division, etc.** **E+W**

<sup>F322</sup>**Rule 2** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Issue, etc., of claim form** **E+W**

<sup>F322</sup>**Rule 3** .....

(155) [1927 c. 36](#); section 1 was amended by the Landlord and Tenant Act [1954 \(c. 56\)](#), section 47(5). Section 8 was amended by the 1954 Act, sections 45, 68(1) and schedule 7.  
(156) [1954 c. 56.](#)  
(157) [1987 c. 31.](#)  
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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Claim for compensation in respect of improvement** **E+W**

<sup>F322</sup>**Rule 4** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Proceedings under Part I of Act of 1927** **E+W**

<sup>F322</sup>**Rule 5** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application for new tenancy under section 24 of Act of 1954** **E+W**

<sup>F322</sup>**Rule 6** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application to authorise agreement** **E+W**

<sup>F322</sup>**Rule 6A** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Evidence on application under section 24 of Act of 1954** **E+W**

<sup>F322</sup>**Rule 7** .....

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Parties to certain proceedings** **E+W**

**F322** **Rule 8** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Order dismissing application under section 24 which is successfully opposed** **E+W**

**F322** **Rule 9** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application to determine interim rent** **E+W**

**F322** **Rule 9A** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Other applications under Part II of Act of 1954** **E+W**

**F322** **Rule 10** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Transfer of proceedings from county court** **E+W**

**F322** **Rule 11** .....

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

.....  
**Textual Amendments**  
F322 Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application for relief under section 16, etc., of the Act of 1954** **E+W**

F322 **Rule 12** .....

.....  
**Textual Amendments**  
F322 Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Evidence of rateable value** **E+W**

F322 **Rule 13** .....

.....  
**Textual Amendments**  
F322 Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application under section 19 of the Act of 1987** **E+W**

F322 **Rule 14** .....

.....  
**Textual Amendments**  
F322 Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application for order under section 24 of the Act of 1987** **E+W**

F322 **Rule 15** .....

.....  
**Textual Amendments**  
F322 Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application for acquisition order under section 29 of the Act of 1987** **E+W**

F322 **Rule 16** .....



**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application for order under section 38 or section 40 of the Act of 1987** **E+W**

**F322** **Rule 17** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Service of notices in proceedings under the Act of 1987** **E+W**

**F322** **Rule 18** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Tenants' associations** **E+W**

**F322** **Rule 19** .....

**Textual Amendments**

**F322** Sch. 1 RSC Order 97 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**RSC ORDER 98** **E+W**

**LOCAL GOVERNMENT FINANCE ACT 1982(158), PART III**

**Interpretation** **E+W**

**Rule 1** In this Order “the Act” means the Local Government Finance Act 1982 and a section referred to by number means the section so numbered in that Act.

**Application by auditor for declaration** **E+W**

**Rule 2.**—(1) Any application for a declaration under section 19 (1) of the Act that an item of account is contrary to law shall be made by claim form.

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(2) The claim form shall be served on the body to whose accounts the application relates and on any person against whom an order is sought under section 19 (2).

(3) Not later than seven days after filing the claim form in the Crown Office <sup>F323</sup>... the applicant shall file in that office a witness statement or affidavit stating the facts on which he intends to rely at the hearing of the application.

(4) The claim shall be entered for hearing within six weeks after the claim form has been filed in the Crown Office but, unless the Court otherwise directs, the application shall not be heard sooner than 28 days after service of the claim form.

**Textual Amendments**  
**F323** Words in [Sch. 1 RSC Order 98 rule 2\(3\)](#) omitted (2.10.2000) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), [rules 1, 26](#)

**Appeal against decision of auditor** **E+W**

<sup>F324</sup>**Rule 3** .....

**Textual Amendments**  
**F324** [Sch. 1 RSC Order 98 rule 3](#) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), [Sch. 8](#) (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

**General provisions** **E+W**

**Rule 4.**—(1) Any proceedings in which the jurisdiction conferred on the High Court by section 19 or section 20 of the Act is invoked shall be assigned to the Queen’s Bench Division and be heard by a single judge, unless the Court directs that the matter shall be heard by a Divisional Court; and the Court may, at any stage direct that any officer or member of the body to whose accounts the application of appeal relates be joined as a respondent.

(2) Except in so far as the Court directs that the evidence on any such application or appeal shall be given orally, it shall be given by witness statement or affidavit.

(3) The applicant or appellant must forthwith after filing any witness statement or affidavit under rule 2 (3) or 3 (3) serve a copy thereof on every respondent and any person intending to oppose the application or appeal must, not less than four days before the hearing, serve on the applicant or appellant a copy of any witness statement or affidavit filed by him in opposition <sup>F325</sup>....

(4) Except by permission of the Court, no witness statement or affidavit may be used at the hearing unless a copy thereof was served in accordance with paragraph (3).

**Textual Amendments**  
**F325** Words in [Sch. 1 RSC Order 98 rule 4\(3\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1, 52](#)

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## RSC ORDER 99 **E+W**

### INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975(159)

#### Order to apply to High Court and County Court **E+W**

**Rule A1** This Order applies to proceedings both in the High Court and the county court.

#### Interpretation **E+W**

**Rule 1** In this Order “the Act” means the Inheritance (Provision for Family and Dependents) Act 1975 and a section referred to by number means the section so numbered in that Act.

#### Assignment to Chancery or Family Division if proceedings in High Court **E+W**

**Rule 2** Proceedings in the High Court under the Act may be assigned to the Chancery Division or to the Family Division.

#### Application for financial provision **E+W**

**Rule 3.**—(1) An application under section 1 is made by the issue of a claim form.

(3) There shall be filed with the Court a witness statement or affidavit by the applicant in support of the claim, exhibiting an official copy of the grant of representation to the deceased’s estate and of every testamentary document admitted to proof, and a copy of the witness statement or affidavit shall be served on every defendant with the claim form.

#### Powers of Court as to parties **E+W**

**Rule 4.**—(1) The Court may at any stage of proceedings under the Act direct that any person be added as a party to the proceedings or that notice of the proceedings be served on any person.

(2) [<sup>F326</sup>CPR rule 19.7], shall apply to proceedings under the Act as it applies to the proceedings mentioned in paragraph (1) of that rule.

#### Textual Amendments

**F326** Words in Sch. 1 RSC Order 99 rule 4(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **26**

#### Witness statement or affidavit in answer **E+W**

**Rule 5.**—(1) A defendant to an application under section 1 who is a personal representative of the deceased shall and any other defendant may, within 21 days after service of the claim form on him, inclusive of the day of service, file with the Court a witness statement or affidavit in answer to the application.

(2) The witness statement or affidavit filed by a personal representative pursuant to paragraph (1) shall state to the best of the witness’s ability—

- (a) full particulars of the value of the deceased’s net estate, as defined by section 25 (1);

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- (b) the person or classes of persons beneficially interested in the estate, giving the names and (in the case of those who are not already parties) the addresses of all living beneficiaries, and the value of their interests so far as ascertained;
- (c) if such be the case, that any living beneficiary (naming him) is a child or patient within the meaning of CPR rule 21.1(2); and
- (d) any facts known to the witness which might affect the exercise of the Court’s powers under the Act.

(3) Every defendant who lodges a witness statement or affidavit shall at the same time serve a copy on the claimant and on every other defendant who is not represented by the same solicitor.

**Separate representation** E+W

**Rule 6** Where an application under section 1 is made jointly by two or more applicants and the claim form is accordingly issued by one solicitor on behalf of all of them, they may, if they have conflicting interests, appear on any hearing of the claim by separate solicitors or counsel or in person, and where at any stage of the proceedings it appears to the Court that one of the applicants is not but ought to be separately represented, the Court may adjourn the proceedings until he is.

**Endorsement of memorandum on grant** E+W

**Rule 7** On the hearing of an application under section 1 the personal representative shall produce to the Court the grant of representation to the deceased’s estate and, if an order is made under the Act, the grant shall remain in the custody of the Court until a memorandum of the order has been endorsed on or permanently annexed to the grant in accordance with section 19 (3).

**Disposal of proceedings in private** E+W

<sup>F327</sup>**Rule 8** .....

**Textual Amendments**

**F327** Sch. 1 RSC Order 99 rule 8 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **53**

**Subsequent applications in proceedings under section 1** E+W

**Rule 9** Where an order has been made on an application under section 1, any subsequent application under the Act, whether made by a party to the proceedings or by any other person, shall be made by the issue of an application notice in accordance with CPR Part 23.

**Drawing up and service of orders** E+W

**Rule 10** The provisions of the Family Proceedings Rules relating to the drawing up and service of orders shall apply to proceedings in the Family Division under this Order as if they were proceedings under those Rules. In this rule “Family Proceedings Rules” means rules made under section 40 of the Matrimonial and Family Proceedings Act 1984.

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## RSC ORDER 101 **E+W**

### THE PENSIONS APPEAL TRIBUNALS ACT 1943

#### Assignment to Queen's Bench Division **E+W**

<sup>F328</sup>**Rule 1** .....

##### Textual Amendments

**F328** Sch. 1 RSC Order 101 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

#### **E+W**

<sup>F328</sup> .....

##### Textual Amendments

**F328** Sch. 1 RSC Order 101 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

#### **E+W**

<sup>F328</sup> .....

##### Textual Amendments

**F328** Sch. 1 RSC Order 101 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

#### **E+W**

<sup>F328</sup> .....

##### Textual Amendments

**F328** Sch. 1 RSC Order 101 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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## RSC ORDER 106 **E+W**

### PROCEEDINGS RELATING TO SOLICITORS: THE SOLICITORS ACT 1974(160)

#### Interpretation **E+W**

**Rule 1.**—(1) In this Order—

“the Act” means the Solicitors Act 1974 and a section referred to by number means the section so numbered in that Act;

“appeal” means an appeal to the High Court against an order made by the Tribunal on an application or complaint under the Act.

(2) Expressions used in this Order which are used in the Act have the same meanings in this Order as in the Act.

#### Jurisdiction under Part III of Act **E+W**

**Rule 2.**—(2) The jurisdiction of the High Court under Part III of the Act may be exercised by

- (a) A judge <sup>F329</sup> ...
- (b) A master, a taxing master or a district judge of the Family Division, or
- (c) A district judge if the costs are for contentious business done in proceedings in the district registry of which he is the district judge or for non contentious business.

#### Textual Amendments

**F329** Words in [Sch. 1 RSC Order 106 rule 2\(2\)\(a\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [62\(h\)](#)

#### Power to order solicitor to deliver cash account, etc. **E+W**

**Rule 3.**—(1) Where the relationship of solicitor and client exists or has existed the court may, on the application of the client or his personal representatives, make an order for—

- (a) the delivery by the solicitor of a cash account;
- (b) the payment or delivery up by the solicitor of money or securities;
- (c) the delivery to the claimant of a list of the moneys or securities which the solicitor has in his possession or control on behalf of the claimant;
- (d) the payment into or lodging in court of any such moneys or securities.

(2) An application for an order under this rule must be made by the issue of a claim form, or if in proceedings by an application in accordance with CPR Part 23.

(3) If the defendant alleges that he has a claim for costs, the Court may make such order for detailed assessment in accordance with CPR Part 47 and payment, or securing the payment, thereof and the protection of the defendant’s lien, if any, as the Court thinks fit.

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### **Certificate to be submitted with solicitor's application for detailed assessment** **E+W**

**Rule 5A** A solicitor who applies for an order under the Act for the detailed assessment in accordance with CPR Part 47 of his bill of costs shall lodge with his application a certificate that all the relevant requirements of the Act have been satisfied.

### **Applications under Schedule 1 to Act** **E+W**

**Rule 6.**—(1) Proceedings in the High Court under Schedule 1 to the Act shall be assigned to the Chancery Division.

(2) The claim form by which an application for an order under the said Schedule is made must be entitled in the matter of a solicitor, or a deceased solicitor, as the case may be (without naming him) and in the matter of the Act.

(3) Where an order has been made under paragraph 9 (4), 9 (5) or 10 of the said Schedule an application for an order under paragraph 9 (8) or 9 (10) may be made in accordance with CPR Part 23 in the proceedings in which the first mentioned order was made.

### **Defendants to applications under Schedule 1 to Act** **E+W**

**Rule 7** The defendant to a claim by which an application for an order under Schedule 1 to the Act is made shall be—

- (a) if the application is for an order under paragraph 5 thereof, the solicitor or, as the case may be, every member of the firm, on whose behalf the money in respect of which the order is sought is held;
- (b) if the application is for an order under paragraph 6 (4) or 9 (8) thereof, the Law Society;
- (c) if the application is for an order under paragraph 8, 9 (4) or 9 (5) thereof, the person against whom the order is sought;
- (d) if the application is for an order under paragraph 9 (10) thereof, the person from whom the Law Society obtained possession of the documents by virtue of paragraph 9 or 10;
- (e) if the application is for an order under paragraph 10 thereof for the re-direction of postal packets addressed to a solicitor or his firm, the solicitor or, as the case may be, every member of the firm;
- (f) if the application is for an order under paragraph 11 thereof, the solicitor or personal representative in substitution for whom the appointment of a new trustee is sought and, if he is a co-trustee, the other trustee or trustees.

### **Interim order restricting payment out of banking account** **E+W**

**Rule 8** At any time after the issue of a claim form by which an application for an order under paragraph 5 of Schedule 1 to the Act is made, the Court may, on the application of the claimant made without notice in accordance with CPR Part 23 make an interim order under that paragraph to have effect until the hearing of the application and include therein a further order requiring the defendant to show cause at the hearing why an order under that paragraph should not be made.

### **Adding parties, etc.** **E+W**

**Rule 9** The Court may, at any stage of proceedings under Schedule 1 to the Act, order any person to be added as a party to the proceedings or to be given notice thereof.

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**Service of documents** **E+W**

**Rule 10.**—(1) Any document required to be served on the Law Society in proceedings under this Order shall be served by sending it by prepaid post to the secretary of the Law Society.

(2) Subject to paragraph (1) a claim form by which an application under Schedule 1 to the Act is made, an order under paragraph 5 of that Schedule or rule 8 and any other document not required to be served personally which is to be served on a defendant to proceedings under the said Schedule shall, unless the Court otherwise directs, be deemed to be properly served by sending it by prepaid post to the defendant at his last known address.

**Constitution of Divisional Court to hear appeals** **E+W**

**Rule 11** Every appeal shall be heard by a Divisional Court of the Queen’s Bench Division consisting, unless the Lord Chief Justice otherwise directs, of not less than three judges.

**Title, service, etc., of notice of appeal** **E+W**

**Rule 12.**—(1) The [<sup>F330</sup>appellant’s notice] by which an appeal is brought must be entitled in the matter of a solicitor, or, as the case may be, a solicitor’s clerk, without naming him, and in the matter of the Act.

(2) Unless the Court otherwise orders, the persons to be served with such notice are every party to the proceedings before the Tribunal and the Law Society.

[<sup>F331</sup>(3) The appellant’s notice must be filed at the court within 14 days after the date on which a statement of the tribunal’s findings was filed pursuant to section 48(1) of the Act.]

<sup>F332</sup>(4) .....

<p><b>Textual Amendments</b></p> <p><b>F330</b> Words in Sch. 1 RSC Order 106 rule 12(1) substituted (2.5.2000) by <a href="#">The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221)</a>, rules 1(b), <a href="#">27(a)(i)</a></p> <p><b>F331</b> Sch. 1 RSC Order 106 rule 12(3) substituted (2.5.2000) by <a href="#">The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221)</a>, rules 1(b), <a href="#">27(a)(ii)</a></p> <p><b>F332</b> Sch. 1 RSC Order 106 rule 12(4) omitted (2.5.2000) by virtue of <a href="#">The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221)</a>, rules 1(b), <a href="#">27(a)(iii)</a></p>
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**Law Society to produce certain documents** **E+W**

**Rule 13.**—(1) Within 7 days after being served with the [<sup>F333</sup>appellant’s notice] the Law Society must lodge in the Crown Office three copies of each of the following documents:—

- (a) the order appealed against, together with the statement of the Tribunal’s findings required by section 48 (1) of the Act,
- (b) any document lodged by a party with the Tribunal which is relevant to a matter in issue on the appeal, and
- (c) the transcript of the shorthand note, or, as the case may be, the note taken by the chairman of the Tribunal of the evidence in the proceedings before the Tribunal.

(2) At the hearing of the appeal the Court shall direct by whom the costs incurred in complying with paragraph (1) are to be borne and may order them to be paid to the Law Society by one of the parties notwithstanding that the Society does not appear at the hearing.



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#### Textual Amendments

**F333** Words in Sch. 1 RSC Order 106 rule 13(1) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **27(b)**

#### Restriction on requiring security for costs **E+W**

**Rule 14** No person other than an appellant who was the applicant in the proceedings before the Tribunal, shall be ordered to give security for the costs of an appeal.

#### Disciplinary committee's opinion may be required **E+W**

**Rule 15** The Court may direct the Tribunal to furnish the Court with a written statement of their opinion on the case which is the subject-matter of an appeal or on any question arising therein, and where such a direction is given, the clerk to the Tribunal must as soon as may be lodge three copies of such statement in the Crown Office and at the same time send a copy to each of the parties to the appeal.

#### Persons entitled to be heard on appeal **E+W**

**Rule 16** A person who has not been served with the [<sup>F334</sup>appellant's notice] but who desires to be heard in opposition to the appeal shall, if he appears to the Court to be a proper person to be so heard, be entitled to be so heard.

#### Textual Amendments

**F334** Words in Sch. 1 RSC 106 rule 16 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **27(c)**

#### Discontinuance of appeal **E+W**

**Rule 17.**—(1) An appellant may at any time discontinue his appeal by serving notice of discontinuance on the clerk to the Tribunal and every other party to the appeal and, if the appeal has been entered, by lodging a copy of the notice in the Crown Office.

(2) Where an appeal has been discontinued in accordance with paragraph (1) it shall be treated as having been dismissed with an order for payment by the appellant of the costs of and incidental to the appeal, including any costs incurred by the Law Society in complying with rule 13 (1).

## RSC ORDER 108 **E+W**

### PROCEEDINGS RELATING TO CHARITIES: THE CHARITIES ACT 1993(161)

#### Interpretation **E+W**

**Rule 1** In this Order—

“the Act” means the Charities Act 1993;

“certificate” means a certificate that a case is a proper one for an appeal;

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“charity proceedings” means proceedings in the High Court under the Court’s jurisdiction with respect to charities or under the Court’s jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes;

“the Commissioners” means the Charity Commissioners for England and Wales.

#### **Assignment to Chancery Division** E+W

**Rule 2** Charity proceedings and proceedings brought in the High Court by virtue of the Act shall be assigned to the Chancery Division.

#### **Application for permission to appeal or to take charity proceedings** E+W

**Rule 3.**—(1) An application shall not be made under section 16 (13) of the Act for permission to appeal against an order of the Commissioners unless the applicant has requested the Commissioners to grant a certificate and they have refused to do so.

(2) An application under section 33 (5) of the Act for permission to start charity proceedings must be made within 21 days after the refusal by the Commissioners of an order authorising proceedings.

(3) The application must be made by lodging in Chancery Chambers a statement showing—

- (a) the name, address and description of the applicant;
- (b) particulars of the order against which it is desired to appeal or of the proceedings which it is desired to take;
- (c) the date of the Commissioners' refusal to grant a certificate or an order authorising the taking of proceedings;
- (d) the grounds on which the applicant alleges that it is a proper case for an appeal or for taking proceedings.

(4) The application may be made without notice in the first instance and if it is made with the consent of any other party to the proposed appeal or proposed proceedings that fact shall be mentioned in the statement.

(5) If the judge on considering the application so directs, the Commissioners shall furnish him with a written statement of their reasons for refusing a certificate or, as the case may be, an order authorising the taking of proceedings, and a copy of any such statement shall be sent from Chancery Chambers to the applicant.

(6) Unless, after considering the applicant’s statement and the statement (if any) of the Commissioners, the judge decides to give the permission applied for without a hearing, the application shall be set down for hearing, and the hearing may be in private if the judge so directs.

(7) Where the application is determined without a hearing, a copy of the judge’s order shall be sent from Chancery Chambers to the applicant and the Commissioners; and where the application is to be set down for hearing, notice of the day and time fixed for the hearing shall be sent from that Office to the applicant.

#### **Application for enforcement of order or direction of Commissioners** E+W

**Rule 4** Order 52 rule 1 (4), shall apply in relation to an application under section 88 of the Act as if for the reference in that rule to a single judge of the Queen’s Bench Division there was substituted a reference to a single judge of the Chancery Division.

#### **Appeal against order, etc., of Commissioners** E+W

**Rule 5.**—(1) An appeal against an order or decision of the Commissioners shall be heard and determined by a single judge.

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(2) Such an appeal must be brought by a [<sup>F335</sup>appellant's notice] to which the Attorney-General, unless he is the appellant, shall be made a [<sup>F336</sup>respondent] in addition to any other person who is a proper [<sup>F336</sup>respondent] thereto.

(3) A [<sup>F335</sup>appellant's notice] under this rule must state the grounds of the appeal and, except with the permission of the judge hearing the appeal, the appellant shall not be entitled to rely on any ground not so stated.

#### Textual Amendments

**F335** Words in Sch. 1 RSC Order 108 rule 5 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **28(a)**

**F336** Words in Sch. 1 RSC Order 105 rule 5(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **28(b)**

#### Service on Commissioners **E+W**

**Rule 6** Any document required or authorised to be served on the Commissioners in proceedings to which this Order relates must be served on the Treasury Solicitor in accordance with Order 77, rule 4 (2).

## RSC ORDER 109 **E+W**

### THE ADMINISTRATION OF JUSTICE ACT 1960(162)

#### Applications under Act **E+W**

**Rule 1.**—(1) Any of the following applications, that is to say—

- (a) an application under section 2 of the Administration of Justice Act 1960, or under that section as applied by section 13 of that Act, to extend the time within which an application may be made to a Divisional Court for permission to appeal to the House of Lords under section 1 of that Act, or section 13 thereof, from an order or decision of that Court, and
- (b) an application by a defendant under section 9 (3) of that Act to a Divisional Court for permission to be present on the hearing of any proceedings preliminary or incidental to an appeal to the House of Lords under section 1 of that Act from a decision of that Court

must be made to a Divisional Court except in vacation when it may be made to a judge <sup>F337</sup>...

(2) Any such application to a Divisional Court, if not made in the proceedings before the Divisional Court from whose order or decision the appeal in question is brought, must be made by the issue of a claim form <sup>F338</sup>....

(3) Any such application to a judge <sup>F339</sup>... must, in the case of such an application as is referred to in paragraph (1)(a) be made by the issue of a claim form and, in the case of such an application as is referred to in paragraph (1)(b) need not be served on any other person unless, in the latter case, the judge otherwise directs.

(4) No application notice or copy of the claim form (as the case may be) by which such an application as is referred to in paragraph (1)(b) is made, need be given to any party affected thereby unless the Divisional Court otherwise directs.

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(5) Where any application to which this rule applies is made in vacation to a single judge and the judge refuses the application, the applicant shall be entitled to have the application determined by a Divisional Court.

**Textual Amendments**  
**F337** Words in Sch. 1 RSC Order 109 rule 1(1) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **62(i)**  
**F338** Words in Sch. 1 RSC Order 109 rule 1(2) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **55**  
**F339** Words in Sch. 1 RSC Order 109 rule 1(3) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **62(i)**

**Appeals under section 13 of Act** **E+W**

**Rule 2.**—(1) An appeal to a Divisional Court of the High Court under section 13 of the Administration of Justice Act 1960, shall be heard and determined by a Divisional Court of the Queen’s Bench Division.

<sup>F340</sup>(3) .....

(4) Unless the Court gives permission, there shall be not more than 4 clear days between the date on which the order or decision appealed against was made and the day named in the notice of appeal for the hearing of the appeal.

(5) The notice must be served, and the appeal entered, not less than one clear day before the day named in the notice for the hearing of the appeal.

**Textual Amendments**  
**F340** Sch. 1 RSC Order 109 rule 2(3) omitted (2.5.2000) by virtue of [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **29(a)**

**Release of appellant on bail** **E+W**

**Rule 3.**—(1) Where, in the case of an appeal under section 13 of the Administration of Justice Act 1960, to a Divisional Court or to the House of Lords from a Divisional Court, the appellant is in custody, the High Court may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as the Court may fix) for his appearance, within 10 days after the judgment of the Divisional Court or, as the case may be, of the House of Lords, on the appeal before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.

(2) Order 79, rule 9 (1) to (6) and (8) shall apply in relation to an application to the High Court for bail pending an appeal under the said section 13 to which this rule applies, and to the admission of a person to bail in pursuance of an order made on the application, as they apply in relation to an application to that Court for bail in criminal proceedings, and to the admission of a person to bail in pursuance of an order made on the application, but with the substitution, for references to the defendant, of references to the appellant, and, for references to the prosecutor, of references to the court officer of the court from whose order or decision the appeal is brought and to the parties to the proceedings in that court who are directly affected by the appeal.

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## [<sup>F341</sup>Release of appellant on bail by the Court of Appeal **E+W**

**Rule 4.**—(1) Where, in the case of an appeal under section 13 of the Administration of Justice Act 1960 to the Court of Appeal or to the House of Lords from the Court of Appeal, the appellant is in custody, the Court of Appeal may order his release on his giving security (whether by recognisance, with or without sureties, or otherwise and for such reasonable sum as that court may fix) for his appearance within 10 days after the judgment of the Court of Appeal or, as the case may be, of the House of Lords on the appeal shall have been given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.

(2) An application for the release of a person under paragraph (1) pending an appeal to the Court of Appeal or House of Lords under the said section 13 must be made in accordance with CPR Part 23, and the application notice must, at least 24 hours before the day named therein for the hearing, be served on the court from whose order or decision the appeal is brought and on all parties to the proceedings in that court who are directly affected by the appeal.

(3) Order 79, rules 9(6), (6A), (6B) and (8) shall apply in relation to the grant of bail under this rule by the Court of Appeal in a case of criminal contempt of court as they apply in relation to the grant of bail in criminal proceedings by the High Court, but with the substitution for references to a judge of references to the Court of Appeal and for references to the defendant of references to the appellant.

(4) When granting bail under this rule in a case of civil contempt of court, the Court of Appeal may order that the recognisance or other security to be given by the appellant or the recognisance of any surety shall be given before any person authorised by virtue of section 119(1) of the Magistrates' Courts Act 1980 to take a recognisance where a magistrates' court having power to take it has, instead of taking it, fixed the amount in which the principal and his sureties, if any, are to be bound. An order by the Court of Appeal granting bail as aforesaid must be in Form 98 in the relevant practice direction with the necessary adaptations.

(5) Where in pursuance of an order of the Court of Appeal under paragraph (4) of this rule a recognisance is entered into or other security given before any person, it shall be the duty of that person to cause the recognisance of the appellant or any surety or, as the case may be, a statement of the other security given, to be transmitted forthwith to the [<sup>F342</sup>justices' chief executive for] the court which committed the appellant; and a copy of such recognisance or statement shall at the same time be sent to the governor or keeper of the prison or other place of detention in which the appellant is detained, unless the recognisance or security was given before such governor or keeper.

(6) The powers conferred on the Court of Appeal by paragraphs (1), (3) and (4) of this rule may be exercised by a single judge.]

### Textual Amendments

**F341** Sch. 1 RSC Order 109 rule 4 inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 7](#)

**F342** Words in Sch. 1 RSC Order 109 rule 4(5) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), [23](#)

## RSC ORDER 110 **E+W**

### ENVIRONMENTAL CONTROL PROCEEDINGS

## Injunctions to prevent environmental harm **E+W**

**Rule 1.**—(1) An injunction under—

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- (a) section 187B or 214A of the Town and Country Planning Act 1990(163);
- (b) section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990(164); or
- (c) section 26AA of the Planning (Hazardous Substances) Act 1990(165)

may be granted against a person whose identity is unknown to the applicant; and in the following provisions of this rule such an injunction against such a person is referred to as “an injunction under paragraph (1),” and the person against whom it is sought is referred to as “the defendant”.

(2) An applicant for an injunction under paragraph (1) shall, in the [F343 claim form], describe the defendant by reference to—

- (a) a photograph,
- (b) a thing belonging to or in the possession of the defendant, or
- (c) any other evidence,

with sufficient particularity to enable service to be effected..

(3) An applicant for an injunction under paragraph (1) shall file in support of the application evidence by witness statement or affidavit—

- (a) verifying that he was unable to ascertain, within the time reasonably available to him, the defendant’s identity,
- (b) setting out the action taken to ascertain the defendant’s identity, and
- (c) verifying the means by which the defendant has been described in the application and that the description is the best that the applicant is able to provide.

(4) Paragraph (2) is without prejudice to the power of the Court to make an order for service by an alternative method or dispensing with service.

**Textual Amendments**

**F343** Words in Sch. 1 RSC Order 110 rule 1(2) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 56

RSC ORDER 111 **E+W**

THE SOCIAL SECURITY ADMINISTRATION ACT 1992

Judge by whom appeals and references to be heard **E+W**

<sup>F344</sup>**Rule 1** .....

**Textual Amendments**

**F344** Sch. 1 RSC Order 111 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 8](#) (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

(163) 1990 c. 8.  
(164) 1990 c. 9.  
(165) 1990 c. 10.

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**E+W**

F344 .....

**Textual Amendments**

**F344** Sch. 1 RSC Order 111 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F344 .....

**Textual Amendments**

**F344** Sch. 1 RSC Order 111 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F344 .....

**Textual Amendments**

**F344** Sch. 1 RSC Order 111 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

**E+W**

F344 .....

**Textual Amendments**

**F344** Sch. 1 RSC Order 111 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

RSC ORDER 112 **E+W**

[<sup>F345</sup>APPLICATIONS FOR USE OF SCIENTIFIC TESTS IN DETERMINING PARENTAGE]

**Textual Amendments**

**F345** Sch. 1 RSC Order 112 heading substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **24(a)**



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## Interpretation **E+W**

### Rule 1 In this Order—

“the Act” means Part III of the Family Law Reform Act 1969<sup>(166)</sup>;

“<sup>F346</sup>bodily samples” and “<sup>F347</sup>scientific tests” have the meanings assigned to them by section 25 of the Act;

“direction” means a direction for the use of <sup>F347</sup>scientific tests] under section 20 (1) of the Act;

“the court officer” means the officer of the court who draws up a direction.

#### Textual Amendments

**F346** Words in Sch. 1 RSC Order 112 substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **24(b)**

**F347** Words in Sch. 1 RSC Order 112 substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **24(c)**

## Application for direction **E+W**

**Rule 2.**—(1) Except with the permission of the court, an application in any proceedings for a direction shall be in accordance with CPR Part 23 and a copy of the application notice shall be served on every party to the proceedings (other than the applicant) and on any other person from whom the direction involves the taking of <sup>F346</sup>bodily samples].

(3) Any notice required by this rule to be served on a person who is not a party to the proceedings shall be served on him personally.

#### Textual Amendments

**F346** Words in Sch. 1 RSC Order 112 substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **24(b)**

## Applications involving children under 16 and patients **E+W**

**Rule 3** Where an application is made for a direction in respect of a person who is either—

- (a) under 16, or
- (b) suffering from a mental disorder within the meaning of the Mental Health Act 1983<sup>(167)</sup> and incapable of understanding the nature and purpose of <sup>F347</sup>scientific tests],

the application notice <sup>F348</sup>... shall state the name and address of the person having the care and control of the person under disability and shall be served on him instead of on the person under disability.

#### Textual Amendments

**F347** Words in Sch. 1 RSC Order 112 substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **24(c)**

**F348** Words in Sch. 1 RSC Order 112 rule 3 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **57**

<sup>(166)</sup>1969 c. 46.

<sup>(167)</sup>1983 c. 20.



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### Addition as a party of person to be tested **E+W**

**Rule 4** Where an application is made for a direction involving the taking of [<sup>F346</sup>bodily samples] from a person who is not a party to the proceedings in which the application is made, the court may at any time direct that person to be made a party to the proceedings.

#### Textual Amendments

**F346** Words in Sch. 1 RSC Order 112 substituted (1.4.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(c), **24(b)**

### Service of direction and adjournment of proceedings **E+W**

**Rule 5** Where the court gives a direction in any proceedings, the court officer shall send a copy to every party to the proceedings and to every other person from whom the direction involves the taking of [<sup>F346</sup>bodily samples] and, unless otherwise ordered, further consideration of the proceedings shall be adjourned until the court receives a report pursuant to the direction.

#### Textual Amendments

**F346** Words in Sch. 1 RSC Order 112 substituted (1.4.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(c), **24(b)**

### Service of copy report **E+W**

**Rule 6** On receipt by the court of a report made pursuant to a direction, the proper officer shall send a copy to every party to the proceedings and to every other person from whom the direction involved the taking of [<sup>F346</sup>bodily samples].

#### Textual Amendments

**F346** Words in Sch. 1 RSC Order 112 substituted (1.4.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(c), **24(b)**

## RSC ORDER 113 **E+W**

### SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

### Proceedings to be brought by claim form **E+W**

<sup>F349</sup>**Rule 1** .....

#### Textual Amendments

**F349** Sch. 1 RSC Order 113 rules 1-6 revoked (15.10.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rule 1(d), **Sch. 3**

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**Jurisdiction of Masters** **E+W**

<sup>F349</sup>**Rule 1A** .....

.....  
**Textual Amendments**  
**F349** Sch. 1 RSC Order 113 rules 1-6 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Forms of claim form** **E+W**

<sup>F349</sup>**Rule 2** .....

.....  
**Textual Amendments**  
**F349** Sch. 1 RSC Order 113 rules 1-6 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Witness statement or affidavit in support** **E+W**

<sup>F349</sup>**Rule 3** .....

.....  
**Textual Amendments**  
**F349** Sch. 1 RSC Order 113 rules 1-6 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Service of claim form** **E+W**

<sup>F349</sup>**Rule 4** .....

.....  
**Textual Amendments**  
**F349** Sch. 1 RSC Order 113 rules 1-6 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Application by occupier to be made a party** **E+W**

<sup>F349</sup>**Rule 5** .....

.....  
**Textual Amendments**  
**F349** Sch. 1 RSC Order 113 rules 1-6 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Order for possession** **E+W**

<sup>F349</sup>**Rule 6** .....

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**Textual Amendments**

**F349** Sch. 1 RSC Order 113 rules 1-6 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Writ of possession** **E+W**

**Rule 7.**—(1) Order 45, rule 3 (2) shall not apply in relation to an order for possession [<sup>F350</sup>in a possession claim against trespassers under Part 55] but no writ of possession to enforce such an order shall be issued after the expiry of three months from the date of the order without the permission of the Court.

An application for permission may be made without notice being served on any other party unless the Court otherwise directs.

(2) The writ of possession shall be in Form No. 66A.

**Textual Amendments**

**F350** Words in [Sch. 1 RSC Order 113 rule 7\(1\)](#) substituted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(d), **25**

**Setting aside order** **E+W**

<sup>F351</sup>**Rule 8** .....

**Textual Amendments**

**F351** [Sch. 1 RSC Order 113 rule 8](#) revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), **Sch. 3**

**RSC ORDER 114** **E+W**

**REFERENCES TO THE EUROPEAN COURT**

**Interpretation** **E+W**

**Rule 1** In this Order—

“the Court” means the court by which an order is made and includes the Court of Appeal;

“the European Court” means the Court of Justice of the European Communities; and

“order” means an order referring a question to the European Court for a preliminary ruling under article 177 of the Treaty establishing the European Community, Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community or for a ruling on the interpretation of any of the Brussels Conventions (within the meaning of s.1 (1) of the Civil Jurisdiction and Judgments Act 1982(**168**)) or any of the instruments referred to in s.1 of the Contracts (Applicable Law) Act 1990(**169**).

(168)1982 c. 27.

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## Making of order **E+W**

**Rule 2.**—(1) An order may be made by the Court of its own initiative at any stage in proceedings, or on application by a party before or at the trial or hearing thereof.

(2) Where an application is made before the trial or hearing, it shall be made [<sup>F352</sup>in accordance with CPR Part 23].

(3) In the High Court no order shall be made except by a judge in person.

### Textual Amendments

**F352** Words in [Sch. 1 RSC Order 114 rule 2\(2\)](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **59**

## Schedule to order to set out request for ruling **E+W**

**Rule 3** An order shall set out in a schedule the request for the preliminary ruling of the European Court, and the Court may give directions as to the manner and form in which the schedule is to be prepared.

## Stay of proceedings pending ruling **E+W**

**Rule 4** The proceedings in which an order is made shall, unless the Court otherwise orders, be stayed until the European Court has given a preliminary ruling on the question referred to it.

## Transmission of order to the European Court **E+W**

**Rule 5** When an order has been made, the Senior Master shall send a copy thereof to the Registrar of the European Court; but in the case of an order made by the High Court, he shall not do so, unless the Court otherwise orders, until the time for appealing against the order has expired or, if an appeal is entered within that time, until the appeal has been determined or otherwise disposed of.

## Appeals from orders made by High Court **E+W**

**Rule 6** On an appeal to the Court of Appeal from an order made by the High Court [<sup>F353</sup>an appellant's notice must be filed at the Court of Appeal within 14 days after the date the order was made.]

### Textual Amendments

**F353** Words in [Sch. 1 RSC Order 114 rule 6](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **30**

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## RSC ORDER 115 **E+W**

### CONFISCATION AND FORFEITURE IN CONNECTION WITH CRIMINAL PROCEEDINGS

#### **I. Drug Trafficking Act 1994(170) and Criminal Justice (International Co-operation) Act 1990(171) **E+W****

##### **Interpretation **E+W****

**Rule 1.**—(1) In this Part of this Order, “The Act” means the Drug Trafficking Act 1994 and a section referred to by number means the section so numbered in the Act.

(2) Expressions used in this Part of this Order which are used in the Act have the same meanings in this Part of this Order as in the Act and include any extended meaning given by the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

##### **Assignment of proceedings **E+W****

**Rule 2** Subject to rule 12, the jurisdiction of the High Court under the Act shall be exercised by a judge of the Chancery Division or of the Queen’s Bench Division <sup>F354</sup> ....

##### **Textual Amendments**

**F354** Words in Sch. 1 RSC Order 115 rule 2 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **62(j)**

##### **Title of proceedings **E+W****

**Rule 2A** An application made in accordance with CPR Part 23, or a claim form issued in relation to proceedings under this Part of this Order shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.

##### **Application for confiscation order **E+W****

**Rule 2B.**—(1) An application by the prosecutor for a confiscation order under section 19 shall be made in accordance with CPR Part 23 where there have been proceedings against the defendant in the High Court, and shall otherwise be made by the issue of a claim form.

(2) The application shall be supported by a witness statement or affidavit giving full particulars of the following matters—

- (a) the grounds for believing that the defendant has died or absconded;
- (b) the date or approximate date on which the defendant died or absconded;
- (c) where the application is made under section 19 (2), the offence or offences of which the defendant was convicted, and the date and place of conviction;
- (d) where the application is made under section 19 (4), the proceedings which have been initiated against the defendant (including particulars of the offence and the date and place of institution of those proceedings); and

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- (e) where the defendant is alleged to have absconded, the steps taken to contact him.
- (3) The prosecutor's statement under section 11 shall be exhibited to the witness statement or affidavit and shall include the following particulars—
  - (a) the name of the defendant;
  - (b) the name of the person by whom the statement is given;
  - (c) such information known to the prosecutor as is relevant to the determination whether the defendant has benefited from drug trafficking and to the assessment of the value of his proceeds of drug trafficking.
- (4) Unless the Court otherwise orders, a witness statement or affidavit under paragraph (2) may contain statements of information and belief, with their sources and grounds.
- (5) The application and the witness statement or affidavit in support shall be served not less than 7 days before the date fixed for the hearing of the application on—
  - (a) the defendant (or on the personal representatives of a deceased defendant);
  - (b) any person who the prosecutor reasonably believes is likely to be affected by the making of a confiscation order; and
  - (c) the receiver, where one has been appointed in the matter.

#### **Application for restraint order or charging order** E+W

**Rule 3.**—(1) An application for a restraint order under section 26 or for a charging order under section 27 (to either of which may be joined an application for the appointment of a receiver) may be made by the prosecutor by the issue of a claim form, notice of which need not be served on any other party.

(2) An application under paragraph (1) shall be supported by a witness statement or affidavit, which shall—

- (a) give the grounds for the application; and
- (b) to the best of the witness's ability, give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) Unless the Court otherwise directs, a witness statement or affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

#### **Restraint order and charging order** E+W

**Rule 4.**—(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to living expenses and legal expenses of the defendant, but the prosecutor shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made where notice of it has not been served on any person shall have effect until a day which shall be fixed for the hearing where all parties may attend on the application and a charging order shall be an order to show cause, imposing the charge until such day.

(3) Where a restraint order is made the prosecutor shall serve copies of the order and of the witness statement or affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the prosecutor shall serve copies of the order and of the witness statement or affidavit in support on the defendant and, where the property to which the order

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relates is held by another person, on that person and shall serve a copy of the order on such of the persons or bodies specified in Order 50, rule 2 (1)(b) to (d) as shall be appropriate.

### Discharge or variation of order **E+W**

**Rule 5.**—(1) Any person or body on whom a restraint order or a charging order is served or who is notified of such an order may make an application in accordance with CPR Part 23 to discharge or vary the order.

(2) The [<sup>F355</sup>application notice] and any witness statement or affidavit in support shall be lodged with the court and served on the prosecutor and, where he is not the applicant, on the defendant, not less than two clear days before the date fixed for the hearing of the [<sup>F356</sup>application].

(3) Upon the court being notified that proceedings for the offences have been concluded or that the amount, payment of which is secured by a charging order has been paid into court, any restraint order or charging order, as the case may be, shall be discharged.

(4) The Court may also discharge a restraint order or a charging order upon receiving notice from the prosecutor that it is no longer appropriate for the restraint order or the charging order to remain in place.

#### Textual Amendments

**F355** Words in Sch. 1 RSC Order 115 rule 5(2) substituted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **60(a)(i)**

**F356** Word in Sch. 1 RSC Order 115 rule 5(2) substituted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **60(a)(ii)**

### Further application by prosecutor **E+W**

**Rule 6.**—(1) Where a restraint order or a charging order has been made the prosecutor may apply by an application in accordance with CPR Part 23 with notice or, where the case is one of urgency or the giving of notice would cause a reasonable apprehension of dissipation of assets, without notice—

- (a) to vary such order, or
- (b) for a restraint order or a charging order in respect of other realisable property, or
- (c) for the appointment of a receiver.

(2) An application under paragraph (1) shall be supported by a witness statement or affidavit which, where the application is for a restraint order or a charging order, shall to the best of the witness's ability give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) The application and witness statement or affidavit in support shall be lodged with the court and served on the defendant and, where one has been appointed in the matter, on the receiver, not less than two clear days before the date fixed for the hearing of the [<sup>F357</sup>application].

(4) Rule 4 (3) and (4) shall apply to the service of restraint orders and charging orders respectively made under this rule on persons other than the defendant.

#### Textual Amendments

**F357** Word in Sch. 1 RSC Order 115 rule 6(3) substituted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **60(b)**

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**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

## Realisation of property **E+W**

**Rule 7.**—(1) An application by the prosecutor under section 29 shall, where there have been proceedings against the defendant in the High Court, be made by an application in accordance with CPR Part 23 and shall otherwise be made by the issue of a claim form

(2) The application notice or claim form, as the case may be, shall be served with the evidence in support not less than 7 days before the date fixed for the hearing of the application or claim on:—

- (a) the defendant,
- (b) any person holding any interest in the realisable property to which the application relates, and
- (c) the receiver, where one has been appointed in the matter.

(3) The application shall be supported by a witness statement or affidavit, which shall, to the best of the witness's ability, give full particulars of the realisable property to which it relates and specify the person or persons holding such property, and a copy of the confiscation order, of any certificate issued by the Crown Court under section 5 (2) and of any charging order made in the matter shall be exhibited to such witness statement or affidavit.

(4) The Court may, on an application under section 29—

- (a) exercise the power conferred by section 30 (2) to direct the making of payments by a receiver;
- (b) give directions in respect of the property interests to which the application relates; and
- (c) make declarations in respect of those interests.

## Receivers **E+W**

**Rule 8.**—(1) Subject to the provisions of this rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed in pursuance of a charging order or under sections 26 or 29.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Act, it shall not be necessary for a witness statement or affidavit of fitness to be sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall make an application to the court for directions in accordance with CPR Part 23, as to the distribution of such sums.

(4) An application under paragraph (3) shall be served with any evidence in support not less than 7 days before the date fixed for the hearing of the application on:—

- (a) the defendant, and
- (b) any other person who held property realised by the receiver.

(5) A receiver may apply for an order to discharge him from his office by making an application in accordance with CPR Part 23, which shall be served, together with any evidence in support, on all persons affected by his appointment not less than 7 days before the day fixed for the hearing of the application.

## Certificate of inadequacy **E+W**

**Rule 9.**—(1) The defendant or a receiver appointed under section 26 or 29 or in pursuance of a charging order may apply in accordance with CPR Part 23 for a certificate under section 17 (1).

(2) An application under paragraph (1) shall be served with any supporting evidence not less than 7 days before the date fixed for the hearing of the application on the prosecutor and, as the case may be, on either the defendant or the receiver (where one has been appointed).



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## **Certificate under section 16** **E+W**

**Rule 9A** An application under section 16 (2) (increase in realisable property) shall be served with any supporting evidence not less than 7 days before the date fixed for the hearing of the application on the defendant and, as the case may be, on either the prosecutor or (where one has been appointed in the matter) on the receiver.

## **Compensation** **E+W**

**Rule 10** An application for an order under section 18 shall be made in accordance with CPR Part 23, which shall be served, with any supporting evidence, on the person alleged to be in default and on the relevant authority under section 18 (5) not less than 7 days before the date fixed for the hearing of the application.

## **Disclosure of information** **E+W**

**Rule 11.**—(1) An application by the prosecutor under section 59 shall be made in accordance with CPR Part 23 and the application notice shall state the nature of the order sought and whether material sought to be disclosed is to be disclosed to a receiver appointed under section 26 or 29 or in pursuance of a charging order or to a person mentioned in section 59 (8).

(2) The application notice and witness statement or affidavit in support shall be served on the authorised Government Department in accordance with Order 77, rule 4 not less than 7 days before the date fixed for the hearing of the application.

(3) The witness statement or affidavit in support of an application under paragraph (1) shall state the grounds for believing that the conditions in section 59 (4) and, if appropriate, section 59 (7) are fulfilled.

## **Compensation for, discharge and variation of confiscation order** **E+W**

**Rule 11A.**—(1) An application under section 21, 22 or 23 shall be made in accordance with CPR Part 23 which, together with any evidence in support, shall be lodged with the Court and served on the prosecutor not less than 7 days before the day fixed for the hearing of the application.

(2) Notice shall also be served on any receiver appointed in pursuance of a charging order or under section 26 or 29.

(3) An application for an order under section 22 shall be supported by a witness statement or affidavit giving details of—

- (a) the confiscation order made under section 19 (4);
- (b) the acquittal of the defendant;
- (c) the realisable property held by the defendant; and
- (d) the loss suffered by the applicant as a result of the confiscation order.

(4) An application for an order under section 23 shall be supported by a witness statement or affidavit giving details of—

- (a) the confiscation order made under section 19 (4);
- (b) the date on which the defendant ceased to be an absconder;
- (c) the date on which proceedings against the defendant were instituted and a summary of the steps taken in the proceedings since then; and
- (d) any indication given by the prosecutor that he does not intend to proceed against the defendant.

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(5) An application made under section 21 shall be supported by a witness statement or affidavit giving details of—

- (a) the confiscation order made under section 19(4);
- (b) the circumstances in which the defendant ceased to be an absconder; and
- (c) the amounts referred to in section 21 (2).

(6) Where an application is made for an order under section 23 (3) or 24 (2)(b), the witness statement or affidavit shall also include—

- (a) details of the realisable property to which the application relates; and
- (b) details of the loss suffered by the applicant as a result of the confiscation order.

(7) Unless the Court otherwise orders, a witness statement or affidavit under paragraphs (3) to (6) may contain statements of information and belief, with the sources and grounds thereof.

#### **Exercise of powers under sections 37 and 40** E+W

**Rule 12** The powers conferred on the High Court by sections 37 and 40 may be exercised by a judge [<sup>F358</sup>or] a master of the Queen’s Bench Division.

#### **Textual Amendments**

**F358** Word in Sch. 1 RSC Order 115 rule 12 substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **60(c)**

#### **Application for registration** E+W

**Rule 13** An application for registration of an order specified in an Order in Council made under section 37 or of an external confiscation order under section 40 (1) must be made in accordance with CPR Part 23, and may be made without notice.

#### **Evidence in support of application under section 37** E+W

**Rule 14** An application for registration of an order specified in an Order in Council made under section 37 must be made in accordance with CPR Part 23, and be supported by a witness statement or affidavit—

- (i) exhibiting the order or a certified copy thereof, and
- (ii) stating, to the best of the witness’s knowledge, particulars of what property the person against whom the order was made holds in England and Wales, giving the source of the witness’s knowledge.

#### **Evidence in support of application under section 40 (1)** E+W

**Rule 15.**—(1) An application for registration of an external confiscation order must be made in accordance with CPR Part 23, and be supported by a witness statement or affidavit—

- (a) exhibiting the order or a verified or certified or otherwise duly authenticated copy thereof and, where the order is not in the English language, a translation thereof into English certified by a notary public or authenticated by witness statement or affidavit, and
- (b) stating—
  - (i) that the order is in force and is not subject to appeal,

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- (ii) where the person against whom the order was made did not appear in the proceedings, that he received notice thereof in sufficient time to enable him to defend them,
- (iii) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered, and
- (iv) to the best of the witness's knowledge, particulars of what property the person against whom the order was made holds in England and Wales, giving the source of the witness's knowledge.

(2) Unless the Court otherwise directs, a witness statement or affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

#### **Register of orders** E+W

**Rule 16.**—(1) There shall be kept in the Central Office under the direction of the Master of the Crown Office a register of the orders registered under the Act.

(2) There shall be included in such register particulars of any variation or setting aside of a registration and of any execution issued on a registered order.

#### **Notice of registration** E+W

**Rule 17.**—(1) Notice of the registration of an order must be served on the person against whom it was obtained by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the Court may direct.

[<sup>F359</sup>(2) Permission is not required to serve such a notice out of the jurisdiction and CPR rules 6.24, 6.25 and 6.29 shall apply in relation to such notice as they apply in relation to a claim form.]

#### **Textual Amendments**

**F359** Sch. 1 RSC Order 115 rule 17(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [31](#)

#### **Application to vary or set aside registration** E+W

**Rule 18** An application made in accordance with CPR Part 23 by the person against whom an order was made to vary or set aside the registration of an order must be made to a judge and be supported by witness statement or affidavit.

#### **Enforcement of order** E+W

**Rule 19.**—(2) If an application is made under rule 18, an order shall not be enforced until after such application is determined.

#### **Variation, satisfaction and discharge of registered order** E+W

**Rule 20** Upon the court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge, as the case may be, shall be entered in the register.

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## Rules to have effect subject to Orders in Council **E+W**

**Rule 21** Rules 12 to 20 shall have effect subject to the provisions of the Order in Council made under section 37 or, as the case may be, of the Order in Council made under section 39.

## Criminal Justice (International Co-operation) Act 1990: external forfeiture orders **E+W**

**Rule 21A** The provisions of this Part of this Order shall, with such modifications as are necessary and subject to the provisions of any Order in Council made under section 9 of the Criminal Justice (International Co-operation) Act 1990(172), apply to proceedings for the registration and enforcement of external forfeiture orders as they apply to such proceedings in relation to external confiscation orders.

For the purposes of this rule, an external forfeiture order is an order made by a court in a country or territory outside the United Kingdom which is enforceable in the United Kingdom by virtue of any such Order in Council.

## II. Part VI of the Criminal Justice Act 1988(173) **E+W**

### Interpretation **E+W**

**Rule 22.**—(1) In this Part of this Order, “the 1988 Act” means the Criminal Justice Act 1988 and a section referred to by number means the section so numbered in that Act.

(2) Expressions which are used in this Part of this Order which are used in the 1988 Act have the same meanings in this Part of this Order as in the 1988 Act and include any extended meaning given by the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

### Application of Part I of Order 115 **E+W**

**Rule 23** Part I of Order 115 (except rule 11) shall apply for the purposes of proceedings under Part VI of the 1988 Act with the necessary modifications and, in particular,—

- (a) references to drug trafficking offences and to drug trafficking shall be construed as references to offences to which Part VI of the 1988 Act applies and to committing such an offence;
- (b) references to the Drug Trafficking Act 1994 shall be construed as references to the 1988 Act and references to sections 5 (2), 26, 27, 29, 30 (2), 17 (1), 18, 18 (5), 39 and 40 of the 1994 Act shall be construed as references to sections 73 (6), 77, 78, 80, 81, 81 (1), 83 (1), 89, 89 (5), 96 and 97 of the 1988 Act respectively;
- (c) rule 3 (2) shall have effect as if the following sub-paragraphs were substituted for sub-paragraphs (a) and (b)—
  - “(a) state, as the case may be, either that proceedings have been instituted against the defendant for an offence to which Part VI of the 1988 Act applies (giving particulars of the offence) and that they have not been concluded or that, whether by the laying of an information or otherwise, a person is to be charged with such an offence;
  - (b) state, as the case may be, either that a confiscation order has been made or the grounds for believing that such an order may be made;”

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(172) 1990 c. 5.  
 (173) 1988 c. 33.

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- (d) rule 7 (3) shall have effect as if the words “certificate issued by a magistrates' court or the Crown Court” were substituted for the words “certificate issued by the Crown Court”;
- (e) rule 8 shall have effect as if the following paragraph were added at the end—
  - “(6) Where a receiver applies in accordance with CPR Part 23 for the variation of a confiscation order, the application notice shall be served, with any supporting evidence, on the defendant and any other person who may be affected by the making of an order under section 83 of the 1988 Act, not less than 7 days before the date fixed for the hearing of the application.”
- (f) rule 11 shall apply with the necessary modifications where an application is made under section 93J of the 1988 Act for disclosure of information held by government departments.

### [<sup>F360</sup>III: TERRORISM ACT 2000] E+W

#### Textual Amendments

**F360** Sch. 1 RSC Order 115 Section 3 heading substituted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **16(a)**

#### Interpretation E+W

**Rule 24** In this Part of this Order—

- (a) “the Act” means [<sup>F361</sup>Terrorism Act 2000];
- (b) “Schedule 4” means Schedule 4 to the Act; <sup>F362</sup>...
- [<sup>F363</sup>(ba) “the prosecutor” means the person with conduct of proceedings which have been instituted in England and Wales for an offence under any of sections 15 to 18 of the Act, or the person who the High Court is satisfied will have the conduct of [<sup>F364</sup>any proceedings] for such an offence; and]
- (c) [<sup>F365</sup>other] expressions used have the same meanings as they have in [<sup>F366</sup>Schedule 4 to] the Act.

#### Textual Amendments

**F361** Words in Sch. 1 RSC Order 115 rule 24(a) substituted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **16(b)(i)**

**F362** Word in Sch. 1 RSC Order 115 rule 24(b) omitted (31.5.2001) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **16(b)(ii)**

**F363** Sch. 1 RSC Order 115 rule 24(ba) inserted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **16(b)(iii)**

**F364** Words in Sch. 1 RSC Order 115 rule 24(ba) substituted (20.12.2001) by [The Civil Procedure \(Amendment No. 6\) Rules 2001 \(S.I. 2001/4016\)](#), rules 1, **2(a)**

**F365** Word in Sch. 1 RSC Order 115 rule 24(c) inserted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **16(b)(iv)**

**F366** Words in Sch. 1 RSC Order 115 rule 24(c) substituted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **16(b)(v)**

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**Assignment of proceedings** E+W

**Rule 25.**—(1) Subject to paragraph (2), the jurisdiction of the High Court under the Act shall be exercised by a judge of the Queen’s Bench Division or of the Chancery Division <sup>F367</sup> ...

(2) The jurisdiction conferred on the High Court by paragraph 9 of Schedule 4 may also be exercised by a master of the Queen’s Bench Division.

**Textual Amendments**  
**F367** Words in Sch. 1 RSC Order 115 rule 25(1) omitted (26.4.1999) by virtue of The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, 62(j)

**Application for restraint order** E+W

**Rule 26.**—(1) An application for a restraint order under [<sup>F368</sup>paragraph 5] of Schedule 4 may be made by the prosecutor by a claim form, which need not be served on any person.

(2) An application under paragraph (1) shall be supported by a witness statement or affidavit, which shall:—

- [<sup>F369</sup>(a) state, as the case may be, either—
  - (i) that proceedings have been instituted against a person for an offence under any of sections 15 to 18 of the Act and that they have not been concluded; or
  - (ii) that a criminal investigation has been started in England and Wales with regard to such an offence,

and in either case give details of the alleged or suspected offence and of the defendant’s involvement;]

- (b) [<sup>F370</sup>where proceedings have been instituted,] state, as the case may be, that a forfeiture order has been made in the proceedings or the grounds for believing that such an order may be made;

[<sup>F371</sup>(ba) where proceedings have not been instituted—

- (i) indicate the state of progress of the investigation and when it is anticipated that a decision will be taken on whether to institute proceedings against the defendant;
- (ii) state the grounds for believing that a forfeiture order may be made in any proceedings against the defendant; and
- (iii) verify that the prosecutor is to have the conduct of any such proceedings;]

- (c) to the best of the witness’s ability, give full particulars of the property in respect of which the order is sought and specify the person or persons holding such property and any other persons having an interest in it;

<sup>F372</sup>(d) .....

<sup>F372</sup>(e) .....

(3) A claim form under paragraph (1) shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.

(4) Unless the Court otherwise directs, a witness statement or affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

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#### Textual Amendments

- F368** Words in Sch. 1 RSC Order 115 rule 26(1) substituted (31.5.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(c), **16(c)**
- F369** Sch. 1 RSC Order 115 rule 26(2)(a) substituted (20.12.2001) by The Civil Procedure (Amendment No. 6) Rules 2001 (S.I. 2001/4016), rules 1, **2(b)(i)**
- F370** Words in Sch. 1 RSC Order 115 rule 26(2)(b) inserted (20.12.2001) by The Civil Procedure (Amendment No. 6) Rules 2001 (S.I. 2001/4016), rules 1, **2(b)(ii)**
- F371** Sch. 1 RSC Order 115 rule 26(2)(ba) inserted (20.12.2001) by The Civil Procedure (Amendment No. 6) Rules 2001 (S.I. 2001/4016), rules 1, **2(b)(iii)**
- F372** Sch. 1 RSC Order 115 rule 26(2)(d)(e) omitted (20.12.2001) by virtue of The Civil Procedure (Amendment No. 6) Rules 2001 (S.I. 2001/4016), rules 1, **2(b)(iv)**

#### Restraint order **E+W**

**Rule 27.**—(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to living expenses and legal expenses of the defendant, but the prosecutor shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made without notice of [<sup>F373</sup>the application for] it being served on any person shall have effect until a day which shall be fixed for the hearing where all parties may attend on the application.

(3) Where a restraint order is made the prosecutor shall serve copies of the order and [<sup>F374</sup>, unless the court otherwise orders,] of the witness statement or affidavit in support on the defendant and on all other persons affected by the order.

#### Textual Amendments

- F373** Words in Sch. 1 RSC Order 115 rule 27(2) inserted (31.5.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(c), **16(e)**
- F374** Words in Sch. 1 RSC Order 115 rule 27(3) inserted (20.12.2001) by The Civil Procedure (Amendment No. 6) Rules 2001 (S.I. 2001/4016), rules 1, **2(c)**

#### Discharge or variation of order **E+W**

**Rule 28.**—(1) Subject to paragraph (2), an application to discharge or vary a restraint order shall be made in accordance with CPR Part 23.

(2) Where the case is one of urgency, an application under this rule by the prosecutor may be made without notice.

(3) The application and any witness statement or affidavit in support shall be lodged with the court and, where the application is made in accordance with CPR Part 23 the application notice shall be served on the following persons (other than the applicant)—

- (a) the prosecutor;
- (b) the defendant; and
- (c) all other persons restrained or otherwise affected by the order;

not less than two clear days before the date fixed for the hearing of the application.



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(4) Where a restraint order has been made and has not been discharged, the prosecutor shall notify the court when proceedings for the offence have been concluded, and the court shall thereupon discharge the restraint order.

(5) Where an order is made discharging or varying a restraint order, the applicant shall serve copies of the order of discharge or variation on all persons restrained by the earlier order and shall notify all other persons affected of the terms of the order of discharge or variation.

### Compensation **E+W**

**Rule 29** An application for an order under [<sup>F375</sup>paragraph 9 or 10 of Schedule 4] shall be made in accordance with CPR Part 23, and the application notice, shall be served, with any supporting evidence, on the person alleged to be in default and on [<sup>F376</sup>the person or body by whom compensation, if ordered, will be payable under paragraph 9(6) or 10(4)] not less than 7 days before the date fixed for the hearing of the application.

#### Textual Amendments

**F375** Words in Sch. 1 RSC Order 115 rule 29 substituted (31.5.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(c), **16(f)(i)**

**F376** Words in Sch. 1 RSC Order 115 rule 29 substituted (31.5.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(c), **16(f)(ii)**

### Application for registration **E+W**

**Rule 30** An application for registration of a Scottish order, a Northern Ireland order or an Islands order must be made in accordance with CPR Part 23 and may be made without notice.

### Evidence in support of application **E+W**

**Rule 31.**—(1) An application for registration of any such order as is mentioned in rule 30 must be supported by a witness statement or affidavit—

- (a) exhibiting the order or a certified copy thereof, and
- (b) which shall, to the best of the witness's ability, give particulars of such property in respect of which the order was made as is in England and Wales, and specify the person or persons holding such property.

(2) Unless the Court otherwise directs, a witness statement or affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

### Register of orders **E+W**

**Rule 32.**—(1) There shall be kept in the Central Office under the direction of the Master of the [<sup>F377</sup>Administrative Court] a register of the orders registered under the Act.

(2) There shall be included in such register particulars of any variation or setting aside of a registration, and of any execution issued on a registered order.

#### Textual Amendments

**F377** Words in Sch. 1 RSC Order 115 rule 32(1) substituted (31.5.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(c), **16(g)**



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### Notice of registration **E+W**

**Rule 33.**—(1) Notice of the registration of an order must be served on the person or persons holding the property referred to in rule 31(1)(b) and any other persons appearing to have an interest in that property.

[<sup>F378</sup>(2) Permission is not required to serve such a notice out of the jurisdiction and CPR rules 6.24, 6.25 and 6.29 shall apply in relation to such notice as they apply in relation to a claim form.]

#### Textual Amendments

**F378** Sch. 1 RSC Order 115 rule 33(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **31**

### Application to vary or set aside registration **E+W**

**Rule 34** An application to vary or set aside the registration of an order must be made to a judge in accordance with CPR Part 23 and be supported by a witness statement or affidavit.

This rule does not apply to a variation or cancellation under rule 36.

### Enforcement of order **E+W**

**Rule 35.**—(2) If an application is made under rule 34, an order shall not be enforced until after such application is determined.

(3) This rule does not apply to the taking of steps under [<sup>F379</sup>paragraph 7 or 8] of Schedule 4, as applied by [<sup>F380</sup>paragraph 13(6)] of that Schedule.

#### Textual Amendments

**F379** Words in Sch. 1 RSC Order 115 rule 35(3) substituted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **16(h)(i)**

**F380** Words in Sch. 1 RSC Order 115 rule 35(3) substituted (31.5.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(c), **16(h)(ii)**

### Variation and cancellation of registration **E+W**

**Rule 36** If effect has been given (whether in England or Wales or elsewhere) to a Scottish, Northern Ireland or Islands order, or if the order has been varied or discharged by the court by which it was made, the applicant for registration shall inform the court and—

- (a) if such effect has been given in respect of all the money or other property to which the order applies, or if the order has been discharged by the court by which it was made, registration of the order shall be cancelled;
- (b) if such effect has been given in respect of only part of the money or other property, or if the order has been varied by the court by which it was made, registration of the order shall be varied accordingly.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

## [<sup>F381</sup>RSC ORDER 116 E+W

### THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996

#### Textual Amendments

**F381** Sch. 1 RSC Order 116 inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **61**, Appendix 1

#### Application E+W

1. This Order shall apply in relation to acquittals in respect of offences alleged to be committed on or after 15th April 1997.

#### Interpretation E+W

2. In this Order, unless the context otherwise requires—

“the Act” means the Criminal Procedure and Investigations Act 1996;

“acquitted person” means a person whose acquittal of an offence is the subject of a certification under section 54(2) of the Act, and “acquittal” means the acquittal of that person of that offence;

“magistrates' court” has the same meaning as in section 148 of the Magistrates' Courts Act 1980;

“prosecutor” means the individual or body which acted as prosecutor in the proceedings which led to the acquittal;

“record of court proceedings” means—

- (a) (where the proceedings took place in the Crown Court) a transcript of the evidence, or
- (b) a note of the evidence made by the justices' clerk,

in the proceedings which led to the conviction for the administration of justice offence referred to in section 54(1)(b) of the Act or, as the case may be, the proceedings which led to the acquittal;

“single judge” means a judge of the Queen's Bench Division;

“witness” means a witness whose evidence is contained in a witness statement or affidavit filed under rule 5, 7, 8 or 9.

#### Assignment of proceedings E+W

3. The jurisdiction of the High Court under section 54(3) of the Act shall be exercised by a single judge.

#### Time limit for making application E+W

4. An application under section 54(3) of the Act shall be made not later than 28 days after—

- (a) the expiry of the period allowed for appealing (whether by case stated or otherwise), or making an application for leave to appeal, against the conviction referred to in section 54(1)(b) of the Act; or
- (b) where notice of appeal or application for leave to appeal against the conviction is given, the determination of the appeal or application for leave to appeal and, for this purpose,

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“determination” includes abandonment (within the meaning of rule 10 of the Criminal Appeal Rules 1968 or, as the case may be, rule 11 of the Crown Court Rules 1982).

#### **Application** **E+W**

5.—(1) An application under section 54(3) of the Act shall be made by claim form which shall be issued out of the Crown Office by the prosecutor.

(2) The application shall be accompanied by—

- (a) a witness statement or affidavit which deals with the conditions in section 55(1), (2) and (4) of the Act and which exhibits any relevant documents (which may include a copy of any record of court proceedings);
- (b) a copy of the certification under section 54(2) of the Act.

#### **Notice to the acquitted person** **E+W**

6.—(1) The prosecutor shall, within 4 days of the issue of the application, serve written notice on the acquitted person that the application has been issued.

(2) The notice given under paragraph (1) shall—

- (a) specify the date on which the application was issued;
- (b) be accompanied by a copy of the application and of the documents which accompanied it;
- (c) inform the acquitted person that—
  - (i) the result of the application may be the making of an order by the High Court quashing the acquittal, and
  - (ii) if he wishes to respond to the application, he must, within 28 days of the date of service on him of the notice, file in the Crown Office any witness statement or affidavit on which he intends to rely.

#### **Witness statement or affidavit of service on an acquitted person** **E+W**

7. The prosecutor shall, as soon as practicable after service of the notice under rule 6, file at the Crown Office a witness statement or affidavit of service which exhibits a copy of the notice.

#### **Response of acquitted person** **E+W**

8.—(1) If the acquitted person wishes to respond to the application, he shall, within 28 days of service on him of notice under rule 6, file in the Crown Office a witness statement or affidavit which—

- (a) deals with the conditions in section 55(1), (2) and (4) of the Act; and
- (b) exhibits any relevant documents (which may include a copy of any record of court proceedings).

(2) The acquitted person shall, within 4 days of the filing of the documents mentioned in paragraph (1), serve copies of them on the prosecutor.

#### **Evidence** **E+W**

9.—(1) A witness statement or affidavit filed under rule 5, 7, 8 or this rule may contain statements of information or belief with the sources and grounds thereof.

(2) The prosecutor may, not later than 10 days after expiry of the period allowed under rule 8(1), apply for an order granting permission to file further evidence without notice being served on any other party.

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(3) If the single judge grants permission, the order shall specify a period within which further evidence or records are to be filed, and the Crown Office shall serve a copy of the order on the prosecutor and on the acquitted person.

(4) The prosecutor shall, within 4 days of filing further evidence in the Crown Office, serve a copy of that evidence on the acquitted person.

#### **Determination of the application** **E+W**

**10.**—(1) Subject to paragraph (3), the single judge shall determine whether or not to make an order under section 54(3) of the Act on the basis of the written material provided under rules 5, 7, 8 and 9 in the absence of the prosecutor, the acquitted person, or of any witness.

(2) The determination shall not be made, and any hearing under paragraph (3) shall not take place, before the expiry of—

- (a) 10 days after the expiry of the period allowed under rule 8(1), or
- (b) 10 days after the expiry of the period allowed by any order made under rule 9(3).

(3) The single judge may, of his own initiative or on the application of the prosecutor or acquitted person, order a hearing of the application if he thinks fit.

(4) An application under paragraph (3) shall state whether a hearing is desired in order for a deponent for the other party to attend and be cross-examined, and, if so, the reasons for wishing the witness to attend.

(5) An application under paragraph (3) shall be made no later than 7 days after the expiry of the period allowed—

- (a) under rule 8(1), or
- (b) by any order made under rule 9(3).

(6) Where a hearing is ordered, the single judge may, of his own initiative or on the application of the prosecutor or acquitted person, order a witness to attend in order to be cross-examined.

(7) The prosecutor or the acquitted person, as the case may be, shall within 4 days after filing the application under paragraph (3), serve a copy of it on the other party, and file in the Crown Office a witness statement or affidavit of service.

(8) A party served under paragraph (7) shall, within 5 days of service, file any representations he wishes to make as to whether or not a hearing should be ordered.

(9) Subject to paragraph (10) below—

- (a) the single judge shall not determine an application for a hearing under paragraph (3) unless—
  - (i) a witness statement or affidavit of service has been filed as required by paragraph (7), and
  - (ii) the period for filing representations allowed under paragraph (8) has elapsed, or
  - (iii) representations have been filed under paragraph (8).
- (b) The requirements imposed by sub-paragraph (a)(i) and (iii) are satisfied even though the witness statement or affidavit of service or, as the case may be, the representations are filed outside the time limits allowed.

(10) Where after an application for a hearing has been made—

- (a) no witness statement or affidavit of service has been filed, and
- (b) no representations under paragraph (8) have been received after the expiry of 7 days from the filing of the application,

the single judge may reject the application.

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(11) Where after a hearing is ordered, either the prosecutor or the acquitted person desires a witness for the other party to attend the hearing in order to be cross-examined, he must apply for an order under paragraph (5) giving his reasons without notice being served on any other party.

(12) The Crown Office shall serve notice on the prosecutor and the acquitted person of any order made under the foregoing paragraphs of this rule and, where a hearing is ordered, the notice shall—

- (a) set out the date, time and place of the hearing, and
- (b) give details of any witness ordered to attend for cross-examination.

(13) A hearing ordered under paragraph (3) above shall be in public unless the single judge otherwise directs.

(14) the Crown Office shall serve notice of any order made under section 54(3) of the Act quashing the acquittal or of a decision not to make such an order on the prosecutor, the acquitted person and—

- (a) where the court before which the acquittal or conviction occurred was a magistrates' court, on the [<sup>F382</sup>justices' chief executive];
- (b) where the court before which the acquittal or conviction occurred was the Crown Court, on the appropriate officer of the Crown Court sitting at the place where the acquittal or conviction occurred.]

#### Textual Amendments

**F382** Words in Sch. 1 RSC Order 116 rule 10(14)(a) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), 26

SCHEDULE 2 **E+W**

Rule 50(4)

#### Commencement Information

**I433** [Sch. 2](#) in force at 26.4.1999, see [Signature](#)

## CCR ORDER 1 **E+W**

### CITATION, APPLICATION AND INTERPRETATION

#### Application of RSC to county court proceedings **E+W**

**Rule 6** Where by virtue of these rules or section 76 of the Act or otherwise any provision of the RSC is applied in relation to proceedings in a county court, that provision shall have effect with the necessary modifications and in particular—

- (b) any reference in that provision to a master, district judge of the principal registry of the Family Division, the Admiralty registrar, or a district judge or taxing officer shall be construed as a reference to the district judge of the county court; and
- (d) any reference in that provision to an office of the Supreme Court having the conduct of the business of a division or court or a district registry shall be construed as a reference to the county court office.

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## CCR ORDER 3 **E+W**

### COMMENCEMENT OF PROCEEDINGS

#### Appeals to county court **E+W**

<sup>F383</sup>Rule 6 .....

#### Textual Amendments

**F383** Sch. 2 CCR Order 3 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

## CCR ORDER 4 **E+W**

### VENUE FOR BRINGING PROCEEDINGS

#### Proceedings relating to land **E+W**

**Rule 3** Proceedings—

<sup>F384</sup>(a) .....

- (b) for the foreclosure or redemption of any mortgage or, subject to Order 31, rule 4, for enforcing any charge or lien on land; or
- (c) for the recovery of moneys secured by a mortgage or charge on land,

may be commenced only in the court for the district in which the land or any part of the land is situated.

#### Textual Amendments

**F384** Sch. 2 CCR Order 4 rule 3(a) revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

## CCR ORDER 5 **E+W**

### CAUSES OF ACTION AND PARTIES

#### Representative proceedings **E+W**

<sup>F385</sup>Rule 5 .....

#### Textual Amendments

**F385** Sch. 2 CCR Order 5 rules 5-8 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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## Representation of person or class **E+W**

### <sup>F385</sup>Rule 6 .....

#### Textual Amendments

**F385** Sch. 2 CCR Order 5 rules 5-8 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

## Representation of estate where no personal representative **E+W**

### <sup>F385</sup>Rule 7 .....

#### Textual Amendments

**F385** Sch. 2 CCR Order 5 rules 5-8 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

## Proceedings against estates **E+W**

### <sup>F385</sup>Rule 8 .....

#### Textual Amendments

**F385** Sch. 2 CCR Order 5 rules 5-8 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

## Partners may sue and be sued in firm name **E+W**

**Rule 9.**—(1) Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within England or Wales may sue or be sued in the name of the firm of which they were partners when the cause of action arose.

(2) Where partners sue or are sued in the name of the firm, the partners shall, on demand made in writing by any other party, forthwith deliver to the party making the demand and file a statement of the names and places of residence of all the persons who were partners in the firm when the cause of action arose.

(3) If the partners fail to comply with such a demand, the court, on application by any other party, may order the partners to furnish him with such a statement and to verify it on oath and may direct that in default—

- (a) if the partners are claimants, the proceedings be stayed on such terms as the court thinks fit, or
- (b) if the partners are defendants, they be debarred from defending the claim.

(4) When the names and places of residence of the partners have been stated in compliance with a demand or order under this rule, the proceedings shall continue in the name of the firm.

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**Defendant carrying on business in another name** E+W

**Rule 10.**—(1) A person carrying on business in England or Wales in a name other than his own name may, whether or not he is within the jurisdiction, be sued—

- (a) in his own name, followed by the words “trading as A.B.”, or
- (b) in his business name, followed by the words “(a trading name)”.

(2) Where a person is sued in his business name in accordance with paragraph (1)(b), the provisions of these rules relating to claims against firms shall, subject to the provisions of any enactment, apply as if he were a partner and the name in which he carried on business were the name of his firm.

**Failure to proceed after death of party** E+W

**Rule 12.**—(1) If, after the death of a claimant or defendant in any claim or matter, the cause of action survives but no order is made substituting any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the court for an order that unless the claim is proceeded with within such time as may be specified in the order the claim shall be struck out as against the claimant or defendant who has died; but where it is the claimant who has died, the court shall not make an order unless satisfied that notice of the application has been given to the personal representatives (if any) of the deceased claimant and to any other interested person who the court considers should be notified.

(2) Where a counterclaim is made by a defendant to any claim this rule shall apply in relation to the counterclaim as if the counterclaim were a separate claim and as if the defendant making a counterclaim were a claimant and the person against whom it is made a defendant.

**Claim to money in court where change in parties after judgment** E+W

**Rule 13.**—(1) Where any change had taken place after judgment, by death, assignment or otherwise, in the parties to any claim and there is money standing in court to the credit of the claim, any person claiming to be entitled to the money may give to the court notice of his claim, accompanied by a witness statement or affidavit verifying the facts stated in the notice.

(2) The district judge may, if satisfied as to the entitlement of the person giving notice, cause the money to be paid to him or may refer the claim to the judge and may require the claimant to give notice of the claim to any other person.

(3) It shall not be necessary for notice to be given under this rule where the person claiming to be entitled to the money in court has obtained permission under Order 26, rule 5, to issue a warrant of execution.

**Bankruptcy of claimant** E+W

**Rule 14** Rules 11 and 13 shall not apply to any case for which provision is made by section 49 of the Act.

**CCR ORDER 6** E+W

**PARTICULARS OF CLAIM**

**Recovery of land** E+W

<sup>F386</sup>Rule 3 .....



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**Textual Amendments**

**F386** Sch. 2 CCR Order 6 rule 3 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Mortgage claim** **E+W**

<sup>F387</sup>**Rule 5** .....

**Textual Amendments**

**F387** Sch. 2 CCR Order 6 rule 5 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Mortgage claim—dwelling-house** **E+W**

<sup>F388</sup>**Rule 5A** .....

**Textual Amendments**

**F388** Sch. 2 CCR Order 6 rule 5A revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Hire-purchase** **E+W**

**Rule 6.**—(1) Where a claimant claims the delivery of goods let under a hire-purchase agreement [<sup>F389</sup>or a conditional sale agreement] to a person other than a body corporate, he shall in his particulars state in the order following—

- (a) the date of the agreement and the parties to it with the number of the agreement or sufficient particulars to enable the debtor to identify the agreement;
- (b) where the claimant was not one of the original parties to the agreement, the means by which the rights and duties of the creditor under the agreement passed to him;
- (c) whether the agreement is a regulated agreement and, if it is not a regulated agreement, the reason why;
- (d) the place where the agreement was signed by the debtor (if known);
- (e) the goods claimed;
- (f) the total price of the goods;
- (g) the paid-up sum;
- (h) the unpaid balance of the total price;
- (i) whether a default notice or a notice under section 76 (1) or section 98 (1) of the Consumer Credit Act 1974 has been served on the debtor, and if it has, the date on which and the manner in which it was so served;
- (j) the date when the right to demand delivery of the goods accrued;
- (k) the amount (if any) claimed as an alternative to the delivery of the goods; and
- (l) the amount (if any) claimed in addition to the delivery of the goods or any claim under sub-paragraph (k), stating the cause of action in respect of which each such claim is made.

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(2) Where a claimant’s claim arises out of a hire-purchase agreement [<sup>F390</sup>or a conditional sale agreement] but is not for the delivery of goods, he shall in his particulars state in the order following—

- (a) the date of the agreement and the parties to it with the number of the agreement or sufficient particulars to enable the debtor to identify the agreement;
- (b) where the claimant was not one of the original parties to the agreement, the means by which the rights and duties of the creditor under the agreement passed to him;
- (c) whether the agreement is a regulated agreement and, if it is not a regulated agreement, the reason why;
- (d) the place where the agreement was signed by the debtor (if known);
- (e) the goods let under the agreement;
- (f) the amount of the total price;
- (g) the paid-up sum;
- (h) the amount (if any) claimed as being due and unpaid in respect of any instalment or instalments of the total price; and
- (i) the nature and amount of any other claim and the circumstances in which it arises.

(3) Expressions used in this rule which are defined by the Consumer Credit Act 1974 have the same meanings in this rule as they have in that Act.

**Textual Amendments**

- F389** Words in Sch. 2 CCR Order 6 rule 6(1) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **64(a)**
- F390** Words in Sch. 2 CCR Order 6 rule 6(2) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **64(b)**

**CCR ORDER 7** **E+W**  
**SERVICE OF DOCUMENTS**

**Recovery of land** **E+W**

<sup>F391</sup>**Rule 15** .....

**Textual Amendments**

- F391** Sch. 2 CCR Order 7 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Mortgage possession claims** **E+W**

<sup>F391</sup>**Rule 15A** .....

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**Textual Amendments**

**F391** Sch. 2 CCR Order 7 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**CCR ORDER 13** **E+W**

**APPLICATIONS AND ORDERS IN THE COURSE OF PROCEEDINGS**

**General provisions** **E+W**

<sup>F392</sup>**Rule 1** .....

**Textual Amendments**

**F392** Sch. 2 CCR Order 13 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

**CCR ORDER 16** **E+W**

**TRANSFER OF PROCEEDINGS**

**Interpleader proceedings under execution** **E+W**

**Rule 7.**—(1) This rule applies to interpleader proceedings under an execution which are ordered to be transferred from the High Court.

(2) Notice of the hearings or pre-trial review of the proceedings shall be given by the court officer to the sheriff as well as to every other party to the proceedings.

(3) The interpleader claimant shall, within 8 days of the receipt by him of the notice referred to in paragraph (2), file in triplicate particulars of any goods alleged to be his property and the grounds of his interpleader claim and the court officer shall send a copy to the execution creditor and to the sheriff, but the judge may hear the proceedings or, as the case may be, the district judge may proceed with the pre-trial review, if he thinks fit, notwithstanding that the particulars have not been filed.

(4) Subject to any directions in the order of the High Court, damages may be claimed against the execution creditor in the same manner as in interpleader proceedings commenced in a county court.

(5) On any day fixed for the pre-trial review of the proceedings or for the hearing of any application by the sheriff or other party for directions the court may order the sheriff—

- (a) to postpone the sale of the goods seized;
- (b) to remain in possession of such goods until the hearing of the proceedings; or
- (c) to hand over possession of such goods to the district judge,

and, where a direction is given under sub-paragraph (c), the district judge shall be allowed reasonable charges for keeping possession of the goods, not exceeding those which might be allowed to the sheriff, and, if the district judge is directed to sell the goods, such charges for the sale as would be allowed under an execution issued by the county court.

(6) No order made in the proceedings shall prejudice or affect the rights of the sheriff to any proper charges and the judge may make such order with respect to them as may be just.

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(7) The charges referred to in paragraphs (5) and (6) shall ultimately be borne in such manner as the judge shall direct.

(8) The order made at the hearing of the proceedings shall direct how any money in the hands of the sheriff is to be disposed of.

## CCR ORDER 19 **E+W**

### REFERENCE TO EUROPEAN COURT

#### **Making and transmission of order** **E+W**

**Rule 15.**—(1) In this rule “the European Court” means the Court of Justice of the European Communities and “order” means an order referring a question to the European Court for a preliminary ruling under Article 177 of the Treaty establishing the European Economic Community, Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community.

(2) An order may be made by the judge before or at the trial or hearing of any claim and either of his own initiative or on the application of any party.

(3) An order shall set out in a schedule the request for the preliminary ruling of the European Court, and the judge may give directions as to the manner and form in which the schedule is to be prepared.

(4) The proceedings in which an order is made shall, unless the judge otherwise orders, be stayed until the European Court has given a preliminary ruling on the question referred to it.

(5) When an order has been made, the court officer shall send a copy thereof to the Senior Master for transmission to the Registrar of the European Court; but, unless the judge otherwise orders, the copy shall not be sent to the Senior Master until the time for appealing to the Court of Appeal against the order has expired or, if an appeal is entered within that time, until the appeal has been determined or otherwise disposed of.

(6) Nothing in these rules shall authorise the district judge to make an order.

## CCR ORDER 22 **E+W**

### JUDGMENTS AND ORDERS

#### **Certificate of judgment** **E+W**

**Rule 8.**—(1) Any person who wishes to have a certificate of any judgment or order given or made in a claim shall make a request in writing to the court stating—

- (a) if he is a party to the claim whether the certificate—
  - (i) is required for the purpose of taking proceedings on the judgment or order in another court;
  - (ii) is required for the purpose of enforcing the judgment or order in the High Court; or
  - (iii) is for the purpose of evidence only;
- (b) if he is not a party to the claim, the purpose for which the certificate is required, the capacity in which he asks for it and any other facts showing that the certificate may properly be granted.

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(1A) Where the certificate is required for the purpose of enforcing the judgment or order in the High Court, the applicant shall also either—

- [<sup>F393</sup>(a) state that—
- (i) it is intended to enforce the judgment or order by execution against goods; or
  - (ii) the judgment or order to be enforced is an order for possession of land made in a possession claim against trespassers; or]
- (b) confirm that an application has been made for an order under section 42 of the Act (transfer to High Court by order of a county court) and attach a copy of the application to the request for a certificate.

(2) Where the request is made by a person who is not a party to the claim, the request shall be referred to the district judge, who may, if he thinks fit, refer it to the judge.

(3) Without prejudice to paragraph (2), for the purposes of section 12 (2) of the Act a certificate under this rule may be signed by the court manager or any other officer of the court acting on his behalf.

#### Textual Amendments

**F393** Sch. 2 CCR Order 22 rule 8(1A)(a) substituted (15.10.2001) by [The Civil Procedure \(Amendment No. 4\) Rules 2001 \(S.I. 2001/2792\)](#), rules 1(a), **13** (with rule 24)

#### Variation of payment **E+W**

**Rule 10.**—(1) Where a judgment or order has been given or made for the payment of money, the person entitled to the benefit of the judgment or order or, as the case may be, the person liable to make the payment (in this rule referred to as “the judgment creditor” and “the debtor” respectively) may apply in accordance with the provisions of this rule for a variation in the date or rate of payment.

(2) The judgment creditor may apply in writing, without notice being served on any other party, for an order that the money, if payable in one sum, be paid at a later date than that by which it is due or by instalments or, if the money is already payable by instalments, that it be paid by the same or smaller instalments, and the court officer may make an order accordingly unless no payment has been made under the judgment or order for 6 years before the date of the application in which case he shall refer the application to the district judge.

(3) The judgment creditor may apply to the district judge on notice for an order that the money, if payable in one sum, be paid at an earlier date than that by which it is due or, if the money is payable by instalments, that it be paid in one sum or by larger instalments, and any such application shall be made in writing stating the proposed terms and the grounds on which it is made.

- (4) Where an application is made under paragraph (3)—
- (a) the proceedings shall be automatically transferred to the debtor’s home court if the judgment or order was not given or made in that court; and
  - (b) the court officer shall fix a day for the hearing of the application before the district judge and give to the judgment creditor and the debtor not less than 8 days’ notice of the day so fixed,

and at the hearing the district judge may make such order as seems just.

(5) The debtor may apply for an order that the money, if payable in one sum, be paid at a later date than that by which it is due or by instalments or, if the money is already payable by instalments, that it be paid by smaller instalments, and any such application shall be in the appropriate form stating the proposed terms, the grounds on which it is made and including a signed statement of the debtor’s means.

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- (6) Where an application is made under paragraph (5), the court officer shall—
- (a) send the judgment creditor a copy of the debtor’s application (and statement of means); and
  - (b) require the judgment creditor to notify the court in writing, within 14 days of service of notification upon him, giving his reasons for any objection he may have to the granting of the application.
- (7) If the judgment creditor does not notify the court of any objection within the time stated, the court officer shall make an order in the terms applied for.
- (8) Upon receipt of a notice from the judgment creditor under paragraph (6), the court officer may determine the date and rate of payment and make an order accordingly.
- (9) Any party affected by an order made under paragraph (8) may, within 14 days of service of the order on him and giving his reasons, apply on notice for the order to be re-considered and, where such an application is made—
- (a) the proceedings shall be automatically transferred to the debtor’s home court if the judgment or order was not given or made in that court; and
  - (b) the court officer shall fix a day for the hearing of the application before the district judge and give to the judgment creditor and the debtor not less than 8 days’ notice of the day so fixed.
- (10) On hearing an application under paragraph (9), the district judge may confirm the order or set it aside and make such new order as he thinks fit and the order so made shall be entered in the records of the court.
- (11) Any order made under any of the foregoing paragraphs may be varied from time to time by a subsequent order made under any of those paragraphs.

### Set-off of cross-judgments **E+W**

- Rule 11.**—(1) An application under section 72 of the Act for permission to set off any sums, including costs, payable under several judgments or orders each of which was obtained in a county court shall be made in accordance with this rule.
- (2) Where the judgments or orders have been obtained in the same county court, the application may be made to that court on the day when the last judgment or order is obtained, if both parties are present, and in any other case shall be made on notice.
- (3) Where the judgments or orders have been obtained in different county courts, the application may be made to either of them on notice, and notice shall be given to the other court.
- (4) The district judge of the court to which the application is made and the district judge of any other court to which notice is given under paragraph (3) shall forthwith stay execution on any judgment or order in his court to which the application relates and any money paid into court under the judgment or order shall be retained until the application has been disposed of.
- (5) The application may be heard and determined by the court and any order giving permission shall direct how any money paid into court is to be dealt with.
- (6) Where the judgments or orders have been obtained in different courts, the court in which an order giving permission is made shall send a copy of the order to the other court, which shall deal with any money paid into that court in accordance with the order.
- (7) The court officer or, as the case may be, each of the court officers affected shall enter satisfaction in the records of his court for any sums ordered to be set off, and execution or other process for the enforcement of any judgment or order not wholly satisfied shall issue only for the balance remaining payable.
- (8) Where an order is made by the High Court giving permission to set off sums payable under several judgments and orders obtained respectively in the High Court and a county court, the court

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officer of the county court shall, on receipt of a copy of the order, proceed in accordance with paragraph (7).

**Order of appellate court** E+W

**Rule 13** Where the Court of Appeal or High Court has heard and determined an appeal from a county court, the party entitled to the benefit of the order of the Court of Appeal or High Court shall deposit the order or an office copy thereof in the office of the county court.

**CCR ORDER 24** E+W

**SUMMARY PROCEEDINGS FOR THE RECOVERY OF LAND**

**Part I—Land** E+W

**Proceedings to be by claim form** E+W

<sup>F394</sup>**Rule 1** .....

**Textual Amendments**  
**F394** [Sch. 2](#) CCR Order 24 rules 1-5 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001](#) (S.I. 2001/256), rule 1(d), [Sch. 3](#)

**Witness statement or affidavit in support** E+W

<sup>F394</sup>**Rule 2** .....

**Textual Amendments**  
**F394** [Sch. 2](#) CCR Order 24 rules 1-5 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001](#) (S.I. 2001/256), rule 1(d), [Sch. 3](#)

**Service of claim form** E+W

<sup>F394</sup>**Rule 3** .....

**Textual Amendments**  
**F394** [Sch. 2](#) CCR Order 24 rules 1-5 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001](#) (S.I. 2001/256), rule 1(d), [Sch. 3](#)

**Application by occupier to be made a party** E+W

<sup>F394</sup>**Rule 4** .....

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

**Textual Amendments**

**F394** Sch. 2 CCR Order 24 rules 1-5 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Hearing of claim** **E+W**

<sup>F394</sup>**Rule 5** .....

**Textual Amendments**

**F394** Sch. 2 CCR Order 24 rules 1-5 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Warrant of possession** **E+W**

**Rule 6.**—(1) Subject to paragraphs (2) and (3), a warrant of possession to enforce an order for possession [<sup>F395</sup>in a possession claim against trespassers under Part 55] may be issued at any time after the making of the order and subject to the provisions of Order 26, rule 17, a warrant of restitution may be issued in aid of the warrant of possession.

(2) No warrant of possession shall be issued after the expiry of 3 months from the date of the order without the permission of the court, and an application for such permission may be made without notice being served on any other party unless the court otherwise directs.

(3) Nothing in this rule shall authorise the issue of a warrant of possession before the date on which possession is ordered to be given.

**Textual Amendments**

**F395** Words in [Sch. 2 CCR Order 24 rule 6\(1\)](#) substituted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(d), [27\(a\)](#)

**Setting aside order** **E+W**

<sup>F396</sup>**Rule 7** .....

**Textual Amendments**

**F396** Sch. 2 CCR Order 24 rule 7 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Part II—Interim Possession Orders** **E+W**

**Definitions and interpretation** **E+W**

**Rule 8.**—(1) In this Part of this Order—

- (a) “applicant” means a person who applies for an interim possession order;



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- (b) “premises” means premises within the meaning of section 12 of the Criminal Law Act 1977(174); and
- (c) “respondent” means a person against whom an application for an interim possession order is made, whether or not that person is named in the application or order.

(2) Where a rule in this Part of this Order requires an act to be done within a specified number of hours, CPR rule 2.8(4) shall not apply to the calculation of the period of time within which the act must be done.

### Conditions for interim possession order application **E+W**

**Rule 9** In [<sup>F397</sup>a possession claim against trespassers under Part 55], an application may be made for an interim possession order where the following conditions are satisfied—

- (a) the only claim made in the proceedings is for the recovery of premises;
- (b) the claim is made by a person who—
  - (i) has an immediate right to possession of the premises; and
  - (ii) has had such a right throughout the period of unlawful occupation complained of;
- (c) the claim is made against a person (not being a tenant holding over after the termination of the tenancy) who entered the premises without the applicant’s consent and has not subsequently been granted such consent, but no application for an interim possession order may be made against a person who entered the premises with the consent of the person who, at the time of entry, had an immediate right to possession of the premises; and
- (d) the claim is made within 28 days of the date on which the applicant first knew, or ought reasonably to have known, that the respondent, or any of the respondents, was in occupation.

#### Textual Amendments

**F397** Words in Sch. 2 CCR Order 27 rule 10(3) substituted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), **27(b)**

### Issue of the applications **E+W**

**Rule 10.**—(1) In proceedings in which an application for an interim possession order is made, unless otherwise provided, [<sup>F398</sup>Part 55] shall not apply.

- (2) The applicant shall file—
  - (a) a claim form;
  - (b) a witness statement or affidavit in support; and
  - (c) an application notice,

each of which shall be in the appropriate prescribed form, together with sufficient copies for service on the respondent.

(3) The witness statement or affidavit shall be sworn by the applicant personally or, where the application for an interim possession order is made by a body corporate, shall be sworn by an officer of the body corporate duly authorised to swear the witness statement or affidavit on its behalf.

- (4) On the filing of the documents mentioned in paragraph (2), the court shall—
  - (a) issue the claim form and the application for an interim possession order;

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- (b) fix an appointment for the application to be considered; and
- (c) insert the time of that appointment in the application notice filed under paragraph (2) and in the copy to be served on the respondent.

(5) The time fixed for consideration of the application for an interim possession order shall be as soon as possible after the documents have been filed, but not less than 3 days after the date on which the application for an interim possession order is issued.

#### Textual Amendments

**F398** Words in [Sch. 2 CCR Order 24 rule 10\(1\)](#) substituted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(d), [27\(c\)](#)

#### Service of the notice of application **E+W**

**Rule 11.**—(1) Within 24 hours of the issue of the application for an interim possession order, the applicant shall serve the following documents on the respondent, namely—

- (a) the application notice; and
- (b) the prescribed form of respondent’s witness statement or affidavit, which shall be attached to the application notice.

(2) The applicant shall serve the documents mentioned in paragraph (1) by fixing a copy of them to the main door or other conspicuous part of the premises and, if practicable, inserting through the letter-box at the premises a copy of the documents in a sealed, transparent envelope addressed to “the occupiers”.

(3) Additionally (but not alternatively), the applicant may place stakes in the ground at conspicuous parts of the premises to each of which shall be fixed a sealed transparent envelope addressed to “the occupiers” and containing a copy of the documents.

(4) At or before the time fixed for consideration of the application for an interim possession order, the applicant shall file a witness statement or affidavit of service in the prescribed form in relation to the documents mentioned in paragraph (1).

(5) At any time before the time fixed for consideration of the application for an interim possession order the respondent may file a witness statement or affidavit in the prescribed form in response to the application.

#### Consideration of the application **E+W**

**Rule 12.**—(1) If the respondent has filed a witness statement or affidavit in accordance with rule 11 (5), he may attend before the court when the application for an interim possession order is considered to answer such questions on his witness statement or affidavit or on the applicant’s witness statement or affidavit as the court may put to him.

(2) The parties’ witness statements or affidavits shall be read in evidence and no oral evidence shall be adduced except in response to questions put by the court.

(3) If the court so directs, an application for an interim possession order may be dealt with in private and in the absence of one or both of the parties.

(4) In deciding whether to grant an interim possession order the court shall have regard to whether the applicant has given or is prepared to give undertakings in support of his application—

- (a) to reinstate the respondent if, after an interim possession order has been made, the court holds that the applicant was not entitled to the order;

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- (b) to pay damages if, after an interim possession order has been made, the court holds that the applicant was not entitled to the order;
  - (c) not to damage the premises pending final determination of the possession proceedings;
  - (d) not to grant a right of occupation to any other person pending final determination of the possession proceedings; and
  - (e) not to damage or dispose of any of the respondent's possessions pending final determination of the possession proceedings.
- (5) The court shall make an interim possession order if—
- (a) the applicant has filed a witness statement or affidavit of service of the notice of application; and
  - (b) the court is satisfied that—
    - (i) the conditions specified in rule 9 are met; and
    - (ii) any undertakings given by the applicant as a condition of making the order are adequate.
- (6) An interim possession order shall be in a prescribed form and shall be to the effect that the respondent vacate the premises specified in the claim form within 24 hours of service of the order.
- (7) On the making of an interim possession order, the court shall fix a return date for the hearing of the claim which shall be not less than 7 days after the date on which the interim possession order is made.
- (8) Where an interim possession order is made, the court officer shall submit a draft of the order as soon as possible to the judge or district judge by whom it was made for approval, and when the draft order has been approved the court shall insert in the order the time limit for service under rule 13 (1).
- (9) Where the court does not make an interim possession order—
- (a) the court officer shall fix a return date for the hearing of the claim;
  - (b) the court may give directions for the further conduct of the matter; and
  - (c) subject to such directions, the matter shall proceed in accordance with [F399Part 55].
- (10) When it has considered the application for an interim possession order, the court shall give a copy of the respondent's witness statement or affidavit (if any) to the applicant, if the applicant requests such a copy.
- (11) The court shall serve any directions made under paragraph (9) on the parties and at the same time shall serve on the respondent a copy of the claim form and witness statement or affidavit in support.

#### Textual Amendments

**F399** Words in [Sch. 2 CCR Order 24 rule 12\(9\)\(c\)](#) substituted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(d), **27(d)**

### Service and enforcement of the interim possession order **E+W**

**Rule 13.**—(1) An interim possession order must be served within 48 hours of the judge or district judge's approving the draft order under rule 12 (8).

(2) The applicant shall serve copies of the claim form, the applicant's witness statement or affidavit and the interim possession order in accordance with rule 11 (2) and (3) or in such other manner as the court may direct.

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(3) Order 26, rule 17 (enforcement of warrant of possession) shall not apply to the enforcement of an interim possession order.

(4) If an interim possession order is not served within the time limit specified by this rule or by any order extending or abridging time, the applicant may apply to the court for directions for the application for possession to continue under [F400Part 55] as if it had not included a claim for an interim possession order.

#### Textual Amendments

**F400** Words in Sch. 2 CCR Order 24 rule 13(4) substituted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(d), **27(d)**

#### Matters arising after making of an interim possession order **E+W**

**Rule 14.**—(1) Before the return date the applicant shall file a witness statement or affidavit of service in the prescribed form in relation to the documents specified in rule 13 (2), and no final order for possession may be made unless such a witness statement or affidavit has been filed.

(2) The interim possession order shall expire on the return date.

(3) On the return date the court may make such order as appears appropriate and may in particular—

- (a) make a final order for possession;
- (b) dismiss the claim for possession;
- (c) give directions for the application for possession to continue under [F401Part 55] as if it had not included a claim for an interim possession order.

(4) An order may be made on the return date in the absence of one or both of the parties.

(5) If the court holds that the applicant was not entitled to an interim possession order, the respondent may apply for relief pursuant to any undertakings given by the applicant.

(6) Unless it otherwise directs, the court shall serve a copy of any order or directions made under this rule on the parties.

(7) Unless the court otherwise directs, service on the respondent under paragraph (6) shall be in accordance with rule 11 (2) and (3).

(8) Rule 6 (warrant of possession) shall apply to the enforcement of a final order for possession made under this rule.

#### Textual Amendments

**F401** Words in Sch. 2 substituted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(d), **27(d)**

#### Application to set aside an interim possession order **E+W**

**Rule 15.**—(1) If the respondent has vacated the premises, he may apply on grounds of urgency for the interim possession order to be set aside before the return date.

(2) An application under this rule shall be supported by a witness statement or affidavit.

(3) On receipt of an application to set aside, the judge or district judge shall give directions as to—

- (a) the date for the hearing; and

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- (b) the period of notice, if any, to be given to the applicant and the mode of service of any such notice.
- (4) No application to set aside an interim possession order may be made under CPR Part 39.3.
- (5) Where no notice is required under paragraph (3)(b), the only matter to be dealt with at the hearing shall be whether the interim possession order should be set aside (and the consequent application of any undertaking given under rule 12 (4)(a)) and all other matters shall be dealt with on the return date.
- (6) The court shall serve on the applicant a copy of any order made under paragraph (5) and, where no notice is required under paragraph (3)(b), the court shall at the same time serve a copy of the respondent's application to set aside and the witness statement or affidavit in support.
- (7) Where notice is required under paragraph (3)(b), the court may treat the application as an application to bring forward the return date, in which case rule 14 (2) to (8) shall apply accordingly.

## CCR ORDER 25 **E+W**

### ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL

#### Judgment creditor and debtor **E+W**

**Rule 1** In this Order and Orders 26 to 29 “judgment creditor” means the person who has obtained or is entitled to enforce a judgment or order and “debtor” means the person against whom it was given or made.

#### Transfer of proceedings for enforcement **E+W**

**Rule 2.**—(1) Where, with a view to enforcing a judgment or order obtained by him in a county court, a judgment creditor desires to apply for—

- (a) the oral examination of the debtor;
- (b) a charging order under section 1 of the Charging Orders Act 1979(175);
- (c) an attachment of earnings order; or
- (d) the issue of a judgment summons,

and the application is required by any provision of these rules to be made to another county court, the judgment creditor shall make a request in writing to the court officer of the court in which the judgment or order was obtained for the transfer of the proceedings to the other court.

(2) On receipt of a request under paragraph (1), the court officer shall make an order transferring the proceedings to the other court and shall—

- (a) make an entry of the transfer in the records in his court; and
  - (b) send to the court to which the proceedings have been transferred a certificate of the judgment or order stating the purpose for which it has been issued, and, if requested by that officer, all the documents in his custody relating to the proceedings.
- (3) When the proceedings have been transferred to the other court—
- (a) that court shall give notice of the transfer to the judgment creditor and the debtor;
  - (b) any payment which, by or under these rules or the Court Funds Rules 1987(176), is authorised or required to be made into court shall be made into that court; and

(175) 1979 c. 53; section 1 was amended by the Administration of Justice Act 1982 (c. 53) sections 34(3), 37, schedule 3, Part II, paragraphs 2, 3, 6; and by the County Courts Act 1984 (c. 28), section 148(1), schedule 2, Part V.

(176) S.I. 1987/821, as amended by S.I. 1988/817, 1990/518, 1991/227 and 1997/177.

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- (c) subject to sub-paragraph (d), any subsequent steps in the proceedings shall be taken in that court, but
- (d) any application or appeal under Order 37 shall be made to the court in which the judgment or order was obtained.

(4) If the judgment creditor desires to make a subsequent application for any of the remedies mentioned in paragraph (1)(a) to (d) and the application is required to be made to another court, he may make a request under paragraph (1) to the court to which the proceedings have been transferred and paragraphs (2) and (3) shall apply with the necessary modifications.

### Oral examination of debtor **E+W**

**Rule 3.**—(1) Where a person has obtained a judgment or order in a county court for the payment of money or where an order has been made under rule 12 of this Order, the appropriate court may, on an application made by the judgment creditor without notice being served on any other party, order the debtor or, if the debtor is a body corporate, an officer thereof to attend before the court officer and be orally examined as to the debtor's means of satisfying the judgment or order, and may also order the person to be examined to produce at the time and place appointed for the examination any books or documents in his possession relevant to the debtor's means.

(1A) An application under paragraph (1) shall certify the amount of money remaining due under the judgment, order or award (as that word is defined by rule 12 (1) of this Order).

(2) The appropriate court for the purposes of paragraph (1) shall be the court for the district in which the person to be examined (or, if there are more such persons than one, any of them) resides or carries on business.

[<sup>F402</sup>(3) The order shall be served—

- (a) by the judgment creditor delivering the order to the debtor personally; or
- (b) by the court sending it by first-class post to the debtor—
  - (i) at his address for service; or
  - (ii) where CPR rule 6.5(5) applies, at the place of service specified in that rule.]

[<sup>F403</sup>(3A) Unless the judgment creditor otherwise requests, service shall be effected in accordance with paragraph (3)(b).

(3B) Where an order is served in accordance with paragraph (3)(b) the date of service shall, unless the contrary is shown, be deemed to be the seventh day after the date on which the order was sent to the debtor.

(3C) Where—

- (a) an order has been sent by post in accordance with paragraph (3)(b) to the debtor's address for service; and
- (b) the order has been returned to the court office undelivered, the court shall send notice of non-service to the judgment creditor pursuant to CPR rule 6.11 together with a notice informing him that he may request bailiff service at that address.

(3D) If the appellant requests bailiff service under paragraph (3C), it shall be effected by a bailiff of the court—

- (a) inserting the order, enclosed in an envelope addressed to the debtor, through the letter-box at the debtor's address for service;
- (b) delivering the order to some person, apparently not less than 16 years old, at the debtor's address for service; or
- (c) delivering the order to the debtor personally.]

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(4) If the person to be examined fails to attend at the time and place fixed for the examination, the court may adjourn the examination and make a further order for his attendance and any such order shall direct that any payments made thereafter shall be paid into court and not direct to the judgment creditor.

(5) Nothing in Order 29, rule 1 (2) to (7) shall apply to an order made under paragraph (4), but Order 27, rules 7B and 8, shall apply, with the necessary modifications, as they apply to orders made under section 23 (1) of the Attachment of Earnings Act 1971(177) except that for a period of 5 days specified in paragraph (1) of Order 27, rule 8 there shall be substituted a period of 10 days.

(5A) Where an examination has been adjourned, the judgment creditor, if requested to do so by the person to be examined not less than 7 days before the day fixed for the adjourned examination shall pay to him a sum reasonably sufficient to cover his expenses in travelling to and from the court unless such a sum was paid to him at the time of service of the order for oral examination.

(5B) The judgment creditor shall, not more than 4 days before the day fixed for the adjourned examination, file a certificate stating either that no request has been made under paragraph (5A) or that a sum has been paid in accordance with such a request.

(5C) Where the person to be examined has made a request under paragraph (5A), he shall not be committed to prison under Order 29, rule 1 (1) for having failed to attend at the time and place fixed for the adjourned examination unless the judgment creditor has paid to him a sum reasonably sufficient to cover the travelling expenses before the day fixed for the adjourned examination.

(6) CPR rule 34.8 (evidence by deposition) shall apply with the necessary modifications, to an examination under this rule as it applies to an examination under that Part save that CPR rule 34.8(6) (b) shall not apply.

(7) Nothing in this rule shall be construed as preventing the court, before deciding whether to make an order under paragraph (1), from giving the person to be examined an opportunity of making a statement in writing or a witness statement or affidavit as to the debtor's means.

#### Textual Amendments

**F402** Sch. 2 CCR Order 25 rule 3 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **32(a)(i)**

**F403** Sch. 2 CCR Order 25 rule 3(3A)-(3D) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **32(a)(ii)**

### Examination of debtor under judgment not for money **E+W**

**Rule 4** Where any difficulty arises in or in connection with the enforcement of any judgment or order for some relief other than the payment of money, the court may make an order under rule 3 for the attendance of the debtor and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

### Provision of information **E+W**

**Rule 5.**—(1) The requests and applications mentioned in paragraph (2) are—

- (a) a request for a warrant of execution, delivery or possession;
- (b) a request for a judgment summons or warrant of committal;
- (c) an application for a garnishee order under Order 30, rule 1; and
- (d) an application for a charging order.

(177)1971 c. 32; section 23(1) was amended by the Administration of Justice Act 1982 (c. 53), section 53(2).



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**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(2) Where the judgment creditor has filed any request or application referred to in paragraph (1) or is seeking to enforce a judgment or order by making an application under rule 3 or under Order 27 or 32, he shall forthwith notify the court of any payment received from the debtor in respect of the judgment to be enforced after the date of the application and before—

- (a) the final return to the warrant of execution, delivery or possession; or
- (b) in any other case, the date fixed for the hearing of the application.

(3) Without prejudice to rule 8 (9), where the judgment creditor applies to re-issue enforcement proceedings, he shall file a request in that behalf certifying the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid and stating why re-issue is necessary.

### Interest on judgment debts **E+W**

**Rule 5A** Where the judgment creditor claims interest pursuant to the County Courts (Interest on Judgment Debts) Order 1991(178) and takes proceedings to enforce payment under the relevant judgment (within the meaning of article 4 (1) of that Order), any request or application for enforcement made in those proceedings shall be accompanied by two copies of a certificate giving details of—

- (a) the amount of interest claimed and the sum on which it is claimed;
- (b) the dates from and to which interest has accrued; and
- (c) the rate of interest which has been applied and, where more than one rate of interest has been applied, the relevant dates and rates.

### Description of parties **E+W**

**Rule 6** Where the name or address of the judgment creditor or the debtor as given in the request for the issue of a warrant of execution or delivery, judgment summons or warrant of committal differs from his name or address in the judgment or order sought to be enforced and the judgment creditor satisfies the court officer that the name or address as given in the request is applicable to the person concerned, the judgment creditor or the debtor, as the case may be, shall be described in the warrant or judgment summons as “C.D. of [name and address as given in the request] suing [or sued] as A.D. of [name and address in the judgment or order]”.

### Recording and giving information as to warrants and orders **E+W**

**Rule 7.**—(1) Subject to paragraph (1A), every district judge by whom a warrant or order is issued or received for execution shall from time to time state in the records of his court what has been done in the execution of the warrant or order.

(1A) Where a warrant of execution issued by a court (“the home court”) is sent to another court for execution (“the foreign court”), paragraph (1) shall not apply to the district judge of the home court, but when such a warrant is returned to the home court under paragraph (7), the court officer of the home court shall state in the records of his court what has been done in the execution of the warrant or order.

(2) If the warrant or order has not been executed within one month from the date of its issue or receipt by him, the court officer of the court responsible for its execution shall, at the end of that month and every subsequent month during which the warrant remains outstanding, send notice of the reason for non-execution to the judgment creditor and, if the warrant or order was received from another court, to that court.



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(3) The district judge responsible for executing a warrant or order shall give such information respecting it as may reasonably be required by the judgment creditor and, if the warrant or order was received by him from another court, by the district judge of that court.

(4) Where money is received in pursuance of a warrant of execution or committal sent by one court to another court, the foreign court shall, subject to paragraph (5) and to section 346 of Insolvency Act 1986<sup>(179)</sup> and section 326 of the Companies Act 1948<sup>(180)</sup>, send the money to the judgment creditor in the manner prescribed by the Court Funds Rules 1987<sup>(181)</sup> and, where the money is received in pursuance of a warrant of committal, make a return to the home court.

(5) Where interpleader proceedings are pending, the court shall not proceed in accordance with paragraph (4) until the interpleader proceedings are determined and the district judge shall then make a return showing how the money is to be disposed of and, if any money is payable to the judgment creditor, the court shall proceed in accordance with paragraph (4).

(6) Where a warrant of committal has been received from another court, the foreign court shall, on the execution of the warrant, send notice thereof to the home court.

(7) Where a warrant of execution has been received from another court, either—

(a) on the execution of the warrant; or

(b) if the warrant is not executed—

(i) on the making of a final return to the warrant; or

(ii) on suspension of the warrant under rule 8 (suspension of judgment or execution) or Order 26, rule 10 (withdrawal and suspension of warrant at creditor's request),

the foreign court shall return the warrant to the home court.

### Suspension of judgment or execution **E+W**

**Rule 8.**—(1) The power of the court to suspend or stay a judgment or order or to stay execution of any warrant may be exercised by the district judge or, in the case of the power to stay execution of a warrant of execution and in accordance with the provisions of this rule, by the court officer.

(2) An application by the debtor to stay execution of a warrant of execution shall be in the appropriate form stating the proposed terms, the grounds on which it is made and including a signed statement of the debtor's means.

(3) Where the debtor makes an application under paragraph (2), the court shall—

(a) send the judgment creditor a copy of the debtor's application (and statement of means); and

(b) require the creditor to notify the court in writing, within 14 days of service of notification upon him, giving his reasons for any objection he may have to the granting of the application.

(4) If the judgment creditor does not notify the court of any objection within the time stated, the court officer may make an order suspending the warrant on terms of payment.

(5) Upon receipt of a notice by the judgment creditor under paragraph (3)(b), the court officer may, if the judgment creditor objects only to the terms offered, determine the date and rate of payment and make an order suspending the warrant on terms of payment.

(6) Any party affected by an order made under paragraph (5) may, within 14 days of service of the order on him and giving his reasons, apply on notice for the order to be reconsidered and the court shall fix a day for the hearing of the application before the district judge and give to the judgment creditor and the debtor not less than 8 days' notice of the day so fixed.

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<sup>(179)</sup>1986 c. 45.

<sup>(180)</sup>1948 c. 38.

<sup>(181)</sup>S.I. 1988/821, as amended by S.I. 1988/817, 1990/518, 1991/227 and 1997/177.

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(7) On hearing an application under paragraph (6), the district judge may confirm the order or set it aside and make such new order as he thinks fit and the order so made shall be entered in the records of the court.

(8) Where the judgment creditor states in his notice under paragraph (3)(b) that he wishes the bailiff to proceed to execute the warrant, the court shall fix a day for a hearing before the district judge of the debtor's application and give to the judgment creditor and to the debtor not less than 2 days' notice of the day so fixed.

(9) Subject to any directions given by the district judge, where a warrant of execution has been suspended, it may be re-issued on the judgment creditor's filing a request pursuant to rule 5 (3) showing that any condition subject to which the warrant was suspended has not been complied with.

(10) Where an order is made by the district judge suspending a warrant of execution, the debtor may be ordered to pay the costs of the warrant and any fees or expenses incurred before its suspension and the order may authorise the sale of a sufficient portion of any goods seized to cover such costs, fees and expenses and the expenses of sale.

### **Enforcement of judgment or order against firm** **E+W**

**Rule 9.**—(1) Subject to paragraph (2), a judgment or order against a firm may be enforced against—

- (a) any property of the firm;
- (b) any person who admitted in the proceedings that he was a partner or was adjudged to be a partner;
- (c) any person who was served as a partner with the claim form if—
  - (i) judgment was entered under CPR Part 12, in default of defence or under CPR Part 14 on admission; or
  - (iii) the person so served did not appear at the trial or hearing of the proceedings.

(2) A judgment or order may not be enforced under paragraph (1) against a member of the firm who was out of England and Wales when the claim form was issued unless he—

- (a) was served within England and Wales with the claim form as a partner; or
- (b) was, with the <sup>F404</sup>permission of the court under CPR rule 6.20] served out of England and Wales with the claim form as a partner,

and, except as provided by paragraph (1)(a) and by the foregoing provisions of this paragraph, a judgment or order obtained against a firm shall not render liable, release or otherwise affect a member of the firm who was out of England and Wales when the claim form was issued.

(3) A judgment creditor who claims to be entitled to enforce a judgment or order against any other person as a partner may apply to the court for permission to do so by filing an application notice in accordance with CPR Part 23.

(4) An application notice under paragraph (3) shall be served on the alleged partner, not less than three days before the hearing of the application, in the manner required for service of <sup>F405</sup>an order under Order 25, rule 3] and on the hearing of the application, if the alleged partner does not dispute his liability, the court may, subject to paragraph (2), give permission to enforce the judgment or order against him and, if he disputes liability, the court may order that the question of his liability be tried and determined in such a manner as the court thinks fit.

(5) The foregoing provisions of this rule shall not apply where it is desired to enforce in a county court a judgment or order of the High Court, or a judgment, order, decree or award of any court or arbitrator which is or has become enforceable as if it were a judgment or order of the High Court, and in any such case the provisions of the RSC relating to the enforcement of a judgment or order against a firm shall apply.

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### Textual Amendments

- F404** Words in Sch. 2 CCR Order 25 rule 9(2)(b) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **32(b)(i)**
- F405** Words in Sch. 2 CCR Order 25 rule 9(4) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **32(b)(ii)**

### Enforcing judgment between a firm and its members **E+W**

**Rule 10.**—(1) Execution to enforce a judgment or order given or made in—

- (a) proceedings by or against a firm, in the name of the firm against or by a member of the firm; or
- (b) proceedings by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue without the permission of the court.

(2) On an application for permission the court may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

### Enforcement of High Court judgment **E+W**

**Rule 11.**—(1) A judgment creditor who desires to enforce a judgment or order of the High Court, or a judgment, order, decree or award of any court or arbitrator which is or has become enforceable as if it were a judgment or order of the High Court, shall file in the appropriate court (with such documents as are required to be filed for the purpose of enforcing a judgment or order of a county court)—

- (a) an office copy of the judgment or order or, in the case of a judgment, order, decree or award of a court other than the High Court or an arbitrator, such evidence of the judgment, order, decree or award and of its enforceability as a judgment of the High Court as the district judge may require;
- (b) a certificate verifying the amount due under the judgment, order, decree or award;
- (c) where a writ of execution has been issued to enforce it, a copy of the sheriff's return to the writ; and
- (d) a copy of the order to transfer the proceedings to the county court.

(2) In this rule the “appropriate court” means the county court in which the relevant enforcement proceedings might, by virtue of these rules, be brought if the judgment or order had been obtained in proceedings commenced in a county court.

Provided that if under these rules the court in which the relevant enforcement proceedings might be brought is identified by reference to the court in which the judgment or order has been obtained the appropriate court shall be the court for the district in which the debtor resides or carries on business.

(3) The provisions of this rule are without prejudice to Order 26, rule 2.

### Enforcement of award of tribunal **E+W**

**Rule 12.**—(1) This rule applies where any enactment (other than these rules) provides that if a county court so orders, a sum of money is recoverable as if payable under an order of a county court, and in this rule an application for such an order is referred to as an application to enforce an award and “award” means the award, order, agreement or decision which it is sought to enforce.

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(2) Unless these rules otherwise provide, an application to enforce an award shall be made without notice by—

- (a) certifying the amount remaining due to the applicant; and
- (b) producing either the original or a copy of the award and by filing a copy.

(3) Unless otherwise provided, the application shall be made to the court for the district in which the person against whom the award was made resides or carries on business or, where that person does not reside or carry on business within England and Wales, to the court for the district in which the applicant resides or carries on business.

(4) The order may be made by the court officer.

### Transfer to High Court for enforcement **E+W**

**Rule 13.**—<sup>F406</sup>(1) Where the judgment creditor makes a request for a certificate of judgment under Order 22, rule 8(1) for the purpose of enforcing the judgment or order in the High Court—

- (a) by execution against goods; or
- (b) where the judgment or order to be enforced is an order for possession of land made in a possession claim against trespassers,

the grant of a certificate by the court shall take effect as an order to transfer the proceedings to the High Court and the transfer shall have effect on the grant of that certificate.]

(2) On the transfer of proceedings in accordance with paragraph (1), the court shall give notice to the debtor [<sup>F407</sup>or the person against whom the possession order was made] that the proceedings have been transferred and shall make an entry of that fact in the records of his court.

(3) In a case where a request for a certificate of judgment is made under Order 22, rule 8(1) for the purpose of enforcing a judgment or order in the High Court and—

- (a) an application for a variation in the date or rate of payment of money due under a judgment or order;
- (b) an application under either CPR rule 39.3(3) or CPR rule 13.4;
- (c) a request for an administration order; or
- (d) an application for a stay of execution under section 88 of the Act,

is pending, the request for the certificate shall not be dealt with until those proceedings are determined.

#### Textual Amendments

**F406** Sch. 2 CCR Order 25 Rule 13(1) substituted (15.10.2001) by [The Civil Procedure \(Amendment No. 4\) Rules 2001 \(S.I. 2001/2792\)](#), rules 1(a), **15(a)** (with rule 24)

**F407** Words in Sch. 2 CCR Order 25 rule 13(2) inserted (15.10.2001) by [The Civil Procedure \(Amendment No. 4\) Rules 2001 \(S.I. 2001/2792\)](#), rules 1(a), **15(b)** (with rule 24)

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## CCR ORDER 26 **E+W**

### WARRANTS OF EXECUTION, DELIVERY AND POSSESSION

#### Application for warrant of execution **E+W**

**Rule 1.**—(1) A judgment creditor desiring a warrant of execution to be issued shall file a request in that behalf certifying—

- (a) the amount remaining due under the judgment or order; and
- (b) where the order made is for payment of a sum of money by instalments—
  - (i) that the whole or part of any instalment due remains unpaid; and
  - (ii) the amount for which the warrant is to be issued.

(1A) The court officer shall discharge the functions—

- (a) under section 85 (2) of the Act of issuing a warrant of execution;
- (b) under section 85 (3) of the Act of entering in the record mentioned in that subsection and on the warrant the precise time of the making of the application to issue the warrant; and
- (c) under section 103 (1) of the Act of sending the warrant of execution to another county court.

(2) Where the court has made an order for payment of a sum of money by instalments and default has been made in payment of such an instalment, a warrant of execution may be issued for the whole of the said sum of money and costs then remaining unpaid or, subject to paragraph (3), for such part as the judgment creditor may request, not being in the latter case less than £50 or the amount of one monthly instalment or, as the case may be, four weekly instalments, whichever is the greater.

(3) In any case to which paragraph (2) applies no warrant shall be issued unless at the time when it is issued—

- (a) the whole or part of an instalment which has already become due remains unpaid; and
- (b) any warrant previously issued for part of the said sum of money and costs has expired or has been satisfied or abandoned.

(4) Where a warrant is issued for the whole or part of the said sum of money and costs, the court officer shall, unless the district judge responsible for execution of the warrant directs otherwise, send a warning notice to the person against whom the warrant is issued and, where such a notice is sent, the warrant shall not be levied until 7 days thereafter.

(5) Where judgment is given or an order made for payment otherwise than by instalments of a sum of money and costs to be assessed in accordance with CPR Part 47 (detailed assessment procedure) and default is made in payment of the sum of money before the costs have been assessed, a warrant of execution may issue for recovery of the sum of money and a separate warrant may issue subsequently for the recovery of the costs if default is made in payment of them.

#### Execution of High Court judgment **E+W**

**Rule 2.**—(1) Where it is desired to enforce by warrant of execution a judgment or order of the High Court, or a judgment, order, decree or award which is or has become enforceable as if it were a judgment of the High Court, the request referred to in rule 1 (1) may be filed in any court in the district of which execution is to be levied.

(2) Subject to Order 25, rule 9 (5), any restriction imposed by these rules on the issue of execution shall apply as if the judgment, order, decree or award were a judgment or order of the county court, but permission to issue execution shall not be required if permission has already been given by the High Court.

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(3) Notice of the issue of the warrant shall be sent by the county court to the High Court.

#### **Execution against farmer** E+W

**Rule 3** If after the issue of a warrant of execution the district judge for the district in which the warrant is to be executed has reason to believe that the debtor is a farmer, the execution creditor shall, if so required by the district judge, furnish him with an official certificate, dated not more than three days beforehand, of the result of a search at the Land Registry as to the existence of any charge registered against the debtor under the Agricultural Credits Act 1928(182).

#### **Concurrent warrants** E+W

**Rule 4** Two or more warrants of execution may be issued concurrently for execution in different districts, but—

- (a) no more shall be levied under all the warrants together than is authorised to be levied under one of them; and
- (b) the costs of more than one such warrant shall not be allowed against the debtor except by order of the court.

#### **Permission to issue certain warrants** E+W

**Rule 5.**—(1) A warrant of execution shall not issue without the permission of the court where—

- (a) six years or more have elapsed since the date of the judgment or order;
- (b) any change has taken place, whether by death or otherwise in the parties entitled to enforce the judgment or order or liable to have it enforced against them;
- (c) the judgment or order is against the assets of a deceased person coming into the hands of his executors or administrators after the date of the judgment or order and it is sought to issue execution against such assets; or
- (d) any goods to be seized under a warrant of execution are in the hands of a receiver appointed by a court.

(2) An application for permission shall be supported by a witness statement or affidavit establishing the applicant's right to relief and may be made without notice being served on any other party in the first instance but the court may direct the application notice to be served on such persons as it thinks fit.

(3) Where, by reason of one and the same event, a person seeks permission under paragraph (1) (b) to enforce more judgments or orders than one, he may make one application only, specifying in a schedule all the judgments or orders in respect of which it is made, and if the application notice is directed to be served on any person, it need set out only such part of the application as affects him.

(4) Paragraph (1) is without prejudice to any enactment, rule or direction by virtue of which a person is required to obtain the permission of the court for the issue of a warrant or to proceed to execution or otherwise to the enforcement of a judgment or order.

#### **Duration and renewal of warrant** E+W

**Rule 6.**—(1) A warrant of execution shall, for the purpose of execution, be valid in the first instance for 12 months beginning with the date of its issue, but if not wholly executed, it may be renewed from time to time, by order of the court, for a period of 12 months at any one time, beginning with the day next following that on which it would otherwise expire, if an application for renewal is made before that day or such later day (if any) as the court may allow.

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(182)1928 c. 43.



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(2) A note of any such renewal shall be indorsed on the warrant and it shall be entitled to priority according to the time of its original issue or, where appropriate, its receipt by the district judge responsible for its execution.

#### **Notice on levy** **E+W**

**Rule 7** Any bailiff upon levying execution shall deliver to the debtor or leave at the place where execution is levied a notice of the warrant.

#### **Bankruptcy or winding up of debtor** **E+W**

**Rule 8.**—(1) Where the district judge responsible for the execution of a warrant is required by any provision of the Insolvency Act 1986(**183**) or any other enactment relating to insolvency to retain the proceeds of sale of goods sold under the warrant or money paid in order to avoid a sale, the court shall, as soon as practicable after the sale or the receipt of the money, send notice to the execution creditor and, if the warrant issued out of another court, to that court.

(2) Where the district judge responsible for the execution of a warrant—

- (a) receives notice that a bankruptcy order has been made against the debtor or, if the debtor is a company, that a provisional liquidator has been appointed or that an order has been made or a resolution passed for the winding up of the company; and
- (b) withdraws from possession of goods seized or pays over to the official receiver or trustee in bankruptcy or, if the debtor is a company, to the liquidator the proceeds of sale of goods sold under the warrant or money paid in order to avoid a sale or seized or received in part satisfaction of the warrant,

the court shall send notice to the execution creditor and, if the warrant issued out of another court, to that court.

(3) Where the court officer of a court to which a warrant issued out of another court has been sent for execution receives any such notice as is referred to in paragraph (2)(a) after he has sent to the home court any money seized or received in part satisfaction of the warrant, he shall forward the notice to that court.

#### **Withdrawal and suspension of warrant at creditor's request** **E+W**

**Rule 10.**—(1) Where an execution creditor requests the district judge responsible for executing a warrant to withdraw from possession, he shall, subject to the following paragraphs of this rule, be treated as having abandoned the execution, and the court shall mark the warrant as withdrawn by request of the execution creditor.

(2) Where the request is made in consequence of a claim having been made under Order 33, rule 1, to goods seized under the warrant, the execution shall be treated as being abandoned in respect only of the goods claimed.

(3) If the district judge responsible for executing a warrant is requested by the execution creditor to suspend it in pursuance of an arrangement between him and the debtor, the court shall mark the warrant as suspended by request of the execution creditor and the execution creditor may subsequently apply to the district judge holding the warrant for it to be re-issued and, if he does so, the application shall be deemed for the purpose of section 85 (3) of the Act to be an application to issue the warrant.

(4) Nothing in this rule shall prejudice any right of the execution creditor to apply for the issue of a fresh warrant or shall authorise the re-issue of a warrant which has been withdrawn or has expired or has been superseded by the issue of a fresh warrant.

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(183)1986 c. 45.

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### **Suspension of part warrant** **E+W**

**Rule 11** Where a warrant issued for part of a sum of money and costs payable under a judgment or order is suspended on payment of instalments, the judgment or order shall, unless the court otherwise directs, be treated as suspended on those terms as respects the whole of the sum of money and costs then remaining unpaid.

### **Inventory and notice where goods removed** **E+W**

**Rule 12.**—(1) Where goods seized in execution are removed, the court shall forthwith deliver or send to the debtor a sufficient inventory of the goods removed and shall, not less than 4 days before the time fixed for the sale, give him notice of the time and place at which the goods will be sold.

(2) The inventory and notice shall be given to the debtor by delivering them to him personally or by sending them to him by post at his place of residence or, if his place of residence is not known, by leaving them for him, or sending them to him by post, at the place from which the goods were removed.

### **Account of sale** **E+W**

**Rule 13** Where goods are sold under an execution, the court shall furnish the debtor with a detailed account in writing of the sale and of the application of the proceeds.

### **Notification to foreign court of payment made** **E+W**

**Rule 14** Where, after a warrant has been sent to a foreign court for execution but before a final return has been made to the warrant, the home court is notified of a payment made in respect of the sum for which the warrant is issued, the home court shall send notice of the payment to the foreign court.

### **Order for private sale** **E+W**

**Rule 15.**—(1) Subject to paragraph (6), an order of the court under section 97 of the Act that a sale under an execution may be made otherwise than by public auction may be made on the application of the execution creditor or the debtor or the district judge responsible for the execution of the warrant.

(2) Where he is not the applicant for an order under this rule, the district judge responsible for the execution of the warrant shall, on the demand of the applicant, furnish him with a list containing the name and address of every execution creditor under any other warrant or writ of execution against the goods of the debtor of which the district judge has notice, and where the district judge is the applicant, he shall prepare such a list.

(3) Not less than 4 days before the day fixed for the hearing of the application, the applicant shall give notice of the application to each of the other persons by whom the application might have been made and to every person named in the list referred to in paragraph (2).

(4) The applicant shall produce the list to the court on the hearing of the application.

(5) Every person to whom notice of the application was given may attend and be heard on the hearing of the application.

(6) Where the district judge responsible for the execution of the warrant is the district judge by whom it was issued and he has no notice of any other warrant or writ of execution against the goods of the debtor, an order under this rule may be made by the court of its own motion with the consent of the execution creditor and the debtor or after giving them an opportunity of being heard.



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### **Warrant of delivery** **E+W**

**Rule 16.**—(1) Except where an Act or rule provides otherwise, a judgment or order for the delivery of any goods shall be enforceable by warrant of delivery in accordance with this rule.

(2) If the judgment or order does not give the person against whom it was given or made the alternative of paying the value of the goods, it may be enforced by a warrant of specific delivery, that is to say, a warrant to recover the goods without alternative provision for recovery of their value.

(3) If the judgment or order is for the delivery of the goods or payment of their value, it may be enforced by a warrant of delivery to recover the goods or their value.

(4) Where a warrant of delivery is issued, the judgment creditor shall be entitled, by the same or a separate warrant, to execution against the debtor's goods for any money payable under the judgment or order which is to be enforced by the warrant of delivery.

(4A) Where a judgment or order is given or made for the delivery of goods or payment of their value and a warrant is issued to recover the goods or their value, money paid into court under the warrant shall be appropriated first to any sum of money and costs awarded.

(5) The foregoing provisions of this Order, so far as applicable, shall have effect, with the necessary modifications, in relation to warrants of delivery as they have effect in relation to warrants of execution.

### **Warrant of possession** **E+W**

**Rule 17.**—(1) A judgment or order for the recovery of land shall be enforceable by warrant of possession.

(2) Without prejudice to paragraph (3A), the person desiring a warrant of possession to be issued shall file a request in that behalf certifying that the land has not been vacated in accordance with the judgment or order for the recovery of the said land.

(3) Where a warrant of possession is issued, the judgment creditor shall be entitled, by the same or a separate warrant, to execution against the debtor's goods for any money payable under the judgment or order which is to be enforced by the warrant of possession.

(3A) In a case to which paragraph (3) applies or where an order for possession has been suspended on terms as to payment of a sum of money by instalments, the judgment creditor shall in his request certify—

- (a) the amount of money remaining due under the judgment or order; and
- (b) that the whole or part of any instalment due remains unpaid.

(4) A warrant of restitution may be issued, with the permission of the court, in aid of any warrant of possession.

(5) An application for permission under paragraph (4) may be made without notice being served on any other party and shall be supported by evidence of wrongful re-entry into possession following the execution of the warrant of possession and of such further facts as would, in the High Court, enable the judgment creditor to have a writ of restitution issued.

(6) Rules 5 and 6 shall apply, with the necessary modifications, in relation to a warrant of possession and any further warrant in aid of such a warrant as they apply in relation to a warrant of execution.

### **Saving for enforcement by committal** **E+W**

**Rule 18** Nothing in rule 16 or 17 shall prejudice any power to enforce a judgment or order for the delivery of goods or the recovery of land by an order of committal.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

## CCR ORDER 27 **E+W**

### ATTACHMENT OF EARNINGS

#### Part I—General **E+W**

#### Interpretation **E+W**

**Rule 1.**—(1) In this Order—

“the Act of 1971” means the Attachment of Earnings Act 1971(**184**) and, unless the context otherwise requires, expressions used in that Act have the same meanings as in that Act;

#### Index of orders **E+W**

**Rule 2.**—(1) The court officer of every court shall keep a nominal index of the debtors residing within the district of his court in respect of whom there are in force attachment of earnings orders which have been made by that court or of which the court officer has received notice from another court.

(2) Where a debtor in respect of whom a court has made an attachment of earnings order resides within the district of another court, the court officer of the first-mentioned court shall send a copy of the order to the court officer of the other court for entry in his index.

(3) The court officer shall, on the request of any person having a judgment or order against a person believed to be residing within the district of the court, cause a search to be made in the index of the court and issue a certificate of the result of the search.

#### Appropriate court **E+W**

**Rule 3.**—(1) Subject to paragraphs (2) and (3), an application for an attachment of earnings order may be made to the court for the district in which the debtor resides.

(2) If the debtor does not reside within England or Wales, or the creditor does not know where he resides, the application may be made to the court in which, or for the district in which, the judgment or order sought to be enforced was obtained.

(3) Where the creditor applies for attachment of earnings orders in respect of two or more debtors jointly liable under a judgment or order, the application may be made to the court for the district in which any of the debtors resides, so however that if the judgment or order was given or made by any such court, the application shall be made to that court.

#### Mode of applying **E+W**

**Rule 4.**—(1) A judgment creditor who desires to apply for an attachment of earnings order shall file his application certifying the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid and, where it is sought to enforce an order of a magistrates' court—

- (a) a certified copy of the order; and
- (b) a witness statement or affidavit verifying the amount due under the order or, if payments under the order are required to be made to the [<sup>F408</sup>justices' chief executive for] the magistrates' court, a certificate by that [<sup>F408</sup>chief executive] to the same effect.

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(184)1971 c. 32.

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(2) On the filing of the documents mentioned in paragraph (1) the court officer shall, where the order to be enforced is a maintenance order, fix a day for the hearing of the application.

#### Textual Amendments

**F408** Words in Sch. 2 CCR Order 27 rule 4(1)(b) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), **28(a)**

#### Service and reply **E+W**

**Rule 5.**—<sup>F409</sup>(1) Notice of the application together with a form of reply in the appropriate form, shall be served on the debtor in the manner required for service of an order under Order 25, rule 3.]

(2) The debtor shall, within 8 days after service on him of the documents mentioned in paragraph (1), file a reply in the form provided, and the instruction to that effect in the notice to the debtor shall constitute a requirement imposed by virtue of section 14 (4) of the Act of 1971:

Provided that no proceedings shall be taken for an offence alleged to have been committed under section 23 (2)(c) or (f) of the Act of 1971 in relation to the requirement unless the said documents have been served on the debtor personally or the court is satisfied that they came to his knowledge in sufficient time for him to comply with the requirement.

(2A) Nothing in paragraph (2) shall require a defendant to file a reply if, within the period of time mentioned in that paragraph, he pays to the judgment creditor the money remaining due under the judgment or order and, where such payment is made, the judgment creditor shall so inform the court officer.

(3) On receipt of a reply the court officer shall send a copy to the applicant.

#### Textual Amendments

**F409** Sch. 2 CCR Order 27 rule 5(1) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **33(a)**

#### Notice to employer **E+W**

**Rule 6** Without prejudice to the powers conferred by section 14 (1) of the Act of 1971, the court officer may, at any stage of the proceedings, send to any person appearing to have the debtor in his employment a notice requesting him to give to the court, within such period as may be specified in the notice, a statement of the debtor's earnings and anticipated earnings with such particulars as may be so specified.

#### Attachment of earnings order **E+W**

**Rule 7.**—(1) On receipt of the debtor's reply, the court officer may, if he has sufficient information to do so, make an attachment of earnings order and a copy of the order shall be sent to the parties and to the debtor's employer.

(2) Where an order is made under paragraph (1), the judgment creditor or the debtor may, within 14 days of service of the order on him and giving his reasons, apply on notice for the order to be re-considered and the court officer shall fix a day for the hearing of the application and give to the judgment creditor and the debtor not less than 2 days' notice of the day so fixed.

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(3) On hearing an application under paragraph (2), the district judge may confirm the order or set it aside and make such new order as he thinks fit and the order so made shall be entered in the records of the court.

(4) Where an order is not made under paragraph (1), the court officer shall refer the application to the district judge who shall, if he considers that he has sufficient information to do so without the attendance of the parties, determine the application.

(5) Where the district judge does not determine the application under paragraph (4), he shall direct that a day be fixed for the hearing of the application whereupon the court officer shall fix such a day and give to the judgment creditor and the debtor not less than 8 days' notice of the day so fixed.

(6) Where an order is made under paragraph (4), the judgment creditor or the debtor may, within 14 days of service of the order on him and giving his reasons, apply on notice for the order to be re-considered; and the court officer shall fix a day for the hearing of the application and give to the judgment creditor and the debtor not less than 2 days' notice of the day so fixed.

(7) On hearing an application under paragraph (6), the district judge may confirm the order or set it aside and make such new order as he thinks fit and the order so made shall be entered in the records of the court.

(8) If the creditor does not appear at the hearing of the application under paragraph (5) but—

- (a) the court has received a witness statement or affidavit of evidence from him; or
- (b) the creditor requests the court in writing to proceed in his absence,

the court may proceed to hear the application and to make an order thereon.

(9) An attachment of earnings order may be made to secure the payment of a judgment debt if the debt is—

- (a) of not less than £50; or
- (b) for the amount remaining payable under a judgment for a sum of not less than £50.

#### **Failure by debtor** E+W

**Rule 7A.**—(1) If the debtor has failed to comply with rule 5 (2) or to make payment to the judgment creditor, the court officer may issue an order under section 14 (1) of the Act of 1971 which shall—

- (a) be indorsed with or incorporate a notice warning the debtor of the consequences of disobedience to the order;
- (b) be served on the debtor personally; and
- (c) direct that any payments made thereafter shall be paid into the court and not direct to the judgment creditor.

(2) Without prejudice to rule 16, if the person served with an order made pursuant to paragraph (1) fails to obey it or to file a statement of his means or to make payment, the court officer shall issue a notice calling on that person to show good reason why he should not be imprisoned and any such notice shall be served on the debtor personally not less than 5 days before the hearing.

(3) Order 29, rule 1 shall apply, with the necessary modifications and with the substitution of references to the district judge for references to the judge, where a notice is issued under paragraph (2) or (4) of that rule.

(4) In this rule “statement of means” means a statement given under section 14 (1) of the Act of 1971.

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### Suspended committal order **E+W**

**Rule 7B.**—(1) If the debtor fails to attend at an adjourned hearing of an application for an attachment of earnings order and a committal order is made, the judge or district judge may direct that the committal order shall be suspended so long as the debtor attends at the time and place specified in the committal order and paragraphs (2), (4) and (5) of Order 28, rule 7 shall apply, with the necessary modifications, where such a direction is given as they apply where a direction is given under paragraph (1) of that rule.

(2) Where a committal order is suspended under paragraph (1) and the debtor fails to attend at the time and place specified under paragraph (1), a certificate to that effect given by the court officer shall be sufficient authority for the issue of a warrant of committal.

### Failure by debtor—maintenance orders **E+W**

**Rule 8.**—(1) An order made under section 23 (1) of the Act of 1971(**185**) for the attendance of the debtor at an adjourned hearing of an application for an attachment of earnings order to secure payments under a maintenance order shall—

- (a) be served on the debtor personally not less than 5 days before the day fixed for the adjourned hearing; and
- (b) direct that any payments made thereafter shall be paid into the court and not direct to the judgment creditor.

(2) An application by a debtor for the revocation of an order committing him to prison and, if he is already in custody, for his discharge under subsection (7) of the said section 23 shall be made to the judge or district judge in writing without notice to any other party showing the reasons for the debtor's failure to attend the court or his refusal to be sworn or to give evidence, as the case may be, and containing an undertaking by the debtor to attend the court or to be sworn or to give evidence when next ordered or required to do so.

(3) The application shall, if the debtor has already been lodged in prison, be attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer) and in any other case be made on witness statement or affidavit.

(4) Before dealing with the application the judge or district judge may, if he thinks fit, cause notice to be given to the judgment creditor that the application has been made and of a day and hour when he may attend and be heard.

### Costs **E+W**

**Rule 9.**—(1) Where costs are allowed to the judgment creditor on an application for an attachment of earnings order, there may be allowed—

- (a) a charge of a solicitor for attending the hearing and, if the court so directs, for serving the application;
- (b) if the court certifies that the case is fit for counsel, a fee to counsel; and
- (c) the court fee on the issue of the application.

(2) For the purpose of paragraph (1)(a) a solicitor who has prepared on behalf of the judgment creditor a witness statement or affidavit or request under rule 7 (8) shall be treated as having attended the hearing.

(3) The costs may be fixed and allowed without detailed assessment under CPR Part 47.

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(185)1971 c. 32; section 23(1) was amended by the Administration of Justice Act 1982 (c. 53), section 53(2).

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## Contents and service of order **E+W**

**Rule 10.**—(1) An attachment of earnings order shall contain such of the following particulars relating to the debtor as are known to the court, namely—

- (a) his full name and address;
- (b) his place of work; and
- (c) the nature of his work and his works number, if any,

and those particulars shall be the prescribed particulars for the purposes of section 6 (3) of the Act of 1971.

(2) An attachment of earnings order and any order varying or discharging such an order shall be served on the debtor and on the person to whom the order is directed, and CPR Part 6 and CPR rules 40.4 and 40.5 shall apply with the further modification that where the order is directed to a corporation which has requested the court that any communication relating to the debtor or to the class of persons to whom he belongs shall be directed to the corporation at a particular address, service may, if the district judge thinks fit, be effected on the corporation at that address.

(3) Where an attachment of earnings order is made to enforce a judgment or order of the High Court or a magistrates' court, a copy of the attachment of earnings order and of any order discharging it shall be sent by the court officer of the county court to the court officer of the High Court, or, as the case may be, the [<sup>F397</sup>justices' chief executive for] the magistrates' court.

### Textual Amendments

**F397** Words in [Sch. 2 CCR Order 27 rule 10\(3\)](#) substituted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), [rules 1\(b\)](#), [27\(b\)](#)

## Application to determine whether particular payments are earnings **E+W**

**Rule 11** An application to the court under section 16 of the Act of 1971 to determine whether payments to the debtor of a particular class or description are earnings for the purpose of an attachment of earnings order may be made to the district judge in writing and the court officer shall thereupon fix a date and time for the hearing of the application by the court and give notice thereof to the persons mentioned in the said section 16 (2)(a), (b) and (c).

## Notice of cesser **E+W**

**Rule 12** Where an attachment of earnings order ceases to have effect under section 8 (4) of the Act of 1971, the court officer of the court in which the matter is proceeding shall give notice of the cesser to the person to whom the order was directed.

## Variation and discharge by court of own motion **E+W**

**Rule 13.**—(1) Subject to paragraph (9), the powers conferred by section 9 (1) of the Act of 1971 may be exercised by the court of its own motion in the circumstances mentioned in the following paragraphs.

(2) Where it appears to the court that a person served with an attachment of earnings order directed to him has not the debtor in his employment, the court may discharge the order.

(3) Where an attachment of earnings order which has lapsed under section 9 (4) of the Act of 1971 is again directed to a person who appears to the court to have the debtor in his employment, the court may make such consequential variations in the order as it thinks fit.



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(4) Where, after making an attachment of earnings order, the court makes or is notified of the making of another such order in respect of the same debtor which is not to secure the payment of a judgment debt or payments under an administration order, the court may discharge or vary the first-mentioned order having regard to the priority accorded to the other order by paragraph 8 of Schedule 3 to the Act of 1971.

(5) Where, after making an attachment of earnings order, the court makes an order under section 4 (1)(b) of the Act of 1971(186) or makes an administration order, the court may discharge the attachment of earnings order or, if it exercises the power conferred by section 5 (3) of the said Act, may vary the order in such manner as it thinks fit.

(6) On making a consolidated attachment of earnings order the court may discharge any earlier attachment of earnings order made to secure the payment of a judgment debt by the same debtor.

(7) Where it appears to the court that a bankruptcy order has been made against a person in respect of whom an attachment of earnings order is in force to secure the payment of a judgment debt, the court may discharge the attachment of earnings order.

(8) Where an attachment of earnings order has been made to secure the payment of a judgment debt and the court grants permission to issue execution for the recovery of the debt, the court may discharge the order.

(9) Before varying or discharging an attachment of earnings order of its own motion under any of the foregoing paragraphs of this rule, the court shall, unless it thinks it unnecessary in the circumstances to do so, give the debtor and the person on whose application the order was made an opportunity of being heard on the question whether the order should be varied or discharged, and for that purpose the court officer may give them notice of a date, time and place at which the question will be considered.

#### **Transfer of attachment order** **E+W**

**Rule 14.**—(1) Where the court by which the question of making a consolidated attachment order falls to be considered is not the court by which any attachment of earnings order has been made to secure the payment of a judgment debt by the debtor, the district judge of the last-mentioned court shall, at the request of the district judge of the first-mentioned court, transfer to that court the matter in which the attachment of earnings order was made.

(2) Without prejudice to paragraph (1), if in the opinion of the judge or district judge of any court by which an attachment of earnings order has been made, the matter could more conveniently proceed in some other court, whether by reason of the debtor having become resident in the district of that court or otherwise, he may order the matter to be transferred to that court.

(3) The court to which proceedings arising out of an attachment of earnings are transferred under this rule shall have the same jurisdiction in relation to the order as if it has been made by that court.

#### **Exercise of power to obtain statement of earnings etc.** **E+W**

**Rule 15.**—(1) An order under section 14 (1) of the Act of 1971 shall be indorsed with or incorporate a notice warning the person to whom it is directed of the consequences of disobedience to the order and shall be served on him personally.

(2) Order 34, rule 2, shall apply, with the necessary modifications, in relation to any penalty for failure to comply with an order under the said section 14 (1) or, subject to the proviso to rule 5 (2), any penalty for failure to comply with a requirement mentioned in that rule, as it applies in relation to a fine under section 55 of the County Courts Act 1984(187).

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(186) 1971 c. 32; section 4 was amended by the Insolvency Act 1976 (c. 60), section 13(2); and by the County Courts Act 1984 (c. 28), section 148(1), schedule 2, Part V, paragraph 40.

(187) 1984 c. 28.

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## Offences **E+W**

**Rule 16.**—(1) Where it is alleged that a person has committed any offence mentioned in section 23 (2)(a), (b), (d), (e) or (f) of the Act of 1971 in relation to proceedings in, or to an attachment of earnings order made by, a county court, the district judge shall, unless it is decided to proceed against the alleged offender summarily, issue a summons calling upon him to show cause why he should not be punished for the alleged offence.

The summons shall be served on the alleged offender personally not less than 14 days before the return day.

(2) Order 34, rules 3 and 4, shall apply, with the necessary modifications, to proceedings for an offence under section 23 (2) of the Act of 1971 as they apply to proceedings for offences under the County Courts Act 1984(**188**).

## Maintenance orders **E+W**

**Rule 17.**—(1) The foregoing rules of this Order shall apply in relation to maintenance payments as they apply in relation to a judgment debt, subject to the following paragraphs.

(2) An application for an attachment of earnings order to secure payments under a maintenance order made by a county court shall be made to that county court.

(3) Any application under section 32 of the Matrimonial Causes Act 1973(**189**) for permission to enforce the payment of arrears which became due more than 12 months before the application for an attachment of earnings order shall be made in that application.

[<sup>F410</sup>(3A) Notice of the application together with a form of reply in the appropriate form, shall be served on the debtor in the manner required for service of an order under Order 25, rule 3.]

[<sup>F411</sup>(3B) Service of the notice shall be effected not less than 21 days before the hearing, but service may be effected at any time before the hearing on the applicant satisfying the court by witness statement or affidavit that the respondent is about to remove from his address for service.]

[<sup>F412</sup>(3C)] <sup>F413</sup>... Rule 5 (2A) shall not apply.

(4) An application by the debtor for an attachment of earnings order to secure payments under a maintenance order may be made on the making of the maintenance order or an order varying the maintenance order, and rules 4 and 5 shall not apply.

(5) Rule 7 shall have effect as if for paragraphs (1) to (8) there were substituted the following paragraph—

“(1) An application for an attachment of earnings order may be heard and determined by the district judge, who shall hear the application in private.”

(6) Rule 9 shall apply as if for the reference to the amount payable under the relevant adjudication there were substituted a reference to the arrears due under the related maintenance order.

(7) Where an attachment of earnings order made by the High Court designates the court officer of a county court as the collecting officer, that officer shall, on receipt of a certified copy of the order from the court officer of the High Court, send to the person to whom the order is directed a notice as to the mode of payment.

(8) Where an attachment of earnings order made by a county court to secure payments under a maintenance order ceases to have effect and—

- (a) the related maintenance order was made by that court; or
- (b) the related maintenance order was an order of the High Court and—

(188) 1984 c. 28.

(189) 1973 c. 18.



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- (i) the court officer of the county court has received notice of the cessation from the court officer of the High Court; or
- (ii) a committal order has been made in the county court for the enforcement of the related maintenance order,

the court officer of the county court shall give notice of the cessation to the person to whom the attachment of earnings order was directed.

(9) Where an attachment of earnings order has been made by a county court to secure payments under a maintenance order, notice under section 10 (2) of the Act of 1971 to the debtor and to the person to whom the district judge is required to pay sums received under the order shall be in the form provided for that purpose, and if the debtor wishes to request the court to discharge the attachment of earnings order or to vary it otherwise than by making the appropriate variation, he shall apply to the court, within 14 days after the date of the notice, for the remedy desired.

(10) Rule 13 shall have effect as if for paragraphs (4) to (7) there were substituted the following paragraph:—

“(4) Where it appears to the court by which an attachment of earnings order has been made that the related maintenance order has ceased to have effect, whether by virtue of the terms of the maintenance order or under section 28 of the Matrimonial Causes Act 1973(190) or otherwise, the court may discharge or vary the attachment of earnings order.”

#### Textual Amendments

- F410** Sch. 2 CCR Order 27 rule 17(3A) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **33(b)(i)**
- F411** Sch. 2 CCR Order 27 rule 17(3B) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **33(b)(iii)**
- F412** Sch. 2 CCR Order 27 rule 17(3B) renumbered as Sch. 2 CCR Order 27 rule 17(3C) (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **33(b)(ii)**
- F413** Words in Sch. 2 CCR Order 27 rule 17(3B) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **67**

## Part II—Consolidated Attachment of Earnings Orders **E+W**

### Cases in which consolidated order may be made **E+W**

**Rule 18** Subject to the provisions of rules 19 to 21, the court may make a consolidated attachment order where—

- (a) two or more attachment of earnings orders are in force to secure the payment of judgment debts by the same debtor; or
- (b) on an application for an attachment of earnings order to secure the payment of a judgment debt, or for a consolidated attachment order to secure the payment of two or more judgment debts, it appears to the court that an attachment of earnings order is already in force to secure the payment of a judgment debt by the same debtor.

### Application for consolidated order **E+W**

**Rule 19.**—(1) An application for a consolidated attachment order may be made—

- (a) by the debtor in respect of whom the order is sought; or

(190)1973 c. 18; section 28(1) was amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 5.

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- (b) by any person who has obtained or is entitled to apply for an attachment of earnings order to secure the payment of a judgment debt by that debtor.
- (2) An application under paragraph (1) may be made in the proceedings in which any attachment of earnings order (other than a priority order) is in force and rules 3, 4 and 5 of this Order shall not apply.
- (3) Where the judgment which it is sought to enforce was not given by the court which made the attachment of earnings order, the judgment shall be automatically transferred to the court which made the attachment of earnings order.
- (3A) An application under paragraph (1)(b) shall certify the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid.
- (3B) Where an application for a consolidated attachment of earnings order is made, the court officer shall—
- (a) notify any party who may be affected by the application of its terms; and
  - (b) require him to notify the court in writing, within 14 days of service of notification upon him, giving his reasons for any objection he may have to the granting of the application.
- (3C) If notice of any objection is not given within the time stated, the court officer shall make a consolidated attachment of earnings order.
- (3D) If any party objects to the making of a consolidated attachment of earnings order, the court officer shall refer the application to the district judge who may grant the application after considering the objection made and the reasons given.
- (3E) In the foregoing paragraphs of this rule, a party affected by the application means—
- (a) where the application is made by the debtor, the creditor in the proceedings in which the application is made and any other creditor who has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the debtor;
  - (b) where the application is made by the judgment creditor, the debtor and every person who, to the knowledge of the applicant, has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the debtor.
- (4) A person to whom two or more attachment of earnings orders are directed to secure the payment of judgment debts by the same debtor may request the court in writing to make a consolidated attachment order to secure the payment of those debts, and on receipt of such a request paragraphs (3B) to (3E) shall apply, with the necessary modifications, as if the request were an application by the judgment creditor.

#### **Making of consolidated order by court of its own motion** **E+W**

**Rule 20** Where an application is made for an attachment of earnings order to secure the payment of a judgment debt by a debtor in respect of whom an attachment of earnings order is already in force to secure the payment of another judgment debt and no application is made for a consolidated attachment order, the court officer may make such an order of his own motion after giving all persons concerned an opportunity of submitting written objections.

#### **Extension of consolidated order** **E+W**

**Rule 21.**—(1) Where a consolidated attachment order is in force to secure the payment of two or more judgment debts, any creditor to whom another judgment debt is owed by the same judgment debtor may apply to the court by which the order was made for it to be extended so as to secure the payment of that debt as well as the first-mentioned debts and, if the application is granted, the court may either vary the order accordingly or may discharge it and make a new consolidated attachment order to secure payment of all the aforesaid judgment debts.

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(2) An application under this rule shall be treated for the purposes of rules 19 and 20 as an application for a consolidated attachment order.

#### **Payments under consolidated order** E+W

**Rule 22** Instead of complying with section 13 of the Act of 1971, a court officer who receives payments made to him in compliance with a consolidated attachment order shall, after deducting such court fees, if any, in respect of proceedings for or arising out of the order as are deductible from those payments, deal with the sums paid as he would if they had been paid by the debtor to satisfy the relevant adjudications in proportion to the amounts payable thereunder, and for that purpose dividends may from time to time be declared and distributed among the creditors entitled thereto.

## CCR ORDER 28 E+W

### JUDGMENT SUMMONSES

#### **Application for judgment summons** E+W

**Rule 1.**—(1) An application for the issue of a judgment summons may be made to the court for the district in which the debtor resides or carries on business or, if the summons is to issue against two or more persons jointly liable under the judgment or order sought to be enforced, in the court for the district in which any of the debtors resides or carries on business.

(2) The judgment creditor shall make his application by filing a request in that behalf certifying the amount of money remaining due under the judgment or order, the amount in respect of which the judgment summons is to issue and that the whole or part of any instalment due remains unpaid.

#### **Mode of service** E+W

**Rule 2.**—(1) Subject to paragraph (2), a judgment summons shall be served personally on every debtor against whom it is issued.

(2) Where the judgment creditor or his solicitor gives a certificate for postal service in respect of a debtor residing or carrying on business within the district of the court, the judgment summons shall, unless the district judge otherwise directs, be served on that debtor by an officer of the court sending it to him by first-class post at the address stated in the request for the judgment summons and, unless the contrary is shown, the date of service shall be deemed to be the seventh day after the date on which the judgment summons was sent to the debtor.

(3) Where a judgment summons has been served on a debtor in accordance with paragraph (2), no order of commitment shall be made against him unless—

- (a) he appears at the hearing; or
- (b) the judge is satisfied that the summons came to his knowledge in sufficient time for him to appear at the hearing.

(4) Where a judgment summons is served personally, there may, if the judgment creditor so desires, be paid to the debtor at the time of service a sum reasonably sufficient to cover his expenses in travelling to and from the court.

#### **Time for service** E+W

**Rule 3.**—(1) A judgment summons shall be served not less than 14 days before the day fixed for the hearing.

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(2) A notice of non-service shall be sent pursuant to CPR rule 6.11 in respect of a judgment summons which has been sent by post under rule 2 (2) and has been returned to the court office undelivered.

(3) CPR rules 7.5 and 7.6 shall apply, with the necessary modifications, to a judgment summons as they apply to a claim form.

#### **Enforcement of debtor's attendance** E+W

**Rule 4.**—(1) Order 27, rules 7B and 8, shall apply, with the necessary modifications, to an order made under section 110 (1) of the Act for the attendance of the debtor at an adjourned hearing of a judgment summons as they apply to an order made under section 23 (1) of the Attachment of Earnings Act 1971(191) for the attendance of the debtor at an adjourned hearing of an application for an attachment of earnings order.

(2) At the time of service of the order there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court, unless such a sum was paid to him at the time of service of the judgment summons.

#### **Evidence by witness statement or affidavit** E+W

**Rule 5** Where the judgment creditor does not reside or carry on business within the district of the court from which the judgment summons issued, evidence by witness statement or affidavit shall be admissible on his behalf without any notice having been given, unless the judge otherwise directs.

#### **Suspension of committal order** E+W

**Rule 7.**—(1) If on the hearing of a judgment summons a committal order is made, the judge may direct execution of the order to be suspended to enable the debtor to pay the amount due.

(2) A note of any direction given under paragraph (1) shall be entered in the records of the court and notice of the suspended committal order shall be sent to the debtor.

(3) Where a judgment summons is issued in respect of one or more but not all of the instalments payable under a judgment or order for payment by instalments and a committal order is made and suspended under paragraph (1), the judgment or order shall, unless the judge otherwise orders, be suspended for so long as the execution of the committal order is suspended.

(4) Where execution of a committal order is suspended under paragraph (1) and the debtor subsequently desires to apply for a further suspension, the debtor shall attend at or write to the court office and apply for the suspension he desires, stating the reasons for his inability to comply with the terms of the original suspension, and the court shall fix a day for the hearing of the application by the judge and give at least 3 days' notice thereof to the judgment creditor and the debtor.

(5) The district judge may suspend execution of the committal order pending the hearing of an application under paragraph (4).

#### **New order on judgment summons** E+W

**Rule 8.**—(1) Where on the hearing of a judgment summons, the judge makes a new order for payment of the amount of the judgment debt remaining unpaid, there shall be included in the amount payable under the order for the purpose of any enforcement proceedings, otherwise than by judgment summons, any amount in respect of which a committal order has already been made and the debtor imprisoned.

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(191) 1971 c. 32; section 23(1) was amended by the Administration of Justice Act 1982 (c. 53), section 53(2).

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(2) No judgment summons under the new order shall include any amount in respect of which the debtor was imprisoned before the new order was made, and any amount subsequently paid shall be appropriated in the first instance to the amount due under the new order.

#### **Notification of order on judgment of High Court** **E+W**

**Rule 9.**—(1) Notice of the result of the hearing of a judgment summons on a judgment or order of the High Court shall be sent by the county court to the High Court.

(2) If a committal order or a new order for payment is made on the hearing, the office copy of the judgment or order filed under Order 25, rule 11, shall be deemed to be a judgment or order of the court in which the judgment summons is heard, and if the judgment creditor subsequently desires to issue a judgment summons in another county court, Order 25, rule 2, shall apply with the necessary modifications.

#### **Costs on judgment summons** **E+W**

**Rule 10.**—(1) No costs shall be allowed to the judgment creditor on the hearing of a judgment summons unless—

- (a) a committal order is made; or
  - (b) the sum in respect of which the judgment summons was issued is paid before the hearing.
- (2) Where costs are allowed to the judgment creditor,
- (a) there may be allowed—
    - (i) a charge of the judgment creditor's solicitor for attending the hearing and, if the judge so directs, for serving the judgment summons;
    - (ii) a fee to counsel if the court certifies that the case is fit for counsel;
    - (iii) any travelling expenses paid to the debtor, and
    - (iv) the court fee on the issue of the judgment summons;
  - (b) the costs may be fixed and allowed without detailed assessment under CPR Part 47.

(3) For the purposes of paragraph (2)(a)(i) a solicitor who has prepared on behalf of the judgment creditor a witness statement or affidavit under rule 5 shall be treated as having attended the hearing.

#### **Issue of warrant of committal** **E+W**

**Rule 11.**—(1) A judgment creditor desiring a warrant to be issued pursuant to a committal order shall file a request in that behalf.

(2) Where two or more debtors are to be committed in respect of the same judgment or order, a separate warrant of committal shall be issued for each of them.

(3) Where a warrant of committal is sent to a foreign court for execution, that court shall indorse on it a notice as to the effect of section 122 (3) of the Act addressed to the governor of the prison of that court.

#### **Notification to foreign court of part payment before debtor lodged in prison** **E+W**

**Rule 12** Where, after a warrant of committal has been sent to a foreign court for execution but before the debtor is lodged in prison, the home court is notified that an amount which is less than the sum on payment of which the debtor is to be discharged has been paid, the home court shall send notice of the payment to the foreign court.

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## Payment after debtor lodged in prison **E+W**

**Rule 13.**—(1) Where, after the debtor has been lodged in prison under a warrant of committal, payment is made of the sum on payment of which the debtor is to be discharged, then—

- (a) if the payment is made to the court responsible for the execution of the warrant, [<sup>F414</sup>the court officer] shall make and sign a certificate of payment and send it by post or otherwise to the gaoler;
- (b) if the payment is made to the court which issued the warrant of committal after the warrant has been sent to a foreign court for execution, the home court shall send notice of the payment to the foreign court, [<sup>F415</sup>and the court officer at the foreign court shall make] and sign a certificate of payment and send it by post or otherwise to the gaoler;
- (c) if the payment is made to the gaoler, he shall sign a certificate of payment and send the amount to the court which made the committal order.

(2) Where, after the debtor has been lodged in prison under a warrant of committal, payment is made of an amount less than the sum on payment of which the debtor is to be discharged, then subject to paragraph (3), paragraph (1)(a) and (b) shall apply with the substitution of references to a notice of payment for the references to a certificate of payment and paragraph (1)(c) shall apply with the omission of the requirement to make and sign a certificate of payment.

(3) Where, after the making of a payment to which paragraph (2) relates, the balance of the sum on payment of which the debtor is to be discharged is paid, paragraph (1) shall apply without the modifications mentioned in paragraph (2).

### Textual Amendments

**F414** Words in Sch. 2 CCR Order 28 rule 13(1)(a) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **68(a)**

**F415** Words in Sch. 2 CCR Order 28 rule 13(1)(b) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **68(b)**

## Discharge of debtor otherwise than on payment **E+W**

**Rule 14.**—(1) Where the judgment creditor lodges with the district judge a request that a debtor lodged in prison under a warrant of committal may be discharged from custody, the district judge shall make an order for the discharge of the debtor in respect of the warrant of committal and the court shall send the gaoler a certificate of discharge.

(2) Where a debtor who has been lodged in prison under a warrant of committal desires to apply for his discharge under section 121 of the Act, the application shall be made to the judge in writing and without notice showing the reasons why the debtor alleges that he is unable to pay the sum in respect of which he has been committed and ought to be discharged and stating any offer which he desires to make as to the terms on which his discharge is to be ordered, and Order 27, rule 8 (3) and (4), shall apply, with the necessary modifications, as it applies to an application by a debtor for his discharge from custody under section 23 (7) of the Attachment of Earnings Act 1971(**192**).

(3) If in a case to which paragraph (2) relates the debtor is ordered to be discharged from custody on terms which include liability to re-arrest if the terms are not complied with, the judge may, on the application of the judgment creditor if the terms are not complied with, order the debtor to be re-arrested and imprisoned for such part of the term of imprisonment as remained unserved at the time of discharge.

(192)1971 c. 32.



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(4) Where an order is made under paragraph (3), a duplicate warrant of committal shall be issued, indorsed with a certificate signed by the court officer as to the order of the judge.

## CCR ORDER 29 **E+W**

### COMMITTAL FOR BREACH OF ORDER OR UNDERTAKING

#### Enforcement of judgment to do or abstain from doing any act **E+W**

**Rule 1.**—(1) Where a person required by a judgment or order to do an act refuses or neglects to do it within the time fixed by the judgment or order or any subsequent order, or where a person disobeys a judgment or order requiring him to abstain from doing an act, then, subject to the Debtors Acts 1869 and 1878(193) and to the provisions of these rules, the judgment or order may be enforced, by order of the judge, by a committal order against that person or, if that person is a body corporate, against any director or other officer of the body.

(2) Subject to paragraphs (6) and (7), a judgment or order shall not be enforced under paragraph (1) unless—

- (a) a copy of the judgment or order has been served personally on the person required to do or abstain from doing the act in question and also, where that person is a body corporate, on the director or other officer of the body against whom a committal order is sought, and
- (b) in the case of a judgment or order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act and was accompanied by a copy of any order, made between the date of the judgment or order and the date of service, fixing that time.

(3) Where a judgment or order enforceable by committal order under paragraph (1) has been given or made, the court officer shall, if the judgment or order is in the nature of an injunction, at the time when the judgment or order is drawn up, and in any other case on the request of the judgment creditor, issue a copy of the judgment or order, indorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with paragraph (2).

(4) If the person served with the judgment or order fails to obey it, the judgment creditor may issue a claim form or, as the case may be, an application notice seeking the committal for contempt of court of that person and subject to paragraph (7), the claim form or application notice shall be served on him personally.

(4A) The claim form or application notice (as the case may be) shall:—

- (a) identify the provisions of the injunction or undertaking which it is alleged have been disobeyed or broken;
- (b) list the ways in which it is alleged that the injunction has been disobeyed or the undertaking has been broken.
- (c) be supported by an affidavit stating the grounds on which the application is made, and unless service is dispensed with under paragraph (7), a copy of the affidavit shall be served with the claim form or application notice.

(5) If a committal order is made, the order shall be for the issue of a warrant of committal and, unless the judge otherwise orders—

- (a) a copy of the order shall be served on the person to be committed either before or at the time of the execution of the warrant; or

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(193) 1869 c. 62; 1878 c. 54.

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- (b) where the warrant has been signed by the judge, the order for issue of the warrant may be served on the person to be committed at any time within 36 hours after the execution of the warrant.
- (6) A judgment or order requiring a person to abstain from doing an act may be enforced under paragraph (1) notwithstanding that service of a copy of the judgment or order has not been effected in accordance with paragraph (2) if the judge is satisfied that, pending such service, the person against whom it is sought to enforce the judgment or order has had notice thereof either—
- (a) by being present when the judgment or order was given or made, or
  - (b) by being notified of the terms of the judgment or order whether by telephone, telegram or otherwise.
- (7) Without prejudice to its powers under Part 6 of the CPR, the court may dispense with service of a copy of a judgment or order under paragraph (2) or a claim form or application notice under paragraph (4) if the court thinks it just to do so.
- (8) Where service of the claim form or application notice has been dispensed with under paragraph (7) and a committal order is made in the absence of the respondent, the judge may on his own initiative fix a date and time when the person to be committed is to be brought before him or before the court.

#### **Undertaking given by party** E+W

**Rule 1A** Rule 1 (except paragraph (6) shall apply to undertakings as it applies to orders with the necessary modifications and as if—

- (a) for paragraph (2) of that rule there were substituted the following—
- “(2) A copy of the document recording the undertaking shall be delivered by the court officer to the party giving the undertaking—
- (a) by handing a copy of the document to him before he leaves the court building; or
  - (b) where his place of residence is known, by posting a copy to him at his place of residence; or
  - (c) through his solicitor,

and, where delivery cannot be effected in this way, the court officer shall deliver a copy of the document to the party for whose benefit the undertaking is given and that party shall cause it to be served personally as soon as is practicable.”

- (b) in paragraph (7), the words from “a copy of” to “paragraph (2) or” were omitted.

#### **Solicitor’s undertaking** E+W

**Rule 2.**—(1) An undertaking given by a solicitor in relation to any proceeding in a county court may be enforced, by order of the judge of that court, by committal order against the solicitor.

(2) Where it appears to the judge that a solicitor has failed to carry out any such undertaking, he may of his own initiative direct the court officer to issue a notice calling on the solicitor to show cause why he should not be committed to prison.

(3) Where any party to the proceedings desires to have the undertaking enforced by committal order, the court officer shall, on the application of the party supported by an affidavit setting out the facts on which the application is based, issue such a notice as is referred to in paragraph (2).

#### **Discharge of person in custody** E+W

**Rule 3.**—(1) Where a person in custody under a warrant or order, other than a warrant of committal to which Order 27, rule 8, or Order 28, rule 4 or 14, relates, desires to apply to the court



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for his discharge, he shall make his application in writing attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer) showing that he has purged or is desirous of purging his contempt and shall, not less than one day before the application is made, serve notice of it on the party, if any, at whose instance the warrant or order was issued.

(2) If the committal order—

- (a) does not direct that any application for discharge shall be made to a judge; or
- (b) was made by the district judge under section 118 of the Act(194),

any application for discharge may be made to the district judge.

(3) Nothing in paragraph (1) shall apply to an application made by the Official Solicitor in his official capacity for the discharge of a person in custody.

## CCR ORDER 30 **E+W**

### GARNISHEE PROCEEDINGS

#### **Attachment of debt due to judgment debtor** **E+W**

**Rule 1.**—(1) Where a person (in this Order called “the judgment creditor”) has obtained in a county court a judgment or order for the payment of a sum of money amounting in value to at least £50 by some other person (“the judgment debtor”) and any person within England and Wales (“the garnishee”) is indebted to the judgment debtor, that court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due from the garnishee to the judgment debtor or so much thereof as is sufficient to satisfy the judgment or order against the judgment debtor and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the place and time for the further consideration of the matter (in this Order called “the return day”) and in the meantime attaching the debt due or accruing due from the garnishee or so much of it as is sufficient for the purpose aforesaid.

(3) Among the conditions mentioned in section 108 (3) of the Act (which enables any sum standing to the credit of a person in certain types of account to be attached notwithstanding that certain conditions applicable to the account in question have not been satisfied) there shall be included any condition that a receipt for money deposited in the account must be produced before any money is withdrawn.

(5) An order under this rule shall not require a payment which would reduce below £1 the amount standing in the name of the judgment debtor in an account with a building society or a credit union.

#### **Application for order** **E+W**

**Rule 2** An application for an order under rule 1 may be made without notice being served on any other party by filing a witness statement or affidavit—

- (a) stating the name and last known address of the judgment debtor;
- (b) identifying the judgment or order to be enforced and stating the amount of such judgment or order;
- (c) stating that, to the best of the information or belief of the witness, the garnishee (giving his name and address) is indebted to the judgment debtor;

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(194) Section 118 was amended by the Statute Law (Repeals) Act 1986 (c. 12); and by the Courts and Legal Services Act 1990 (c. 41), section 74(6).

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- (d) where the garnishee is a deposit-taking institution having more than one place of business, giving the name and address of the branch at which the judgment debtor's account is believed to be held and the number of that account or, if it be the case, that all or part of this information is unknown to the witness; and
- (e) certifying the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid.

#### **Preparation, service and effect of order to show cause** E+W

**Rule 3.**—(1) An order under rule 1 to show cause shall be drawn up by the court with sufficient copies for service under this rule.

(2) Unless otherwise directed, a copy of the order shall be served—

- (a) on the garnishee in the manner required for [<sup>F416</sup>an order under Order 25, rule 3] at least 15 days before the return day;
- (b) on the judgment debtor in accordance with CPR Part 6 at least 7 days after a copy has been served on the garnishee and at least 7 days before the return day,

and as from such service on the garnishee the order shall bind in his hands any debt due or accruing due from the garnishee to the judgment debtor, or so much thereof as is sufficient to satisfy the judgment or order obtained by the judgment creditor against the judgment debtor, and the costs entered on the order to show cause.

#### **Textual Amendments**

**F416** Words in [Sch. 2 CCR Order 30 rule 3\(2\)\(a\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), [34](#)

#### **Notice by deposit-taking institution denying indebtedness** E+W

**Rule 5** Where the garnishee being a deposit-taking institution alleges that it does not hold any money to the credit of the judgment debtor, the garnishee may, at any time before the return day, give notice to that effect to the court and to the judgment creditor and thereupon, subject to rule 8 the proceedings against the garnishee shall be stayed.

#### **Order where no notice given etc.** E+W

**Rule 7.**—(1) Where the garnishee—

- (a) does not give notice under rule 5; and
- (b) does not on the return day appear or dispute the debt due or claimed to be due from him to the judgment debtor,

then, if the judgment debtor does not appear or show cause to the contrary, the court may, if it thinks fit, make an order absolute under rule 1 against the garnishee.

(2) An order absolute under rule 1 may be enforced in the same manner as any other order for the payment of money.

#### **Directions where dispute as to notice under rule 5** E+W

**Rule 8** Where the garnishee in a notice given under rule 5 makes an allegation which the judgment creditor disputes, the court shall on the return day give directions for the determination of the question at issue.

### **Determination of liability in other cases** **E+W**

**Rule 9** Where in a case in which no notice has been given under rule 5 the garnishee on the return day disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in proceedings may be tried.

### **Transfer of proceedings** **E+W**

**Rule 10** A garnishee who does not reside or carry on business within the district of the court in which the garnishee proceedings have been commenced and who desires to dispute liability for the debt due or claimed to be due from him to the judgment debtor may apply without notice being served on any other party in writing to that court for an order transferring the proceedings in which the judgment or order sought to be enforced was obtained to the court for the district in which the garnishee resides or carries on business, and the court applied to may, if it thinks fit, grant the application after considering any representations which it may give the judgment creditor and the judgment debtor an opportunity of making.

### **Discharge of garnishee** **E+W**

**Rule 11** Any payment made by a garnishee in compliance with an order absolute in garnishee proceedings, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied (otherwise than in respect of any costs ordered to be paid by the garnishee personally), notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arise is reversed.

### **Money in court** **E+W**

**Rule 12.**—(1) Where money is standing to the credit of the judgment debtor in any county court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of the money but may apply to the court on notice for an order that the money or so much of it as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) On receipt of notice of an application under paragraph (1) the court officer shall retain the money in court until the application has been determined.

(3) The court hearing an application under paragraph (1) may make such order with respect to the money in court as it thinks just.

### **Costs of judgment creditor** **E+W**

**Rule 13** Any costs allowed to the judgment creditor on an application for an order under rule 1 or 12 which in the former case are not ordered to be paid by the garnishee personally shall, unless the court otherwise directs be retained by the judgment creditor out of the money recovered by him under the order in priority to the amount due under the judgment or order obtained by him against the judgment debtor.

### **Attachment of debt owed by firm** **E+W**

**Rule 14.**—(1) An order may be made under rule 1 in relation to a debt due or accruing due from a firm carrying on business within England and Wales, notwithstanding that one or more members of the firm may be resident out of England and Wales.

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(2) An order to show cause under rule 1 relating to such a debt shall be served on a member of the firm within England and Wales or on some other person having the control or management of the partnership business.

### **Powers of district judge** E+W

**Rule 15** The powers conferred on the court by any provision of this Order may be exercised by the judge or district judge.

## **CCR ORDER 31** E+W **CHARGING ORDERS**

### **Application for charging order** E+W

**Rule 1.**—(1) An application to a county court for a charging order under section 1 of the Charging Orders Act 1979(195) may be made—

- (a) if the order is sought in respect of a fund in court, to the court where the money is lodged;
- (b) subject to (a), if the judgment or order sought to be enforced is that of a county court, to the court in which the judgment or order was obtained or, if the proceedings have been transferred to another court under CPR rule 30.2(1)(b)(ii) or Order 25, rule 2, the court to which it has been transferred.
- (c) subject to (a) and (b), to the court for the district in which the debtor resides or carries on business or, if there is no such district, to the court for the district in which the judgment creditor resides or carries on business.

(1A) An application for a charging order under paragraph 11 of Schedule 4 to the Local Government Finance Act 1992(196) shall be made to the court for the district in which the relevant dwelling (within the meaning of section 3 of that Act) is situated.

(2) The application may be made without notice being served on any other party by filing a witness statement or affidavit—

- (a) stating the name and address of the debtor and, if known, of every creditor of his whom the applicant can identify;
- (aa) certifying the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid;
- (b) identifying the subject matter of the intended charge;
- (c) either verifying the debtor's beneficial ownership of the asset to be charged or, where the asset is held by one or more trustees (including where the asset is land which is jointly owned) and the applicant relies on paragraph (b) of section 2 (1) of the said Act of 1979, stating on which of the three grounds appearing in that paragraph the application is based and verifying the material facts;
- (d) stating, in the case of securities other than securities in court, the name and address of the person or body to be served for the purpose of protecting the intended charge;
- (e) stating, where the subject matter is an interest under a trust, or held by a trustee, the names and addresses of such trustees and beneficiaries as are known to the applicant.

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(195) 1979 c. 53; section 1 was amended by the Administration of Justice Act 1982 (c. 53) sections 34(3), 37, schedule 3, Part II, paragraphs 2, 3, 6; and by the County Courts Act 1984 (c. 28), section 148(1), schedule 2, Part V.  
(196) 1992 c. 14.

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Where the judgment or order to be enforced is a judgment or order of the High Court or a judgment, order, decree or award of a court or arbitrator which is or has become enforceable as if it were a judgment or order of the High Court, the applicant shall file with his witness statement or affidavit the documents mentioned in Order 25, rule 11 (a) and (c), and the witness statement or affidavit shall verify the amount unpaid at the date of the application.

(3) Subject to paragraph (1), an application may be made for a single charging order in respect of more than one judgment or order against a debtor.

(4) Upon the filing of the witness statement or affidavit mentioned in paragraph (2), the application shall be entered in the records of the court, and if, in the opinion of the district judge, a sufficient case for such an order is made in the witness statement or affidavit, the district judge shall make a charging order nisi fixing a day for the further consideration of the matter by the court.

(5) A copy of the order shall be sent by the court officer to the judgment creditor and, where funds in court are to be charged, shall be served by the court officer on the Accountant-General at the Court Funds Office.

(6) Copies of the order and of the witness statement or affidavit shall be served by the judgment creditor on—

- (a) the debtor;
- (b) the other creditors named in the witness statement or affidavit (unless the district judge otherwise directs); and
- (c) where a trust is involved, on any trustee holding the asset to be charged, where the applicant relies on paragraph (b) of section 2 (1) of the said Act of 1979 and on such other trustees and beneficiaries as the district judge may direct.

(7) Where an interest in securities not in court is to be charged, copies of the order nisi shall be served by the judgment creditor on the person or body required to be served in like circumstances by RSC Order 50, rule 2 (1)(b).

(8) The documents required by the foregoing paragraphs to be served shall be served in accordance with CPR Part 6 not less than 7 days before the day fixed for the further consideration of the matter.

(9) Upon further consideration of the matter service required under paragraph (6) or (7) shall be proved by witness statement or affidavit.

### **Order on further consideration of application for charging order** E+W

**Rule 2.**—(1) On the day fixed under rule 1 (4) for the further consideration of the matter, the court shall either make the order absolute, with or without modifications, or discharge it.

(2) If an order absolute is made, a copy shall be served by the court officer, in accordance with CPR Part 6 on each of the following persons, namely—

- (a) the debtor;
- (b) the applicant for the order;
- (c) where funds in court are charged, the Accountant General at the Court Funds Office; and
- (d) unless otherwise directed, any person or body on whom a copy of the order nisi was served pursuant to rule 1 (7).

(3) Every copy of an order served on a person or body under paragraph (2)(d) shall contain a stop notice.

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*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

### **Effect of charging order etc. E+W**

**Rule 3.**—(1) Where a charging order nisi or a charging order absolute has been made and served in accordance with rule 1 or 2, it shall have the same effect as an order made and served in like circumstances under RSC Order 50.

(2) The court may vary or discharge a charging order in the like circumstances and in accordance with the same procedure, with the necessary modifications, as a like order made by the High Court.

(3) The powers of the court under rule 2 or the last preceding paragraph, except the power to vary an order made by the judge, may be exercised by the district judge.

### **Enforcement of charging order by sale E+W**

**Rule 4.**—(1) Proceedings in a county court for the enforcement of a charging order by sale of the property charged shall be commenced by a claim form, which shall be filed in the appropriate court, together with a witness statement or affidavit and a copy thereof—

- (a) identifying the charging order sought to be enforced and the subject matter of the charge;
- (b) specifying the amount in respect of which the charge was imposed and the balance outstanding at the date of the application;
- (c) verifying, so far as known, the debtor’s title to the property charged;
- (d) identifying any prior incumbrances on the property charged, with, so far as known, the names and addresses of the incumbrancers and the amounts owing to them; and
- (e) giving an estimate of the price which would be obtained on sale of the property.

(2) The appropriate court shall be—

- (a) if the charging order was made by a county court, that court;
- (b) in any other case, the court for the district in which the debtor resides or carries on business or, if there is no such district, the court for the district in which the judgment creditor resides or carries on business.

(3) A copy of the witness statement or affidavit filed under paragraph (1) shall be served on the respondent with a copy of the claim form and a notice to each respondent of the date of the hearing.

(4) The proceedings may be heard and determined by a district judge.

(5) The net proceeds of sale, after discharging any prior incumbrances and deducting the amount referred to in paragraph (1)(b) and the costs of the sale, shall be paid into court.

## **CCR ORDER 33 E+W**

### **INTERPLEADER PROCEEDINGS**

#### **Part I Under Execution E+W**

##### **Notice of claim E+W**

**Rule 1.**—(A1) In this Part of this Order “the interpleader claimant” means any person making a claim to or in respect of goods seized in execution or the proceeds or value thereof and “the interpleader claim” means that claim.

(1) The interpleader claimant shall deliver to the bailiff holding the warrant of execution, or file in the office of the court for the district in which the goods were seized, notice of his claim stating—

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- (a) the grounds of the interpleader claim or, in the case of a claim for rent, the particulars required by section 102 (2) of the Act; and
  - (b) the interpleader claimant's full name and address.
- (2) On receipt of an interpleader claim made under this rule, the court shall—
- (a) send notice thereof to the execution creditor; and
  - (b) except where the interpleader claim is to the proceeds or value of the goods, send to the interpleader claimant a notice requiring him to make a deposit or give security in accordance with section 100 of the Act.

### Reply to interpleader claim **E+W**

**Rule 2.**—(1) Within 4 days after receiving notice of an interpleader claim under rule 1 (2) the execution creditor shall give notice to the court informing him whether he admits or disputes the interpleader claim or requests the district judge to withdraw from possession of the goods or money claimed.

(2) If, within the period aforesaid, the execution creditor gives notice to the court admitting the interpleader claim or requesting the district judge to withdraw from possession of the goods or money claimed, the execution creditor shall not be liable to the district judge for any fees or expenses incurred after receipt of the notice.

### Order protecting district judge **E+W**

**Rule 3** Where the execution creditor gives the court such a notice as is mentioned in rule 2 (2), the district judge shall withdraw from possession of the goods or money claimed and may apply to the judge, on notice to the interpleader claimant, for an order restraining the bringing of a claim against the district judge for or in respect of his having taken possession of the goods or money and on the hearing of the application the judge may make such order as may be just.

### Issue of interpleader proceedings **E+W**

**Rule 4.**—(1) Where the execution creditor gives notice under rule 2 (1) disputing an interpleader claim made under rule 1 or fails, within the period mentioned in rule 2 (1), to give the notice required by that rule, the district judge shall, unless the interpleader claim is withdrawn, issue an interpleader notice to the execution creditor and the interpleader claimant.

(2) On the issue of an interpleader notice under paragraph (1) the court officer shall enter the proceedings in the records of the court, fix a day for the hearing by the judge and prepare sufficient copies of the notice for service under this rule.

(3) Subject to paragraph (4) the notice shall be served on the execution creditor and the interpleader claimant in the manner required for service of <sup>F417</sup>an order under Order 25, rule 3.]

(4) Service shall be effected not less than 14 days before the return day.

#### Textual Amendments

**F417** Words in Sch. 2 CCR Order 33 rule 4(3) substituted (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rules 1(b), 35



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### **Claim for damages** **E+W**

**Rule 5** Where in interpleader proceedings under an execution the interpleader claimant claims from the execution creditor or the district judge, or the execution creditor claims from the district judge, damages arising or capable of arising out of the execution—

- (a) the party claiming damages shall, within 8 days after service of the notice on him under rule 4(3), give notice of this claim to the court and to any other party against whom the claim is made, stating the amount and the grounds of the claim; and
- (b) the party from whom damages are claimed may pay money into court in satisfaction of the claim as if the interpleader proceedings were a claim brought in accordance with CPR Part 7 by the person making the claim.

### **Part II— Otherwise than under Execution** **E+W**

#### **Application for relief** **E+W**

**Rule 6.**—(1) Where a person (in this Part of this Order called “the applicant”) is under a liability in respect of a debt or any money or goods and he is, or expects to be, sued for or in respect of the debt, money or goods by two or more persons making adverse claims thereto (“the interpleader claimants”), he may apply to the court, in accordance with these rules, for relief by way of interpleader.

(2) The application shall be made to the court in which the claim is pending against the applicant or, if no claim is pending against him, to the court in which he might be sued.

(3) The application shall be made by filing a witness statement or affidavit showing that—

- (a) the applicant claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) the applicant does not collude with any of the interpleader claimants; and
- (c) the applicant is willing to pay or transfer the subject-matter into court or to dispose of it as the court may direct,

together with as many copies of the witness statement or affidavit as there are interpleader claimants.

#### **Relief in pending claim** **E+W**

**Rule 7** Where the applicant is a defendant in a pending claim—

- (a) the witness statement or affidavit and copies required by rule 6 (3) shall be filed within 14 days after service on him of the claim form;
- (b) the return day of the application shall be a day fixed for the pre-trial review of the claim including the interpleader proceedings and, if a day has already been fixed for the pre-trial review or hearing of the claim, the court shall, if necessary, postpone it;
- (c) the interpleader claimant, the applicant and the claimant in the claim shall be given notice of the application, which shall be prepared by the court together with sufficient copies for service;
- (d) the notice to the interpleader claimant shall be served on him, together with a copy of the witness statement or affidavit filed under rule 6 (3) and of the claim form and particulars of claim in the claim, not less than 21 days before the return day in the same manner as an interpleader notice in accordance with rule 4(3);
- (e) the notices to the applicant and the claimant shall be sent to them by the court and the notice to the claimant shall be accompanied by a copy of the said witness statement or affidavit.



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### Relief otherwise than in pending claim **E+W**

**Rule 8** Where the applicant is not a defendant in a pending claim—

- (a) the court shall enter the proceedings in the records of the court;
- (b) the court shall fix a day for the pre-trial review or, if the court so directs, a day for the hearing of the proceedings and shall prepare and issue an interpleader notice, together with sufficient copies for service;
- (c) the notice together with a copy of the witness statement or affidavit filed under rules 6 (3), shall be served on each of the claimants not less than 21 days before the return day in the same manner as an interpleader notice to be served under rule 4(3); and
- (d) the court shall deliver or send a notice of issue to the applicant.

### Payment into court etc. **E+W**

**Rule 9** Before or after the court officer proceeds under rule 7 or 8 the district judge may direct the applicant to bring the subject-matter of the proceedings into court, or to dispose of it in such manner as the district judge thinks fit, to abide the order of the court.

### Reply by interpleader claimant **E+W**

**Rule 10.**—(1) An interpleader claimant shall, within 14 days after service on him of the notice under rule 7 (c) or the interpleader notice under rule 8 (c), file—

- (a) a notice that he makes no interpleader claim; or
- (b) particulars stating the grounds of his interpleader claim to the subject matter,

together in either case with sufficient copies for service under paragraph (2).

(2) The court shall send to each of the other parties a copy of any notice or particulars filed under paragraph (1).

(3) The court may, if it thinks fit, hear the proceedings although no notice or particulars have been filed.

### Order barring interpleader claim etc. **E+W**

**Rule 11.**—(1) Where an interpleader claimant does not appear on any day fixed for a pre-trial review or the hearing of interpleader proceedings, or fails or refuses to comply with an order made in the proceedings, the court may make an order barring his interpleader claim.

(2) If, where the applicant is a defendant in a pending claim, the claimant does not appear on any day fixed for a pre-trial review or the hearing of the interpleader proceedings, the claim including the interpleader proceedings may be struck out.

(3) In any other case where a day is fixed for the hearing of interpleader proceedings, the court shall hear and determine the proceedings and give judgment finally determining the rights and claims of the parties.

(4) Where the court makes an order barring the interpleader claim of an interpleader claimant, the order shall declare the interpleader claimant, and all persons claiming under him, for ever barred from prosecuting his interpleader claim against the applicant and all persons claiming under him, but unless the interpleader claimant has filed a notice under rule 10 that he makes no interpleader claim, such an order shall not affect the rights of the interpleader claimants as between themselves.

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## CCR ORDER 34 **E+W**

### PENAL AND DISCIPLINARY PROVISIONS

#### Issue and service of summons for offence under s.14, 92 or 124 of the Act **E+W**

##### Rule 1 Where—

- (a) it is alleged that any person has committed an offence under [<sup>F418</sup>section 14, 92 or 118] of the Act by assaulting an officer of the court while in the execution of his duty, or by rescuing or attempting to rescue any goods seized in execution, [<sup>F419</sup>or by wilfully insulting a judge, juror, witness or any officer of the court,] and the alleged offender has not been taken into custody and brought before the judge; or
- (b) a complaint is made against an officer of the court under section 124 of the Act for having lost the opportunity of levying execution,

the court officer shall issue a summons, which shall be served on the alleged offender personally not less than 8 days before the return day appointed in the summons.

#### Textual Amendments

**F418** Words in Sch. 2 CCR Order 34 rule 1(a) substituted (14.1.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(a), **40(a)**

**F419** Words in Sch. 2 CCR Order 34 rule 1(a) inserted (14.1.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(a), **40(b)**

#### Committal under s.14, 92 or 118 of the Act **E+W**

**Rule 1A** Rule 1 (5) of Order 29 shall apply, with the necessary modifications, where an order is made under section 14, 92 or 118 of the Act committing a person to prison.

#### Notice to show cause before or after fine under s.55 of the Act **E+W**

**Rule 2** Before or after imposing a fine on any person under section 55 of the Act for disobeying a witness summons or refusing to be sworn or give evidence, the judge may direct the court officer to give to that person notice that if he has any cause to show why a fine should not be or should not have been imposed on him, he may show cause in person or by witness statement or affidavit or otherwise on a day named in the notice, and the judge after considering the cause shown may make such order as he thinks fit.

#### Non-payment of fine **E+W**

**Rule 3.**—(1) If a fine is not paid in accordance with the order imposing it, the court officer shall forthwith report the matter to the judge.

(2) Where by an order imposing a fine, the amount of the fine is directed to be paid by instalments and default is made in the payment of any instalment, the same proceedings may be taken as if default had been made in payment of the whole of the fine.

(3) If the judge makes an order for payment of a fine to be enforced by warrant of execution, the order shall be treated as an application made to the district judge for the issue of the warrant at the time when the order was received by him.

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## Repayment of fine **E+W**

**Rule 4** If, after a fine has been paid, the person on whom it was imposed shows cause sufficient to satisfy the judge that, if it had been shown at an earlier date, he would not have imposed a fine or would have imposed a smaller fine or would not have ordered payment to be enforced, the judge may order the fine or any part thereof to be repaid.

## CCR ORDER 35 **E+W**

### ENFORCEMENT OF COUNTY COURT JUDGMENTS OUTSIDE ENGLAND AND WALES

#### Part I—Enforcement outside United Kingdom **E+W**

#### Interpretation of Part I **E+W**

**Rule 1** In this Part of this Order “the Act of 1933” means the Foreign Judgments (Reciprocal Enforcement) Act 1933(197), “the Act of 1982” means the Civil Jurisdiction and Judgments Act 1982(198) and expressions which are defined in those Acts have the same meaning in this Part of this Order as they have in those Acts.

#### Application under s.10 of the Act of 1933 for certified copy of county court judgment **E+W**

**Rule 2.**—(1) An application under section 10 of the Act of 1933 for a certified copy of a judgment of a county court may be made by filing a witness statement or affidavit, made by a solicitor of the party entitled to enforce the judgment, or by the party himself, if he is acting in person.

(2) A witness statement or affidavit by which an application under section 10 of the Act of 1933 is made must—

- (a) give particulars of the proceedings in which the judgment was obtained;
- (b) have annexed to it evidence of service on the defendant of the claim form or other process by which the proceedings were begun (where service was effected otherwise than through the court), copies of the statements of case, if any, and a statement of the grounds on which the judgment was based;
- (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;
- (d) show that the judgment is not subject to any stay of execution;
- (e) state that the time for appealing or applying for a re-hearing has expired, or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been given or an application for a re-hearing has been made; and
- (f) state whether interest is recoverable on the judgment or part thereof and, if so, the rate and period in respect of which it is recoverable.

(3) The certified copy of the judgment shall be a sealed copy indorsed with a certificate signed by the district judge certifying that the copy is a true copy of a judgment obtained in the county court and that it is issued in accordance with section 10 of the Act of 1933.

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(197) 1933 c. 13; section 10 was substituted by the Civil Jurisdiction and Judgments Act 1982 (c. 27), section 35(1), schedule 10, paragraph 3.

(198) 1982 c. 27; section 12 was amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 3, schedule 2, paragraph 7.

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- (4) There shall also be issued a sealed certificate signed by the district judge and having annexed to it a copy of the claim form or other process by which the proceedings were begun and stating—
- (a) the manner in which the claim form or other process was served on the defendant or that the defendant has delivered to the court an admission, defence or counterclaim;
  - (b) what objections, if any, were made to the jurisdiction;
  - (c) what statements of case, if any, were filed;
  - (d) the grounds on which the judgment was based;
  - (e) that the time for appealing or applying for a re-hearing has expired or, as the case may be, the date on which it will expire;
  - (f) whether notice of appeal against the judgment has been given or an application for a re-hearing has been made;
  - (g) whether interest is recoverable on the judgment or part thereof and, if such be the case, the rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue; and
  - (h) such other particulars as it may be necessary to give the court in the foreign country in which it is sought to obtain execution of the judgment.

#### **Application under s.12 of the Act of 1982 for certified copy of county court judgment** E +W

**Rule 3.**—(1) An application under section 12 of the Act of 1982 for a certified copy of a judgment of a county court may be made by filing a witness statement or affidavit made by a solicitor of the party entitled to enforce the judgment, or by the party himself, if he is acting in person.

(2) A witness statement or affidavit by which an application under section 12 of the Act of 1982 is made must—

- (a) give particulars of the proceedings in which the judgment was obtained;
- (b) have annexed to it evidence of service on the defendant of the claim form or other process by which the proceedings were begun (where service was effected otherwise than through the court), copies of the statements of case, if any, and a statement of the grounds on which the judgment was based together with, where appropriate, any document under which the applicant is entitled to legal aid or assistance by way of representation for the purposes of the proceedings;
- (c) state whether the defendant did or did not object to the jurisdiction and, if so, on what grounds;
- (d) show that the judgment has been served in accordance with CPR Part 6 and CPR rule 40.4 and is not subject to any stay of execution;
- (e) state that the time for appealing or applying for a re-hearing has expired, or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been given or an application for a re-hearing has been made; and
- (f) state—
  - (i) whether the judgment provides for the payment of a sum or sums of money;
  - (ii) whether interest is recoverable on the judgment or part thereof and, if such be the case, the rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue.

(3) The certified copy of the judgment shall be a sealed copy and there shall be issued with the copy of the judgment a sealed certificate signed by the district judge and having annexed to it a copy of the claim form or other process by which the proceedings were begun.

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## Part II—Enforcement in other parts of the United Kingdom **E+W**

### Interpretation of Part II **E+W**

**Rule 4** In this Part of this Order—

“the Act of 1982” means the Civil Jurisdiction and Judgments Act 1982(199),

“money provision” means a provision in any judgment to which section 18 of the Act of 1982 applies for the payment of one or more sums of money,

“non-money provision” means a provision in any judgment to which section 18 of the Act of 1982 applies for any relief or remedy not requiring payment of a sum of money.

### Application for certificate of money provision **E+W**

**Rule 5.**—(1) A certificate in respect of any money provision contained in a judgment of the county court may be obtained by filing a witness statement or affidavit made by the solicitor of the party entitled to enforce the judgment, or by the party himself if he is acting in person, together with a form of certificate.

(2) A witness statement or affidavit by which an application under paragraph (1) is made must—

- (a) give particulars of the judgment, stating the rate of payment, if any, specified under the money provisions contained in the judgment, the sum or aggregate of sums (including any costs or expenses) remaining unsatisfied, the rate of interest, if any, applicable and the date or time from which any such interest began to accrue;
- (b) verify that the time for appealing against the judgment or for applying for a re-hearing has expired, or that any appeal or re-hearing has been finally disposed of and that enforcement of the judgment is not stayed or suspended; and
- (c) state to the best of the information or belief of the witness the usual or last known address of the party entitled to enforce the judgment and of the party liable to execution on it.

(3) The court officer shall enter on the certificate—

- (a) the number of the proceedings;
- (b) the amount remaining due under the judgment;
- (c) the rate of interest payable on the judgment debt, and the date or time from which any such interest began to accrue;
- (d) a note of the costs, if any, allowed for obtaining the certificate; and
- (e) the date on which the certificate is issued.

### Application for certified copy of judgment containing non-money provision **E+W**

**Rule 6.**—(1) A certified copy of a judgment of a county court which contains any non-money provision may be obtained by filing a witness statement or affidavit made by the solicitor of the party entitled to enforce the judgment, or by the party himself, if he is acting in person.

(2) The requirements in paragraph (2) of rule 5 shall apply with the necessary modifications to a witness statement or affidavit made in an application under paragraph (1) of this rule.

(3) The certified copy of a judgment shall be a sealed copy to which shall be annexed a certificate signed by the court officer and stating that the conditions specified in paragraph (3)(a) and (b) of Schedule 7 to the Act of 1982 are satisfied in relation to the judgment.

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(199)1982 c. 27.

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## CCR ORDER 37 **E+W**

### REHEARING, SETTING ASIDE AND APPEAL FROM DISTRICT JUDGE

#### Rehearing **E+W**

**Rule 1.**—(1) In any proceedings tried without a jury the judge shall have power on application to order a rehearing where no error of the court at the hearing is alleged.

(2) Unless the court otherwise orders, any application under paragraph (1) shall be made to the judge by whom the proceedings were tried.

(3) A rehearing may be ordered on any question without interfering with the finding or decision on any other question.

(4) Where the proceedings were tried by the district judge, the powers conferred on the judge by paragraphs (1) and (3) shall be exercisable by the district judge and paragraph (2) shall not apply.

(5) Any application for a rehearing under this rule shall be made on notice stating the grounds of the application and the notice shall be served on the opposite party not more than 14 days after the day of the trial and not less than 7 days before the day fixed for the hearing of the application.

(6) On receipt of the notice, the court officer shall, unless the court otherwise orders, retain any money in court until the application has been heard.

#### Appeal from district judge **E+W**

<sup>F420</sup>**Rule 6** .....

##### Textual Amendments

**F420** Sch. 2 CCR Order 37 rule 6 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

#### Imposition of terms and stay of execution **E+W**

**Rule 8.**—(1) An application to the judge or district judge under any of the foregoing rules may be granted on such terms as he thinks reasonable.

(2) Notice of any such application shall not of itself operate as a stay of execution on the judgment or order to which it relates but the court may order a stay of execution pending the hearing of the application or any rehearing or new trial ordered on the application.

(3) If a judgment or order is set aside under any of the foregoing rules, any execution issued on the judgment or order shall cease to have effect unless the court otherwise orders.

## CCR ORDER 38 **E+W**

### COSTS

#### Fixed costs **E+W**

**Rule 18.**—(1) Appendix B shall effect for the purpose of showing the total amount which, in the several cases to which Appendix B applies, shall be allowed to the solicitor for the claimant as fixed costs without assessment (whether by the summary or the detailed procedure), unless the court otherwise orders.

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(2) In a claim to which Appendix B or CPR Part 45 does not apply no amount shall be entered on the claim form for the charges of the claimant's solicitor, but the words "to be assessed" shall be inserted.

## APPENDIX B **E+W**

### PART I

#### Claims for the Recovery of Property, Applications to Enforce an Award **E+W**

##### Directions **E+W**

1. The Tables in this Part of this Appendix show the amount to be entered on the claim form or application in respect of solicitors' charges—

- (c) in a claim for the recovery of property, including land, with or without a claim for a sum of money (other than a claim to which CPR Part 45 applies), for the purpose of Part II of this Appendix or of fixing the amount which the plaintiff may receive in respect of solicitors' charges without assessment whether by the detailed or summary procedure in the event of the defendant giving up possession and paying the amount claimed, if any, and costs;
- (e) in proceedings for the enforcement of a tribunal or other award, for the purposes only of Order 25, rule 12.

2. In addition to the amount entered in accordance with the relevant Table the appropriate court fees shall be entered on the application.

3. In the Tables the expression "claim" means—

- (a) the sum of money claimed, or
- (b) in relation to a claim for the recovery of land (with or without a claim for a sum of money), a sum exceeding £600 but not exceeding £2,000;
- (c) in relation to a claim for the recovery of property other than money or land, the value of the property claimed or in the case of goods supplied under a hire purchase agreement, the unpaid balance of the total price.

4. The Tables do not apply where the application or the claim form is to be served out of England and Wales or where service by an alternative method is ordered.

##### Tables of Fixed Costs **E+W**

**TABLE I**

Where claim exceeds £25 but does not exceed £250

<i>Amount of charges</i>	<i>£</i>
(a) (a) Where service is not by solicitor	30.75
(b) (b) Where service is by solicitor	35.00

**TABLE II**

Where claim exceeds £250 but does not exceed £600



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<i>Amount of charges</i>		£
(a)	(a) Where service is not by solicitor	41.00
(b)	(b) Where service is by solicitor	48.50

**TABLE III**

Where claim exceeds £600 but does not exceed £2,000

<i>Amount of charges</i>		£
(a)	(a) Where service is not by solicitor	69.50
(b)	(b) Where service is by solicitor	77.00

**TABLE IV**

Where claim exceeds £2,000

<i>Amount of charges</i>		£
(a)	(a) Where service is not by solicitor	75.50
(b)	(b) Where service is by solicitor	82.00

## Part II **E+W**

### Judgments

#### Directions **E+W**

Where an amount in respect of solicitors' charges has been entered on the claim form under Part I of this Appendix and judgment is given in the circumstances mentioned in paragraph (d) in column 1 of the following Table, the amount to be included in the judgment in respect of the solicitors' charges shall, be the amount entered on the application or the claim form together with the amount shown in column 2 of the Table under the sum of money by reference to which the amount entered on the application or the claim form was fixed. Where judgment is given for a sum less than the amount claimed or for the delivery of goods of which the value or the balance of the total price is a sum less than the amount claimed, the foregoing paragraph shall, unless the court otherwise directs, have effect as if the amount entered on the application or the claim form had been fixed by reference to that sum.

#### Fixed Costs on Judgments **E+W**

<i>Column 1</i>	<i>Column 2</i>		
	<i>Sum of money</i>		
	<i>A exceeding £25 but not exceeding £600</i>	<i>B exceeding £600 but not exceeding £3000</i>	<i>C exceeding £3000</i>
	£	£	£
(d) (d) Where judgment is given in a fixed date action for—	38.50	57.25	70.75



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<i>Column 1</i>	<i>Column 2</i>		
	<i>Sum of money</i>		
	<i>A exceeding £25 but not exceeding £600</i>	<i>B exceeding £600 but not exceeding £3000</i>	<i>C exceeding £3000</i>
	£	£	£
(i) delivery of goods where goods are not subject to a regulated agreement; or			
(ii) possession of land suspended on payment of arrears of rent, whether claimed or not, in addition to current rent, and the defendant has neither delivered a defence, admission or counterclaim, nor otherwise denied liability			

(Delivery of goods claims subject to a regulated agreement are dealt with by CPR Part 45)

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## PART III **E+W**

### Miscellaneous Proceedings

The following Table shows the amount to be allowed in respect of solicitors' charges in the circumstances mentioned. The appropriate court fee shall be allowed in addition.

<i>Amount to be allowed</i>	<i>£</i>
<b>3.</b> For filing a request for the issue of a warrant of execution for a sum exceeding £25	£2.25
<b>4.</b> For service of any document required to be served personally (other than an application for an attachment of earnings order or a judgment summons unless allowed under Order 27, rule 9(1)(a), or Order 28, rule 10(2)(a)(i)), including copy and preparation of certificate of service	£8.50
<b>5.</b> For service by an alternative method, including attendances, making appointments to serve claim forms, preparing and attending to swear and file affidavits and to obtain order, and the fees paid for oaths	£25.00
<b>6.</b> For each attendance on the hearing of an application for an attachment of earnings order or a judgment summons where costs are allowed under Order 27, rule 9, or Order 28, rule 10	£8.50
<b>7.</b> For the costs of the judgment creditor when allowed in garnishee proceedings or an application under Order 30, rule 12	one half of the amount recovered
(a) where the money recovered is less than £70.00	
(b) where the money recovered is not less than £70.00	£46.50
<b>8.</b> For the costs of the judgment creditor when allowed on an application for a charging order	£71.00
<b>9.</b> For obtaining a certificate of judgment where costs allowed under Order 35, rule 5(3)(d)	£8.00
<b>10.</b> Where an order for possession is made under [F421Section II of CPR Part 55 (Possession claims)] without the attendance of the claimant, for preparing and filing the application, the documents attached to the application and the request for possession	£79.50
<b>11.</b> On examination of a witness under CCR Order 25, rule 3 where any responsible representative of the solicitor attends, for each half-hour or part thereof	£15.00

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### Textual Amendments

**F421** Words in [Sch. 2](#) CCR Order 38, Appendix B Pt. 3 para. 10 substituted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), [rules 1\(d\)](#), **29**

## CCR ORDER 39 **E+W**

### ADMINISTRATION ORDERS

#### Exercise of powers by district judge **E+W**

**Rule 1** Any powers conferred on the court by Part VI of the Act, section 4 of the Attachment of Earnings Act 1971(**200**) or this Order may be exercised by the district judge or, in the circumstances mentioned in this Order, by the court officer.

#### Request and list of creditors **E+W**

**Rule 2.**—(1) A debtor who desires to obtain an administration order under Part VI of the Act shall file a request in that behalf in the court for the district in which he resides or carries on business.

(2) Where on his examination under Order 25, rule 3, or otherwise, a debtor furnishes to the court on oath a list of his creditors and the amounts which he owes to them respectively and sufficient particulars of his resources and needs, the court may proceed as if the debtor had filed a request under paragraph (1).

(3) Where a debtor is ordered to furnish a list under section 4 (1)(b) of the said Act of 1971, then, unless otherwise directed, the list shall be filed within 14 days after the making of the order.

#### Verification on oath **E+W**

**Rule 3** The statements in the request mentioned in rule 2 (1) and the list mentioned in rule 2 (3) shall be verified by the debtor on oath.

#### Orders made by the court officer **E+W**

**Rule 5.**—(1) The question whether an administration order should be made, and the terms of such an order, may be decided by the court officer in accordance with the provisions of this rule.

(2) On the filing of a request or list under rule 2, the court officer may, if he considers that the debtor's means are sufficient to discharge in full and within a reasonable period the total amount of the debts included in the list, determine the amount and frequency of the payments to be made under such an order ("the proposed rate") and—

- (a) notify the debtor of the proposed rate requiring him to give written reasons for any objection he may have to the proposed rate within 14 days of service of notification upon him;
- (b) send to each creditor mentioned in the list provided by the debtor a copy of the debtor's request or of the list together with the proposed rate;
- (c) require any such creditor to give written reasons for any objection he may have to the making of an administration order within 14 days of service of the documents mentioned in sub-paragraph (b) upon him.

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(200) 1971 c. 32; section 4 was amended by the Insolvency Act 1976 (c. 60), section 13(2); and by the County Courts Act 1984 (c. 28), section 148(1), schedule 2, Part V, paragraph 40.

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Objections under sub-paragraph (c) may be to the making of an order, to the proposed rate or to the inclusion of a particular debt in the order.

(3) Where no objection under paragraph (2)(a) or (c) is received within the time stated, the court officer may make an administration order providing for payment in full of the total amount of the debts included in the list.

(4) Where the debtor or a creditor notifies the court of any objection within the time stated, the court officer shall fix a day for a hearing at which the district judge will decide whether an administration order should be made and the court officer shall give not less than 14 days' notice of the day so fixed to the debtor and to each creditor mentioned in the list provided by the debtor.

(5) Where the court officer is unable to fix a rate under paragraph (2) (whether because he considers that the debtor's means are insufficient or otherwise), he shall refer the request to the district judge.

(6) Where the district judge considers that he is able to do so without the attendance of the parties, he may fix the proposed rate providing for payment of the debts included in the list in full or to such extent and within such a period as appears practicable in the circumstances of the case.

(7) Where the proposed rate is fixed under paragraph (6), paragraphs (2) to (4) shall apply with the necessary modifications as if the rate had been fixed by the court officer.

(8) Where the district judge does not fix the proposed rate under paragraph (6), he shall direct the court officer to fix a day for a hearing at which the district judge will decide whether an administration order should be made and the court officer shall give not less than 14 days' notice of the day so fixed to the debtor and to each creditor mentioned in the list provided by the debtor.

(9) Where an administration order is made under paragraph (3), the court officer may exercise the power of the court under section 5 of the Attachment of Earnings Act 1971 to make an attachment of earnings order to secure the payments required by the administration order.

#### **Notice of objection by creditor** **E+W**

**Rule 6.**—(1) Any creditor to whom notice has been given under rule 5 (8) and who objects to any debt included in the list furnished by the debtor shall, not less than 7 days before the day of hearing, give notice of his objection, stating the grounds thereof, to the court officer, to the debtor and to the creditor to whose debt he objects.

(2) Except with the permission of the court, no creditor may object to a debt unless he has given notice of his objection under paragraph (1).

#### **Procedure on day of hearing** **E+W**

**Rule 7** On the day of the hearing—

- (a) any creditor, whether or not he is mentioned in the list furnished by the debtor, may attend and prove his debt or, subject to rule 6, object to any debt included in that list;
- (b) every debt included in that list shall be taken to be proved unless it is objected to by a creditor or disallowed by the court or required by the court to be supported by evidence;
- (c) any creditor whose debt is required by the court to be supported by evidence shall prove his debt;
- (d) the court may adjourn proof of any debt and, if it does so, may either adjourn consideration of the question whether an administration order should be made or proceed to determine the question, in which case, if an administration order is made, the debt, when proved, shall be added to the debts scheduled to the order;
- (e) any creditor whose debt is admitted or proved, and, with the permission of the court, any creditor the proof of whose debt has been adjourned, shall be entitled to be heard and to

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adduce evidence on the question whether an administration order should be made and, if so, in what terms.

#### **Direction for order to be subject to review** E+W

**Rule 8.**—(1) The court may, on making an administration order or at any subsequent time, direct that the order shall be subject to review at such time or at such intervals as the court may specify.

(2) Where the court has directed that an administration order shall be subject to review, the court officer shall give to the debtor and to every creditor who appeared when the order was made not less than 7 days' notice of any day appointed for such a review.

(3) Nothing in this rule shall require the court officer to fix a day for a review under rule 13A.

#### **Service of order** E+W

**Rule 9** Where an administration order is made, the court officer shall send a copy to—

- (a) the debtor;
- (b) every creditor whose name was included in the list furnished by the debtor;
- (c) any other creditor who has proved his debt; and
- (d) every other court in which, to the knowledge of the district judge, judgment has been obtained against the debtor or proceedings are pending in respect of any debt scheduled to the order.

#### **Subsequent objection by creditor** E+W

**Rule 10.**—(1) After an administration order has been made, a creditor who has not received notice under rule 5 and who wishes to object to a debt scheduled to the order, or to the manner in which payment is directed to be made by instalments, shall give notice to the court officer of his objection and of the grounds thereof.

(2) On receipt of such notice the court shall consider the objection and may—

- (a) allow it;
- (b) dismiss it; or
- (c) adjourn it for hearing on notice being given to such persons and on such terms as to security for costs or otherwise as the court thinks fit.

(3) Without prejudice to the generality of paragraph (2), the court may dismiss an objection if it is not satisfied that the creditor gave notice of it within a reasonable time of his becoming aware of the administration order.

#### **Subsequent proof by creditor** E+W

**Rule 11.**—(1) Any creditor whose debt is not scheduled to an administration order, and any person who after the date of the order became a creditor of the debtor, shall, if he wishes to prove his debt, send particulars of his claim to the court officer, who shall give notice of it to the debtor and to every creditor whose debt is so scheduled.

(2) If neither the debtor nor any creditor gives notice to the court officer, within 7 days after receipt of notice under paragraph (1), that he objects to the claim, then, unless it is required by the court to be supported by evidence, the claim shall be taken to be proved.

(3) If the debtor or a creditor gives notice of objection within the said period of 7 days or the court requires the claim to be supported by evidence, the court officer shall fix a day for consideration of the claim and give notice of it to the debtor, the creditor by whom the claim was made and the

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creditor, if any, making the objection, and on the hearing the court may either disallow the claim or allow it in whole or in part.

(4) If a claim is taken to be proved under paragraph (2) or allowed under paragraph (3), the debt shall be added to the schedule to the order and a copy of the order shall then be sent to the creditor by whom the claim was made.

### Permission to present bankruptcy petition **E+W**

**Rule 12** An application by a creditor under section 112 (4) of the Act(201) for permission to present or join in a bankruptcy petition shall be made on notice to the debtor in accordance with CPR Part 23, but the court may, if it thinks fit, order that notice be given to any other creditor whose debt is scheduled to the administration order.

### Conduct of order **E+W**

**Rule 13.**—(1) The court manager or such other officer of the court as the court making an administration order shall from time to time appoint shall have the conduct of the order and shall take all proper steps to enforce the order (including exercising the power of the court under section 5 of the Attachment of Earnings Act 1971 to make an attachment of earnings order to secure payments required by the administration order) or to bring to the attention of the court any matter which may make it desirable to review the order.

(2) Without prejudice to section 115 of the Act, any creditor whose debt is scheduled to the order may, with the permission of the court, take proceedings to enforce the order.

(3) The debtor or, with the permission of the court, any such creditor may apply to the court to review the order.

(4) When on a matter being brought to its attention under paragraph (1) the court so directs or the debtor or a creditor applies for the review of an administration order, rule 8 (2) shall apply as if the order were subject to review under that rule.

(5) Nothing in this rule shall require the court officer to fix a day for a review under rule 13A.

### Review by court officer in default of payment **E+W**

**Rule 13A.**—(1) Where it appears that the debtor is failing to make payments in accordance with the order, the court officer shall (either of his own initiative or on the application of a creditor whose debt is scheduled to the administration order) send a notice to the debtor—

- (a) informing him of the amounts which are outstanding; and
- (b) requiring him (within 14 days of service of the notice upon him) to
  - (i) make the payments as required by the order; or
  - (ii) explain his reasons for failing to make the payments; and
  - (iii) make a proposal for payment of the amounts outstanding, or
  - (iv) make a request to vary the order.

(2) If the debtor does not comply with paragraph (1)(b) within the time stated, the court officer shall revoke the administration order.

(3) The court officer shall refer a notice given by a debtor under paragraph (1)(b)(ii), (iii) or (iv) to the district judge who may—

- (a) without requiring the attendance of the parties—

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(201)Section 112 was amended by the Insolvency Act 1985 (c. 65), section 220(2).

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- (i) revoke the administration order or vary it so as to provide for payment of the debts included in the order in full or to such extent and within such a period as appears practicable in the circumstances of the case; or
  - (ii) suspend the operation of the administration order for such time and on such terms as he thinks fit; or
- (b) require the court officer to fix a day for the review of the administration order and to give to the debtor and to every creditor whose debt is scheduled to the administration order not less than 8 days' notice of the day so fixed.
- (4) Any party affected by an order made under paragraph (2) or (3)(a) may, within 14 days of service of the order on him and giving his reasons, apply on notice for the district judge to consider the matter afresh and the court officer shall fix a day for the hearing of the application before the district judge and give to the debtor and to every creditor whose debt is scheduled to the administration order not less than 8 days' notice of the day so fixed.
- (5) On hearing an application under paragraph (4), the district judge may confirm the order or set it aside and make such new order as he thinks fit and the order so made shall be entered in the records of the court.

#### **Review of order** E+W

**Rule 14.**—(1) On the review of an administration order the court may—

- (a) if satisfied that the debtor is unable from any cause to pay any instalment due under the order, suspend the operation of the order for such time and on such terms as it thinks fit;
- (b) if satisfied that there has been a material change in any relevant circumstances since the order was made, vary any provision of the order made by virtue of section 112 (6) of the Act;
- (c) if satisfied that the debtor has failed without reasonable cause to comply with any provision of the order or that it is otherwise just and expedient to do so, revoke the order, either forthwith or on failure to comply with any condition specified by the court; or
- (d) make an attachment of earnings order to secure the payments required by the administration order or vary or discharge any such attachment of earnings order already made.

(2) The court officer shall send a copy of any order varying or revoking an administration order to the debtor, to every creditor whose debt is scheduled to the administration order and, if the administration order is revoked, to any other court to which a copy of the administration order was sent pursuant to rule 9.

#### **Discharge of attachment of earnings order** E+W

**Rule 16** On the revocation of an administration order any attachment of earnings order made to secure the payments required by the administration order shall be discharged.

#### **Declaration of dividends** E+W

**Rule 17.**—(1) The officer having the conduct of an administration order shall from time to time declare dividends and distribute them among the creditors entitled to them.

- (2) When a dividend is declared, notice shall be sent by the officer to each of the creditors.

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### **Creditors to rank equally** E+W

**Rule 18** All creditors scheduled under section 113 (d) of the Act(202) before an administration order is superseded under section 117 (2) of the Act shall rank equally in proportion to the amount of their debts subject to the priority given by the said paragraph (d) to those scheduled as having been creditors before the date of the order, but no payment made to any creditor by way of dividend or otherwise shall be disturbed by reason of any subsequent proof by any creditor under the said paragraph (d).

### **Change of debtor's address** E+W

**Rule 19.**—(1) A debtor who changes his residence shall forthwith inform the court of his new address.

(2) Where the debtor becomes resident in the district of another court, the court in which the administration order is being conducted may transfer the proceedings to that other court.

## **CCR ORDER 42** E+W

### **PROCEEDINGS BY AND AGAINST THE CROWN**

#### **Application and interpretation** E+W

**Rule 1.**—(1) These rules apply to any proceedings, so far as they are civil proceedings to which the Crown is a party, subject to the following rules of this Order.

(2) Except where the context otherwise requires, references in these rules to a claim for the recovery of land or other property shall be construed as including references to proceedings against the Crown for an order declaring that the claimant is entitled as against the Crown to the land or property or to the possession of it.

(3) In this Order—

“the Act of 1947” means the Crown Proceedings Act 1947(203);

“civil proceedings by the Crown” and “civil proceedings against the Crown” and “civil proceedings by or against the Crown” have the same respective meanings as in Part II of the Act of 1947 and do not include any of the proceedings specified in section 23 (3) of that Act;

“civil proceedings to which the Crown is a party” has the same meaning as it has for the purposes of Part IV of the Act of 1947 by virtue of section 38 (4) of that Act.

#### **Particulars of claim in claim against the Crown** E+W

**Rule 4** The particulars of claim shall, in the case of civil proceedings against the Crown, include a statement of the circumstances in which the Crown's liability is said to have arisen and as to the government department and officers of the Crown concerned.

#### **Subsequent procedure in claim** E+W

**Rule 5.**—(1) If in a claim against the Crown the defendant considers that the particulars of claim do not contain a sufficient statement as required by rule 4, he may, before the time for delivering a defence has expired, file two copies of a demand for further information as specified in the demand and thereupon the court officer shall serve one copy on the claimant.

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(202) Section 113 was amended by the Administration of Justice Act 1985 (c. 61), section 67(2), schedule 8, Part II.  
(203) 1947 c. 44.



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(2) Where the defendant files a demand under paragraph (1), the time for delivering a defence shall not expire until 4 days after the defendant has given notice to the court and the claimant that the defendant is satisfied with the information supplied in compliance with the demand or 4 days after the court has, on the application of the claimant of which not less than 7 days' notice has been given to the defendant, decided that no further information as to the matters referred to in rule 4 is reasonably required.

(3) Except with the permission of the court, no default judgment shall be entered under CPR Part 12 in a claim against the Crown.

(4) An application for permission under paragraph (3) shall be made on not less than 7 days' notice to the defendant.

(5) No application against the Crown shall be made under CPR Part 24 (summary judgment).

### Subsequent procedure in fixed date claim **E+W**

**Rule 6.**—(1) In the case of a fixed date claim against the Crown, on the filing of the claim form the court shall—

- (a) enter a plaint in the records of the court and deliver to the claimant a notice of issue omitting any reference to a return day;
- (b) serve on the defendant a copy of the particulars of claim if they are filed with the claim form and the notice of issue and of the effect of paragraphs (3) and (5).

(2) Upon the service of the notice mentioned in paragraph (1)(b) all further proceedings in the claim shall be stayed except as provided in this rule.

(3) If the defendant considers that the particulars of claim do not contain a sufficient statement as required by rule 4, he may, within 21 days after service on him of the particulars of claim, file in the court office two copies of a demand for further information as specified in the demand and thereupon the court shall serve one copy on the claimant.

(4) If within the said period the defendant does not file two copies of such a demand, then, subject to paragraph (5), the stay of proceedings provided for by paragraph (2) shall cease to have effect at the end of that period.

(5) If within the said period the defendant files a statement that no such demand will be made, the stay of proceedings provided for by paragraph (2) shall cease to have effect forthwith.

(6) If within the said period the defendant files two copies of such a demand, the stay of proceedings provided for by paragraph (2) shall cease to have effect when the defendant gives notice to the court and the claimant that the defendant is satisfied with the information supplied in compliance with the demand or when the court decides, on the application of the claimant of which not less than 7 days' notice has been given to the defendant, that no further information as to the matters referred to in rule 4, is reasonably required.

(7) When the stay of proceedings provided for by paragraph (2) ceases to have effect, the court shall fix a return day and give notice of it to the claimant and shall proceed to issue the claim form.

### Service on the Crown **E+W**

**Rule 7.**—(1) [<sup>F422</sup>Section III of CPR Part 6] and any other provision of these rules relating to service of process out of England and Wales shall apply in relation to civil proceedings by the Crown but shall not apply in relation to civil proceedings against the Crown.

(2) Personal service of any document which is to be served on the Crown for the purpose of or in connection with civil proceedings by or against the Crown shall not be requisite.

(3) Any such document may be served on the Crown—

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- (a) by leaving the document at the office of the person to be served in accordance with section 18 of the Act of 1947, or any agent whom he has nominated for the purpose, but in either case with a member of the staff of that person or agent; or
- (b) by posting it in a prepaid envelope addressed to the person to be served in accordance with the said section 18 or to any such agent as aforesaid.

#### Textual Amendments

**F422** Words in [Sch. 2 CCR Order 42 rule 7\(1\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [36](#)

#### Special provisions regarding orders made by the Court of its own initiative against the Crown **E+W**

**Rule 8.**—(2) No order shall be made against the Crown by the court of its own initiative—

- (a) (i) requiring the Crown to file or serve any statement of case or give any particulars which the court thinks necessary for defining the issues in the proceedings; and
- (ii) at the same or any subsequent time directing that the claim be dismissed or the defendant be debarred from defending altogether or that anything in any statement of case of which particulars have been ordered be struck out unless the order is obeyed;
- (b) ordering one or more questions or issues to be tried before the others; or
- (c) at a hearing other than the trial.

#### Counterclaim in proceedings by or against the Crown **E+W**

**Rule 9.**—(1) In proceedings by the Crown for the recovery of taxes, duties or penalties the defendant shall not be entitled to avail himself of any set-off or counterclaim and accordingly the claim form to be served on the defendant and the forms for defending the claim, admitting the claim and acknowledging service, to accompany the claim form shall omit any reference to a counterclaim.

(2) In proceedings of any other nature by the Crown the defendant shall not be entitled to avail himself of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

(3) In any proceedings by the Crown the defendant shall not be entitled, and in any proceedings against the Crown the Crown shall not be entitled, without the permission of the court to be obtained on application of which not less than 7 days' notice has been given to the claimant, to make any counterclaim or claim in his statements of case to be entitled to any set-off if—

- (a) the Crown sues or is sued in the name of a Government department and the subject-matter of the set-off or counterclaim does not relate to that department; or
- (b) the Crown sues or is sued in the name of the Attorney-General.

#### Adjustment of liability under judgment for taxes **E+W**

**Rule 10** Where the Crown has obtained a judgment for taxes but subsequently the tax liability is reduced, whether by reason of an appeal against an assessment or otherwise, and the Crown has given notice of the reduction to the court and to the debtor, the sum remaining unsatisfied under the judgment shall be reduced accordingly, but the amount of the reduction shall not rank as a payment under the judgment.

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## Part 20 claim against the Crown where the Crown is not already a party **E+W**

**Rule 11.**—(1) A Part 20 claim for service on the Crown where the Crown is not already a party shall not be issued without the permission of the court to be obtained on application in accordance with CPR Part 23

(1A) An application notice under paragraph (1) must be served on the Crown and the claimant at least 7 days before the hearing.

(2) Permission shall not be granted under paragraph (1) unless the court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

## Disclosure against the Crown **E+W**

**Rule 12.**—(2) Where in any proceedings an order of the court directs that a list of documents made in answer to an order for disclosure against the Crown shall be verified by witness statement or affidavit, the witness statement or affidavit shall be made by such officer of the Crown as the court may direct.

(3) The court may direct which officer of the Crown shall make the disclosure statement required by CPR rule 31.10(5).

## Execution and satisfaction of orders against the Crown **E+W**

**Rule 13.**—(1) Nothing in [<sup>F423</sup>Orders 25 to 31 or RSC Order 30 (in so far as it applies to proceedings in the county court)] shall apply in respect of any order against the Crown.

(2) A certificate issued under section 25 (1) of the Act of 1947 shall be in the form used under Order 22, rule 8, with such variations as the circumstances of the case may require.

### Textual Amendments

**F423** Words in [Sch. 2 CCR Order 42 rule 13\(1\)](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **69**

## Attachment of debts etc. **E+W**

**Rule 14.**—(1) No order for the attachment of a debt under Order 30 or for the appointment of a receiver under RSC Order 30 shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown.

(2) Where such an order could have been obtained in a county court if the money had been due or accruing due from a subject, an application may be made to that county court in accordance with CPR Part 23 for an order under section 27 of the Act of 1947(**204**) restraining the person to whom the money is payable by the Crown from receiving the money and directing payment to the applicant or to the receiver.

(3) The application shall be supported by a witness statement or affidavit setting out the facts giving rise to it and in particular identifying the particular debt from the Crown in respect of which it is made.

(4) Notice of the application together with a copy of the witness statement or affidavit shall be served on the Crown and, unless the court otherwise directs, on the person to be restrained or his solicitor at least 7 days before the day fixed for the hearing.

(204)1947 c. 44; section 27(1) was amended by the Supreme Court Act 1981 (c. 54), section 139(1) and schedule 7.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

(5) Order 30, rules 7 to 9, shall apply, with the necessary modifications, in relation to an application under the said section 27 as they apply in relation to an application for an order under Order 30, rule 1, except that the court shall not have power to issue execution against the Crown.

## CCR ORDER 43 **E+W**

### THE LANDLORD AND TENANT ACTS 1927, 1954, 1985 AND 1987

#### Interpretation **E+W**

<sup>F424</sup>Rule 1 .....

##### Textual Amendments

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

#### Commencement of proceedings and answer **E+W**

<sup>F424</sup>Rule 2 .....

##### Textual Amendments

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

#### Claim for compensation in respect of improvement **E+W**

<sup>F424</sup>Rule 3 .....

##### Textual Amendments

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

#### Proceedings under Part I of the Act of 1927 **E+W**

<sup>F424</sup>Rule 4 .....

##### Textual Amendments

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

#### Proceedings under Part I of the Act of 1954 **E+W**

<sup>F424</sup>Rule 5 .....

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application for new tenancy under section 24 of the Act of 1954** **E+W**

**F424** **Rule 6** .....

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Answer to application for new tenancy under section 24 of the Act of 1954** **E+W**

**F424** **Rule 7** .....

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Order dismissing application under section 24 which is successfully opposed** **E+W**

**F424** **Rule 8** .....

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Other applications under Part II of the Act of 1954** **E+W**

**F424** **Rule 9** .....

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Service of order in proceedings under Part II of the Act of 1954** **E+W**

**F424** **Rule 10** .....

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Proof of determination of rateable value** **E+W**

<sup>F424</sup>**Rule 11** .....

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Provisions as to assessors** **E+W**

<sup>F424</sup>**Rule 13** .....

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**District judge’s jurisdiction** **E+W**

<sup>F424</sup>**Rule 15** .....

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application under section 12 (2) of the Act of 1985** **E+W**

<sup>F424</sup>**Rule 16** .....

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Transfer to leasehold valuation tribunal** **E+W**

<sup>F424</sup>**Rule 16A** .....

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application under section 19 of the Act of 1987** **E+W**

**F424** **Rule 17** .....

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application for order under section 24 of the Act of 1987** **E+W**

**F424** **Rule 18** .....

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application for acquisition order under section 29 of the Act of 1987** **E+W**

**F424** **Rule 19** .....

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Application for order under section 38 or section 40 of the Act of 1987** **E+W**

**F424** **Rule 20** .....

**Textual Amendments**

**F424** Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Service of documents in proceedings under the Act of 1987** **E+W**

**F424** **Rule 21** .....

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

**Textual Amendments**  
F424 Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**Tenants' associations** **E+W**

F424 **Rule 22** .....

**Textual Amendments**  
F424 Sch. 2 CCR Order 43 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

**CCR ORDER 44** **E+W**

**THE AGRICULTURAL HOLDINGS ACT 1986**

**Order to arbitrator to state case** **E+W**

**Rule 1.**—(1) An application under paragraph 26 of Schedule 11 to the Agricultural Holdings Act 1986(205) for an order directing an arbitrator to state, in the form of a special case for the opinion of the court, a question of law arising in the course of the arbitration shall include a concise statement of the question of law.

(2) The arbitrator shall not be made a respondent to the application, but if the judge grants the application, a copy of the order shall be served on the arbitrator.

**Special case stated by arbitrator** **E+W**

**Rule 2.**—(1) Where, pursuant to the said paragraph 26, an arbitrator states, in the form of a special case for the opinion of the court, any question of law arising in the course of the arbitration, the case shall contain a statement of such facts and reference to such documents as may be necessary to enable the judge to decide the question of law.

(2) The case shall be signed by the arbitrator and shall be lodged in the court office by the arbitrator or any party to the arbitration, together with a copy for the use of the judge.

(3) The court officer shall fix a day for the hearing of the special case and give notice thereof to the parties.

(4) On the hearing the judge shall be at liberty to draw any inferences of fact from the case and the documents referred to therein.

(5) The judge may remit the case to the arbitrator for restatement or further statement.

(6) A copy of the order made by the judge on the hearing shall be served on the parties to the arbitration and on the arbitrator.

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(205)1986 c. 5.



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*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

### **Removal of arbitrator or setting aside award** **E+W**

**Rule 3.**—(1) An application under paragraph 27 of Schedule 11 to the said Act of 1986 for the removal of an arbitrator on the ground of his misconduct or for an order setting aside an award on the ground that the arbitrator has misconducted himself or that an arbitration or award has been improperly procured or that there is an error of law on the face of the award shall be made within 21 days after the date of the award.

(2) The arbitrator and all parties to the arbitration, other than the applicant, shall be made respondents.

### **Enforcement of order imposing penalty** **E+W**

**Rule 4.**—(1) When taking any proceedings for the enforcement in a county court of an order under section 27 of the Agricultural Holdings Act 1986, the party in whose favour the order was made shall file—

- (a) a certified copy of the order; and
- (b) a certificate specifying the amount due under the order and stating whether any previous proceedings have been taken for its enforcement and, if so, the nature of the proceedings and their result.

(2) Where it is desired to enforce the order by warrant of execution, the proceedings may be taken in any court in the district of which execution is to be levied.

## **CCR ORDER 45** **E+W**

### **THE REPRESENTATION OF THE PEOPLE ACT 1983**

#### **Application for detailed assessment of returning officer's account** **E+W**

**Rule 1.**—(1) An application by the Secretary of State under section 30 of the Representation of the People Act 1983(206) for the detailed assessment of a returning officer's account shall be made by claim form and on issuing the claim form the court will fix a day for the hearing which shall be a day for proceeding with the detailed assessment if the application is granted.

(2) Where on the application the returning officer desires to apply to the court to examine any claim made against him in respect of matters charged in the account, the application shall be made in writing and filed, together with a copy thereof, within 7 days after service on the returning officer of the copy of the application for detailed assessment.

(3) On the filing of an application under paragraph (2) the court officer shall fix a day for the hearing and give notice thereof to the returning officer, and a copy of the application and of the notice shall be served on the claimant in the manner required for service of [<sup>F425</sup>an order under Order 25, rule 3.]

(4) The examination and detailed assessment may, if the court thinks fit, take place on the same day, but the examination shall be determined before the detailed assessment is concluded.

(5) The application for detailed assessment and any application under paragraph (2) may be heard and determined by the district judge and a copy of the order made on the application shall be served on the Secretary of State and the returning officer and, in the case of an application under paragraph (2), on the claimant.

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(206)1983 c. 3.

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*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

### Textual Amendments

**F425** Words in [Sch. 2 CCR Order 45 rule 1\(3\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), 37

### Appeal from decision of registration officer **E+W**

**Rule 2.**—(1) Where notice of appeal from a decision of a registration officer is given pursuant to regulations made under section 53 of the said Act of 1983, the registration officer shall, within 7 days after receipt of the notice by him, forward the notice by post to the court in which the appeal is required to be brought, together with the statement mentioned in those regulations.

(2) The appeal shall be brought in the court for the district in which the qualifying premises are situated.

In this paragraph “qualifying premises” means the premises in respect of which—

- (a) the person whose right to be registered in the register of electors is in question on the appeal is entered on the electors' list or is registered or claims to be entitled to be registered; or
- (b) the person whose right to vote by proxy or by post is in question on the appeal is or will be registered in the register of electors; or
- (c) the elector whose proxy's right to vote by post is in question on the appeal is or will be registered in the register of electors,

as the case may be.

(3) The respondents to the appeal shall be the registration officer and the party (if any) in whose favour the decision of the registration officer was given.

(4) On the hearing of the appeal—

- (a) the statement forwarded to the court by the registration officer and any document containing information furnished to the court by the registration officer pursuant to the regulations mentioned in paragraph (1) shall be admissible as evidence of the facts stated therein; and
- (b) the judge shall have power to draw all inferences of fact which might have been drawn by the registration officer and to give any decision and make any order which ought to have been given or made by the registration officer.

(5) A respondent to an appeal other than the registration officer shall not be liable for or entitled to costs, unless he appears before the court in support of the decision of the registration officer.

### Selected appeals **E+W**

**Rule 3.**—(1) Where two or more appeals to which rule 2 relates involve the same point of law, the judge may direct that one appeal shall be heard in the first instance as a test case and thereupon the court shall send a notice of the direction to the parties to the selected appeal and the parties to the other appeals.

(2) If within 7 days after service of such notice on him any party to an appeal other than the selected appeal gives notice to the court that he desires the appeal to which he is a party to be heard—

- (a) the appeal shall be heard after the selected appeal is disposed of;
- (b) the court shall give the parties to the appeal notice of the day on which it will be heard;
- (c) the party giving notice under this paragraph shall not be entitled to receive any costs occasioned by the separate hearing of the appeal to which he is a party, unless the judge otherwise orders.

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- (3) If no notice is given under paragraph (2) within the time limited—
- (a) the decision on the selected appeal shall bind the parties to each other appeal without prejudice to their right to appeal to the Court of Appeal;
  - (b) an order similar to the order in the selected appeal shall be made in each other appeal without further hearing;
  - (c) the party to each other appeal who is in the same interest as the unsuccessful party to the selected appeal shall be liable for the costs of the selected appeal in the same manner and to the same extent as the unsuccessful party to that appeal and an order directing him to pay such costs may be made and enforced accordingly.

## CCR ORDER 46 **E+W**

### THE LEGITIMACY ACT 1976

#### Manner of application **E+W**

**Rule 1.**—(1) An application to a county court under section 45 (2) of the Matrimonial Causes Act 1973(207) for a declaration of legitimation by virtue of the Legitimacy Act 1976(208) shall be made by claim form stating—

- (a) the grounds on which the applicant relies;
- (b) the date and place of birth of the applicant and the maiden name of his mother and, if it be the case, that the applicant is known by a name other than that which appears in the certificate of his birth; and
- (c) particulars of every person whose interest may be affected by the proceedings and his relationship, if any, to the applicant, including any person other than the applicant's father to whom his mother was married at the date of his birth.

(2) The application may be filed in the court for the district in which the applicant resides or the marriage leading to the legitimation was celebrated, or if neither the residence of the applicant nor the place of the marriage is in England or Wales, then in the Westminster County Court.

(3) The applicant shall file with the claim form—

- (a) a witness statement or affidavit by him (or, if he is a child, by his litigation friend) verifying the application; and
- (b) any birth, death or marriage certificate intended to be relied on at the hearing.

#### Preliminary consideration and service **E+W**

**Rule 2.**—(1) On the filing of the documents mentioned in rule 1, the court officer shall fix a day for a case management hearing and give notice thereof to the Attorney-General.

(2) It shall not be necessary to serve the application on the Attorney-General otherwise than by delivering a copy of it to him in accordance with section 45 (6) of the Matrimonial Causes Act 1973.

(3) At the case management hearing the court shall give directions as to the persons, if any, other than the Attorney-General, who are to be made respondents to the application.

(4) Where in the opinion of the court it is impracticable to serve a respondent other than the Attorney-General in accordance with the rules relating to service or it is otherwise necessary or

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(207) 1973 c. 18; section 45 was amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22); section 89, schedule 2, paragraph 39; by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 46(1), schedule 1, paragraph 15; and by the Family Law Act 1986 (c. 55), section 68(1), schedule 1, paragraph 14.  
(208) 1976 c. 31.

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expedient to dispense with service of the claim form on any such respondent, the court may make an order dispensing with service on him.

**Answer** **E+W**

**Rule 3.**—(1) The Attorney-General may file an answer to the application within 14 days after directions have been given at the case management hearing.

(2) Any other respondent who wishes to oppose the application or to dispute any of the facts alleged in it shall, within 14 days after service of the application on him, file an answer to the application.

(3) A respondent who files an answer shall file with it as many copies as there are other parties to the proceedings and the court shall send one of the copies to each of those parties.

**CCR ORDER 47** **E+W**

**DOMESTIC AND MATRIMONIAL PROCEEDINGS**

**Family Law Reform Act 1969** **E+W**

**Rule 5.**—(1) In this rule—

“<sup>[F426]</sup>bodily samples” and “<sup>[F427]</sup>scientific tests” have the meanings assigned to them by section 25 of the Family Law Reform Act 1969(209); and

“direction” means a direction for the use of <sup>[F427]</sup>scientific tests] under section 20 (1) of that Act.

(2) Except with the permission of the court, an application in any proceedings for a direction shall be made on notice to every party to the proceedings (other than the applicant) and to any other person from whom the direction involves the taking of <sup>[F426]</sup>bodily samples].

(3) Where an application is made for a direction involving the taking of <sup>[F426]</sup>bodily samples] from a person who is not a party to the proceedings in which the application is made, the application notice shall be served on him personally and the court may at any time direct him to be made a party to the proceedings.

(4) Where an application is made for a direction in respect of a person (in this paragraph referred to as a person under disability) who is either—

(a) under 16; or

(b) suffering from mental disorder within the meaning of the Mental Health Act 1983(210) and incapable of understanding the nature and purpose of <sup>[F427]</sup>scientific tests],

the notice of application shall state the name and address of the person having the care and control of the person under disability and shall be served on him instead of on the person under disability.

(5) Where the court gives a direction in any proceedings, the court officer shall send a copy to every party to the proceedings and to every other person from whom the direction involves the taking of <sup>[F426]</sup>bodily samples], and, unless otherwise ordered, the proceedings shall stand adjourned until the court receives a report pursuant to the direction.

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(209) 1969 c. 46; section 25 was amended by the Human Fertilisation and Embryology Act 1990 (c. 37), section 49(5), schedule 4, paragraph 1; and section 20 by the Children Act 1989 (c. 41), section 89; and by the Courts and Legal Services Act 1990 (c. 41), section 116, schedule 16, Part I, paragraph 3.  
(210) 1983 c. 20.

**Status:** Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.  
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(6) On receipt by the court of a report made pursuant to a direction, the court officer shall send a copy to every party to the proceedings and to every other person from whom the direction involved the taking of [<sup>F426</sup>bodily samples].

#### Textual Amendments

**F426** Words in Sch. 2 CCR Order 47 rule 5 substituted (1.4.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(c), **30(a)**

**F427** Words in Sch. 2 CCR Order 47 rule 5 substituted (1.4.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(c), **30(b)**

## CCR ORDER 48B **E+W**

### [<sup>F428</sup>Enforcement of traffic penalties]

#### Textual Amendments

**F428** Sch. 2 CCR Order Rule 48B heading substituted (1.6.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(a), **17(a)**

### Application and interpretation **E+W**

**Rule 1.**—(1) This Order applies for the recovery of—

- (a) increased penalty charges provided for in parking charge certificates issued under paragraph 6 of Schedule 6 to the 1991 Act; <sup>F429</sup> ...
- (b) amounts payable by a person other than an authority under an adjudication of a parking adjudicator pursuant to section 73 of the 1991 Act [<sup>F430</sup>; and
- (c) increased penalty charges provided for in a charge certificate issued under paragraph 8 of Schedule 1 to the 1996 Act(1) (relating to a contravention or failure to comply with an order made under a provision referred to in section 4(2) of that Act reserving all or part of a carriageway of a road as a bus lane).]

(2) In this Order, unless the context otherwise requires—

“authority” means the local authority which served the charge certificate;

[<sup>F431</sup>“order” means, as the case may be, an order made under—

- (a) paragraph 7 of Schedule 6 to the 1991 Act;
- (b) paragraph 9 of Schedule 1 to the 1996 Act; or
- (c) section 73 of the 1991 Act.]

“the Order” means the Enforcement of Road Traffic Debts Order 1993(211) made under section 78 of the 1991 Act as it applies to a local authority;

[<sup>F432</sup>“relevant period” means, as the case may be—

- (a) the period of 21 days allowed for serving a statutory declaration by—
  - (i) paragraph 8(1) of Schedule 6 to the 1991 Act; or
  - (ii) paragraph 10(1)(c) of Schedule 1 to the 1996 Act; or

(211) S.I. 1993/2073.

*Status: Point in time view as at 14/01/2002. This version of this Instrument contains provisions that are not valid for this point in time.*  
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- (b) where a longer period has been allowed pursuant to—
- (i) paragraph 8(4) of Schedule 6 to the 1991 Act; or
  - (ii) paragraph 10(4) of Schedule 1 to the 1996 Act, that period.]

“respondent” means the person on whom the charge certificate was served or, as the case may be, the person (other than an authority) by whom the amount due under an adjudication of a parking adjudicator is payable;

“specified debts” means the <sup>F433</sup>... debts specified in article 2 of the Order;

“statutory declaration” means a declaration in the appropriate form which complies with paragraph 8 (2) of Schedule 6 to the 1991 Act [<sup>F434</sup>or paragraph 10(2) of Schedule 1 to the 1996 Act, as the case may be]; <sup>F435</sup>...

“the 1991 Act” means the Road Traffic Act 1991 [<sup>F436</sup>and;

“the 1996 Act” means the London Local Authorities Act 1996.]

(3) Unless the context otherwise requires, expressions which are used in the 1991 Act have the same meaning in this Order as they have in that Act.

(4) The references in paragraph (2) to a local authority mean—

- (a) in England, a London authority [<sup>F437</sup>(within the meaning of section 82(1) of the Road Traffic Act 1991)], a county or district council or the Council of the Isles of Scilly; and
- (b) in Wales, a county or county borough council.

#### Textual Amendments

- F429** Word in Sch. 2 CCR Order 48B rule 1(1)(a) omitted (1.6.2001) by virtue of The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(a), **17(c)(i)**
- F430** Sch. 2 CCR Order 48B rule 1(c) and word inserted (1.6.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(a), **17(c)(ii)**
- F431** Words in Sch. 2 CCR Order 48B rule 1(2) substituted (1.6.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(a), **17(d)(i)**
- F432** Words in Sch. 2 CCR Order 48B rule 1(2) substituted (1.6.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(a), **17(d)(ii)**
- F433** Words in Sch. 2 CCR Order 48B rule 1(2) omitted (1.6.2001) by virtue of The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(a), **17(d)(iii)**
- F434** Words in Sch. 2 CCR Order 48B rule 1(2) inserted (1.6.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(a), **17(d)(iv)**
- F435** Word in Sch. 2 CCR Order 48B rule 1(2) omitted (1.6.2001) by virtue of The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(a), **17(d)(v)**
- F436** Words in Sch. 2 CCR Order 48B rule 1(2) inserted (1.6.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(a), **17(d)(vi)**
- F437** Words in Sch. 2 CCR Order 48B rule 1(4)(a) inserted (1.6.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(a), **17(e)**

#### Establishment of the [<sup>F438</sup>traffic enforcement centre] **E+W**

**Rule 1A.**—(1) There shall be a [<sup>F438</sup>traffic enforcement centre] (“the Centre”) situated at such place or places as the Lord Chancellor may determine and having such functions relating to proceedings under this Order and other related matters as he may direct.

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- (2) For any purpose connected with the exercise of the Centre's functions—
- (a) the Centre shall be deemed to be part of the office of the court whose name appears on the documents to which the functions relates or in whose name the documents are issued;
  - (b) any officer of the Centre shall, in exercising its functions, be deemed to act as a court officer of that court,

and these rules shall have effect accordingly.

#### Textual Amendments

**F438** Words in [Sch. 2 CCR Order 48B](#) substituted (1.6.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(a), **17(b)**

#### Requests for orders **E+W**

**Rule 2.**—(1) An authority which wishes to take proceedings under this Order shall give notice to the court officer and, where the court officer so allows, requests for orders may be made, and such orders may be enforced, in accordance with the following provisions of this Order.

(2) An authority shall file a request for an order in the appropriate form scheduling the increased penalty charges in respect of which an order is sought.

(3) The authority shall in the request or in another manner approved by the court officer—

- (a) certify—
  - (i) that 14 days have elapsed since service of the charge certificate;
  - (ii) the amount due under the charge certificate and the date on which the charge certificate was served; and
  - (iii) that the amount due remains unpaid;
- (b) give the charge certificate number;
- (c) specify (whether by reference to the appropriate code or otherwise) the grounds stated in the notice to owner on which [<sup>F439</sup>it is claimed that] that a penalty charge was payable with respect to the vehicle;
- (d) state—
  - (i) the name and address of the respondent and, where known, his title;
  - (ii) the registration number of the vehicle concerned;
  - (iii) (whether by reference to the appropriate charge certificate's number or otherwise) the authority's address for service;
  - (iv) the court fee.

(4) If satisfied that the request is in order, the court officer shall order that the increased charge (together with the court fee) may be recovered as if it were payable under a county court order by sealing the request and returning it to the authority.

(5) When the court officer so orders and on receipt of the sealed request, the authority may draw up the order and shall annex to any such order a form of statutory declaration for the respondent's use.

(6) Within 14 days of receipt of the sealed request, the authority shall serve the order (and the form of statutory declaration) on the respondent by—

- (a) delivering the order to the respondent personally; or
- (b) sending it by first-class post to the respondent at the address given in the request.



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(6A) Where an order is served in accordance with paragraph (6)(b), the date of service shall, unless the contrary is shown, be deemed to be the seventh day after the date on which the order was sent to the respondent.

(6B) Subject to paragraphs (6C) and (6D), where partners are served in the name of their firm, service of an order shall be good service on all the partners, whether any of them is out of England and Wales or not, if the order is—

- (a) delivered to a partner personally; or
- (b) served by a court officer sending it by first class post to the firm at the address stated in the request.

(6C) Where the partnership has to the knowledge of the authority been dissolved before the service of the order, the order shall be served upon every person within the jurisdiction sought to be made liable.

(6D) Unless the authority, or its solicitor, otherwise requests, service on the partnership shall be effected in accordance with paragraph (6B)(b).

(6E) Where an order is served in accordance with paragraph (6B)(b) the date of service shall, unless the contrary is shown, be deemed to be the seventh day after the date on which the order was sent to the respondent.

(6F) Service on a corporation may be effected by serving it on the mayor, chairman or president of the body or the chief executive, clerk, secretary, treasurer or other similar officer thereof.

(6G) Service of [<sup>F440</sup>an order] on a company registered in England and Wales may be effected by serving it at the registered office or at any place of business of the company which has some real connection with an issue in the proceedings.

(6H) Where an order has been served under paragraph (6G) other than at the registered office, and after a request for a warrant of execution has been sealed, it appears to the court officer that the order did not come to the attention of the appropriate person within the company in due time, the court may, on application under CPR Part 23 or of its own initiative, set aside the warrant, and may give such directions as it considers appropriate.

(7) Where an authority requests an order in respect of amounts payable by a person other than an authority under an adjudication of a parking adjudicator pursuant to section 73 of the 1991 Act, paragraphs (2) and (3) shall apply with the necessary modifications and in addition the authority shall—

- (a) state the date on which the adjudication was made;
- (b) provide details of the order made on the adjudication; and
- (c) certify the amount awarded by way of costs and that the amount remains unpaid.

#### Textual Amendments

**F439** Words in Sch. 2 CCR Order 48B rule 2(3)(c) substituted (1.6.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(a), **17(f)**

**F440** Words in Sch. 2 CCR Order 48B rule 2(6G) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **71**

#### Documents **E+W**

**Rule 3.**—(1) Where by or under this Order any document is required to be filed, that requirement shall be deemed to be satisfied if the information which would be contained in the document is delivered in computer-readable form but nothing in this paragraph shall be taken as enabling an



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authority to commence proceedings without supplying a written request in the appropriate form under rule 2 (2).

(2) For the purposes of paragraph (1), information which would be contained in a document relating to one case may be combined with information of the same nature relating to another case.

(3) Where by or under this Order or by virtue of any order a document which contains information is required to be produced, that requirement shall be deemed to be satisfied if a copy of the document is produced from the computer records kept for storing such information.

### Functions of court officer **E+W**

**Rule 4.**—(1) The functions of the district judge under paragraph 8 (4) and (5)(d) of Schedule 6 to the 1991 Act [<sup>F441</sup>and paragraphs 10(4) and (5)(d) of Schedule 1 to the 1996 Act] (longer period for service of the statutory declaration and notice of effect of statutory declaration) may be exercised by the court officer.

(2) Where pursuant to paragraph 8 (4) of Schedule 6 to the 1991 Act [<sup>F442</sup>or paragraph 10(4) of the Schedule 1 to the 1996 Act] a longer period is allowed for service of the statutory declaration, the court officer shall notify the authority and the respondent accordingly.

#### Textual Amendments

**F441** Words in Sch. 2 CCR Order 48B rule 4(1) inserted (1.6.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(a), **17(g)(i)**

**F442** Words in Sch. 2 CCR Order 48B rule 4(2) inserted (1.6.2001) by The Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388), rules 1(a), **17(g)(ii)**

### Enforcement of orders **E+W**

**Rule 5.**—(1) Subject to the Order and to this rule, the following provisions of Orders 25 to 27, 30 and 31 of these Rules shall apply for the enforcement of specified debts—

Order 25, rules 1, 2 (except paragraph (3)(b), (c) and (d)), 3, 5 (except paragraph (1)(a) and (b)) and 9;

Order 26, rule 5;

Order 27, rules 1 to 7, 7A, 9 to 16 and 18 to 22;

Order 30, rules 1 to 3, 5 and 7 to 15;

Order 31, rules 1 to 4.

(2) CPR rule 30.2(1) (b) (ii) (court may order transfer of proceedings to enforce judgment or order to another county court if proceedings could be more conveniently or fairly taken there) applies to proceedings under this Order.

(3) An authority desiring to issue a warrant of execution shall file a request in that behalf in the appropriate form or in another manner approved by the court officer—

(a) certifying the amount remaining due under the order;

(b) specifying the date of service of the order on the respondent; and

(c) certifying that the relevant period has elapsed.

(4) The court shall seal the request and return it to the authority which shall, within 7 days of the sealing of the request, prepare the warrant in the appropriate form.

(5) No payment under a warrant shall be made to the court.

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(6) A warrant shall, for the purpose of execution, be valid for 12 months beginning with the date of its issue and nothing in this rule or in Order 26 shall authorise an authority to renew a warrant.

(7) Where an order is deemed to have been revoked under paragraph 8 (5) of Schedule 6 to the 1991 Act [<sup>F443</sup>or, as the case may be, paragraph 10(5) of Schedule 1 to the 1996 Act]—

- (a) the court shall serve a copy of the statutory declaration on the authority;
- (b) any execution issued on the order shall cease to have effect; and
- (c) on receipt of the court officer’s notice under paragraph 8 (5)(d) of Schedule 6 [<sup>F444</sup>or, as the case may be, paragraph 10(5) of Schedule 1 to the 1996 Act], the authority shall forthwith inform any bailiff instructed to levy execution of the withdrawal of the warrant.

(8) In addition to the requirements of that rule, any application by an authority under Order 25, rule 2, shall—

- (a) where the authority has not attempted to enforce by execution, give the reasons why no such attempt was made;
- (b) certify that there has been no relevant return to the warrant of execution;
- (c) specify the date of service of the order on the respondent; and
- (d) certify that the relevant period has elapsed.

(9) An application under Order 30, rule 2 and (unless provided pursuant to an application under Order 25 rule 2) any application by an authority under Order 25, rule 3, Order 27, rule 4 (1) or Order 31, rule 1 (2) shall, in addition to the requirements of those rules—

- (a) where the authority has not attempted to enforce by execution, give the reasons why no such attempt was made;
- (b) certify that there has been no relevant return to the warrant of execution;
- (c) specify the date of service of the order on the respondent, and
- (d) certify that the relevant period has elapsed.

(10) In paragraphs (8) and (9) “no relevant return to the warrant” means that—

- (a) the bailiff has been unable to seize goods because he has been denied access to the premises occupied by the respondent or because the goods have been removed from those premises;
- (b) any goods seized under the warrant of execution are insufficient to satisfy the specified debt and the cost of execution; or
- (c) the goods are insufficient to cover the cost of their removal and sale.

(11) If the court officer allows, an authority may combine information relating to one charge certificate with information concerning the same respondent in another charge certificate in any request made, or any application brought, under one of the provisions mentioned in paragraph (8) or (9) above.

#### Textual Amendments

**F443** Words in [Sch. 2 CCR Order 48B rule 5\(7\)](#) inserted (1.6.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(a), **17(h)(i)**

**F444** Words in [Sch. 2 CCR Order 48B rule 5\(7\)\(c\)](#) inserted (1.6.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(a), **17(h)(ii)**

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## [<sup>F445</sup>CCR ORDER 48D **E+W**]

### ENFORCEMENT OF FIXED PENALTIES UNDER THE ROAD TRAFFIC (VEHICLE EMISSIONS) (FIXED PENALTY) REGULATIONS 1997

#### Textual Amendments

**F445** Sch. 2 CCR Order 48D inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 72, Appendix 2

#### Application and interpretation **E+W**

1.—(1) This Order applies for the recovery of fixed penalties as defined in regulations 2(1)(b) and 9 of the 1997 Regulations.

(2) In this order, unless the context otherwise requires—

“authority” means a participating authority as defined in regulation 2(1)(f) of the 1997 Regulations;

“order” means an order made under regulation 10(1) of the 1997 Regulations;

“the Order” means the Enforcement of Road Traffic Debts Order 1993;

“respondent” means the person on whom the fixed penalty notice was served;

“specified debts” means the <sup>F446</sup>...debts specified in article 2(1)(a) of the Order;

“the 1997 Regulations” means the Road Traffic (Vehicle Emissions) (Fixed Penalty) Regulations 1997.

(3) Unless the context otherwise requires, expressions which are used in the 1997 Regulations have the same meaning in this Order as they have in those Regulations.

#### Textual Amendments

**F446** Words in [Sch. 2 CCR Order 48D rule 1\(2\)](#) omitted (1.6.2001) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(a), **18(b)**

#### The [<sup>F447</sup>traffic enforcement centre] **E+W**

2. The [<sup>F447</sup>traffic enforcement centre] established in rule 1A of Order 48B shall have such functions relating to proceedings under this Order and other related matters as the Lord Chancellor may direct.

#### Textual Amendments

**F447** Words in [Sch. 2 CCR Order 48D](#) substituted (1.6.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rules 1(a), **18(a)**

#### Requests for Orders and Warrants of Execution **E+W**

3.—(1) An authority which wishes to take proceedings under this Order shall give notice to the court officer and, where the court officer so allows, a combined request for an order and a warrant of

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execution may be made, and such an order may be enforced and a warrant executed in accordance with the following provisions of this Order.

(2) An authority shall file a combined request for an order and a warrant of execution in the appropriate form or in another manner approved by the court officer scheduling the fixed penalties in respect of which an order and warrant of execution are sought.

(3) The authority shall in the request or in another manner approved by the court officer—

- (a) certify—
  - (i) that 56 days have elapsed since the issue of the fixed penalty notice,
  - (ii) the amount due under the fixed penalty notice and the date on which it was issued, and
  - (iii) that the amount due remains unpaid;
- (b) give the number of the fixed penalty notice;
- (c) specify (whether by reference to the appropriate code or otherwise) the grounds stated in the fixed penalty notice and in regulation 2(1)(d) of the 1997 Regulations on which the authorised person who issued the fixed penalty notice believed that a fixed penalty was payable with respect to that vehicle;
- (d) state—
  - (i) the name and address of the respondent and where known, his title;
  - (ii) the registration number of the vehicle concerned;
  - (iii) (whether by reference to the appropriate fixed penalty notice number or otherwise) the authority’s address for service;
  - (iv) the court fee.

(4) If satisfied that the combined request is in order, the court officer shall order that the fixed penalty (together with the court fee) may be recovered as if it were payable under a county court order by sealing the request and returning it to the authority.

(5) When the court officer so orders and on receipt of the sealed request, the authority shall, within 7 days of the sealing of the request, prepare the warrant in the appropriate form.

## **Documents** **E+W**

4.—(1) Rule 3 of Order 48B shall apply to this Order with the modification referred to in paragraph (2).

(2) The reference to rule 2(2) in rule 3(1) of Order 48B shall be a reference to rule 3(2) of this Order.

## **Enforcement of Orders** **E+W**

5.—(1) Rule 5 of Order 48B shall apply to this Order with the modifications referred to in paragraphs (2), (3) and (4).

(2) Paragraphs (3), (4) and (7) of rule 5 shall not apply.

(3) Sub-paragraphs (c) and (d) of rule 5(9) shall not apply.

(4) In paragraph (11) of rule 5, the references to the words “charge certificate” shall be references to the words “fixed penalty notice”.

(5) Where a fixed penalty notice is withdrawn under regulation 12 of the 1997 Regulations—

- (a) any order made or warrant issued in respect of that fixed penalty notice is deemed to be revoked;

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- (b) any execution issued on the order shall cease to have effect, and
- (c) the authority shall forthwith inform any bailiff instructed to levy execution of the withdrawal of the warrant.]

## CCR ORDER 49 E+W

### MISCELLANEOUS STATUTES

#### Access to Neighbouring Land Act 1992(212) E+W

<sup>F448</sup>**Rule 1** .....

##### Textual Amendments

**F448** Sch. 2 CCR Order 49 rule 1 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

#### Administration of Justice Act 1970(213) E+W

<sup>F449</sup>**Rule 1A** .....

##### Textual Amendments

**F449** Sch. 2 CCR Order 49 rule 1A revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

#### Chancel Repairs Act 1932(214) E+W

<sup>F450</sup>**Rule 2** .....

##### Textual Amendments

**F450** Sch. 2 CCR Order 49 rule 2 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

#### Consumer Credit Act 1974(215) E+W

<sup>F451</sup>**Rule 4** .....

##### Textual Amendments

**F451** Sch. 2 CCR Order 49 rule 4 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 3](#)

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(212) 1992 c. 23.  
(213) 1970 c. 31.  
(214) 1932 c. 20.  
(215) 1974 c. 39.

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**Applications under section 114, 204 and 231 of the Copyright, Designs and Patents Act 1988(216) E+W**

**Rule 4A** The CPR Patents Courts practice direction shall apply with the necessary modifications to proceedings brought under sections 114 (1), 204 (1) and 231 (1) of the Copyright, Designs and Patents Act 1988.

**Fair Trading Act 1973(217) E+W**

**Rule 5.**—(1) In this rule a section referred to by number means the section so numbered in the Fair Trading Act 1973 and “the Director” means the Director General of Fair Trading.

(2) Proceedings in a county court under section 35, 38 or 40 shall be started by a claim form.

(3) The respondent shall file an answer.

(4) Where in any proceedings under section 35 or 38 the Director intends to apply for a direction under section 40 (2) that any order made against a body corporate (in this rule referred to as the “respondent body”) which is a member of a group of interconnected bodies corporate shall be binding on all members of the group, he shall file notice of his intention together with as many copies of the claim form and of the notice as are required for the purposes of paragraph (5).

(5) A copy of any notice under paragraph (4) shall be served on the respondent body and a copy of the notice together with a copy of the claim form and a notice of the return day shall be served on each of the bodies corporate specified in the notice under paragraph (4).

(6) The respondent body may at any time serve on the Director a notice containing particulars of any interconnected body corporate not mentioned in a notice under paragraph (4).

(7) With a view to deciding whether or in respect of which bodies notice should be given under paragraph (4) the Director may serve on the respondent body a notice requiring that body to give to him within 14 days after service of the notice particulars of any interconnected bodies corporate belonging to the same group as the respondent body and a copy of any such notice shall be filed.

(8) An application under section 40 (3) shall be made on notice to the respondent body and every interconnected body belonging to the same group.

**Housing Act 1988: assured tenancies E+W**

<sup>F452</sup>**Rule 6** .....

**Textual Amendments**  
**F452** [Sch. 2 CCR Order 49 rule 6](#) revoked (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), [rules 1, 27](#)

**Housing Act 1988: assured shorthold tenancies E+W**

<sup>F453</sup>**Rule 6A** .....

**Textual Amendments**  
**F453** [Sch. 2 CCR Order 49 rule 6A](#) revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), [rule 1\(d\)](#), [Sch. 3](#)

(216)1988 c. 48.  
(217)1973 c. 41.

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## Housing Act 1996: injunctions <sup>F454</sup>... **E+W**

**Rule 6B.**—(1) An application for an injunction under section 152 of the Housing Act 1996(218) may be made by a claim in the appropriate prescribed form and shall be commenced in the court for the district in which the respondent resides or the conduct complained of occurred.

(2) Every application shall—

- (a) state the terms of the injunction applied for; and
- (b) be supported by a witness statement or affidavit in which the grounds on which the application is made are set out.

(3) Every application made on notice must be served, together with a copy of the witness statement or affidavit, by the applicant on the respondent personally not less than 2 days before the date on which the application will be heard.

(4) Where an application is made without giving notice, the [<sup>F455</sup>witness statement or] affidavit in support shall explain why notice was not given and the application and witness statement or affidavit shall be served (with a copy of any order made by the court), on the respondent personally without delay.

(5) Unless otherwise directed, every application made on notice shall be heard in public.

(6) Where in exercise of the powers conferred by section 152 (6) or 153 (1) of the Housing Act 1996, a power of arrest is attached to any provision of an injunction (“a relevant provision”)—

- (a) each relevant provision shall be set out in a separate clause of the injunction and no such clause shall refer to any form of conduct which would not entitle a constable to arrest the respondent under paragraph (a), (b) or (c) of section 152(1) or under paragraph (a), (b) or (c) of section 153 (5) of the Housing Act 1996; and
- (b) the applicant shall deliver a copy of the relevant provisions to the police officer for the time being in charge of any police station for the area where the conduct occurred.

(7) Where an order is made varying or discharging any relevant provision of an injunction to which a power of arrest has been attached, the court shall—

- (a) immediately inform the police officer for the time being in charge of the police station to which a copy of the relevant provisions was delivered under paragraph (6); and
- (b) deliver a copy of the order to any police officer so informed.

[<sup>F456</sup>(7A) An application for a warrant of arrest under section 155(3) of the Housing Act 1996 must be made in accordance with Part 23 and may be made without notice.

Section 155(4) of the Housing Act 1996 provides that a warrant shall not be issued unless the application is substantiated on oath)]

[<sup>F457</sup>(8) The judge before whom a person is brought following his arrest may—

- (a) deal with the matter; or
- (b) adjourn the proceedings.]

[<sup>F458</sup>(8A) Where the proceedings are adjourned the judge may remand the arrested person in accordance with section 155(2)(b) or (5) of the Housing Act 1996.

(8B) Where the proceedings are adjourned and the arrested person is released—

- (a) the matter must be dealt with (whether by the same or another judge) within 14 days of the day on which he was arrested; and
- (b) the arrested person must be given not less than 2 days' notice of the hearing.



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(8C) An application notice under Order 29, rule 1(4) may be issued even if the arrested person is not dealt with within the period mentioned in paragraph (8B)(a).]

[<sup>F459</sup>(9) Order 29, rule 1 shall apply where an application is made to commit a person for breach of an injunction as if references in that rule to the judge included references to a district judge.]

[<sup>F460</sup>(10) A person against whom a committal order has been made may apply to the court under Order 29, rule 3 for his discharge and, if he does so, must, not less than 1 day before the hearing, serve the application notice on the person who made the application for committal.]

[<sup>F461</sup>(11) Where, in accordance with paragraph 2(2)(b) of Schedule 15 to the Housing Act 1996, the court fixes the amount of any recognizance with a view to it being taken subsequently, the recognizance may be taken by—

- (a) a judge;
- (b) a justice of the peace;
- (c) a justices' clerk;
- (d) a police officer of the rank of inspector or above or in charge of a police station; or
- (e) where the arrested person is in his custody, the governor or keeper of a prison,

with the same consequences as if it had been entered into before the court.]

[<sup>F462</sup>(11A) The person having custody of an applicant for bail must release him if satisfied that the required recognizances have been taken.

(11B) In paragraph (8) “arrest” means the arrest of a person pursuant to—

- (a) a power of arrest which, in exercise of the powers conferred by section 152(6) or 153(1) of the Housing Act 1996, has been attached to an injunction; or
- (b) a warrant of arrest issued under section 155 of that Act.]

(12) The jurisdiction of the court under sections 152 to 157 of the Housing Act 1996 may be exercised by a district judge

#### Textual Amendments

- F454** Words in Sch. 2 CCR Order 49 rule 6B heading omitted (15.10.2001) by The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rules 1(b), **23(a)** (with rule 24)
- F455** Words in Sch. 2 CCR Order 49 rule 6B(4) inserted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **73(d)**
- F456** Sch. 2 CCR Order 49 rule 6B(7) (15.10.2001) by The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rules 1(b), **23(b)** (with rule 24)
- F457** Sch.2 CCR Order 49 rule 6B(8) substituted (15.10.2001) by The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rules 1(b), **23(c)** (with rule 24)
- F458** Sch. 2 CCR Order 49 rule 6B(8A)-(8C) inserted (15.10.2001) by The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rules 1(b), **23(d)** (with rule 24)
- F459** Sch. 2 CCR Order 49 rule 6B(9) substituted (15.10.2001) by The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rules 1(b), **23(e)** (with rule 24)
- F460** Sch. 2 CCR Order 49 rule 6B(10) substituted (15.10.2001) by The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rules 1(b), **23(f)** (with rule 24)
- F461** Sch. 2 CCR Order 49 rule 6B(11) substituted (15.10.2001) by The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rules 1(b), **23(g)** (with rule 24)
- F462** Sch. 2 CCR Order 49 rule 6B(11A)(11B) inserted (15.10.2001) by The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rules 1(b), **23(h)** (with rule 24)



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**Injunctions to prevent environmental harm: Town and Country Planning Act 1990 etc.** **E**  
**+W**

**Rule 7.**—(1) An injunction under—

- (a) section 187B or 214A of the Town and Country Planning Act 1990(**219**),
- (b) section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990(**220**), or
- (c) section 26AA of the Planning (Hazardous Substances) Act 1990(**221**),

may be granted against a person whose identity is unknown to the applicant; and in the following provisions of this rule such an injunction against such a person is referred to as “an injunction under paragraph (1)”, and the person against whom it is sought is referred to as “the respondent”.

(2) An applicant for an injunction under paragraph (1) shall, describe the respondent by reference to—

- (a) a photograph,
- (b) a thing belonging to or in the possession of the respondent, or
- (c) any other evidence,

with sufficient particularity to enable service to be effected, and the form of the claim form used shall be modified accordingly.

(3) An applicant for an injunction under paragraph (1) shall file evidence by witness statement or affidavit—

- (a) verifying that he was unable to ascertain, within the time reasonably available to him, the respondent’s identity.
- (b) setting out the action taken to ascertain the respondent’s identity and
- (c) verifying the means by which the respondent has been described in the claim form and that the description is the best that the applicant is able to provide.

(4) Paragraph (2) is without prejudice to the power of the court to make an order in accordance with CPR Part 6 for service by an alternative method or dispensing with service.

**Leasehold Reform Act 1967(222)** **E+W**

<sup>F463</sup>**Rule 8** .....

**Textual Amendments**

**F463** Sch. 2 CCR Order 49 rule 8 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

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(219) 1990 c. 8; section 187B was amended by the Planning and Compensation Act 1991 (c. 34), section 3; and section 214A was amended by the section 23(7) of that Act.  
(220) 1990 c. 9; section 44A was amended by the Planning and Compensation Act 1991 (c. 34), section 25, schedule 3, Part I, paragraph 7.  
(221) 1990 c. 10; section 26AA was inserted by the Planning and Compensation Act 1991 (c. 34), section 25, schedule 3, Part I, paragraph 15.  
(222) 1967 c. 88; section 11 was amended by the [Rentcharges Act 1977 \(c. \)](#), section 17(2), schedule 2. Section 21 was amended by the [Housing Act 1980 \(c. 51\)](#), sections 142, 152, schedule 22, Part II, paragraph 8, schedule 26; by the [County Courts Act 1984 \(c. 28\)](#), section 148(1), schedule 2, Part V, paragraph 31; by the [Leasehold Reform, Housing and Urban Development Act 1993 \(c. 28\)](#), section 187(1), schedule 21, paragraph 4; and by the [Housing Act 1996 \(c. 52\)](#), sections 115, 116, schedule 11, paragraph 1(2).

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**Leasehold Reform, Housing and Urban Development Act 1993(223) E+W**

<sup>F464</sup>**Rule 9** .....

**Textual Amendments**

**F464** Sch. 2 CCR Order 49 rule 9 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

**Local Government Finance Act 1982(224) E+W**

<sup>F465</sup>**Rule 10** .....

**Textual Amendments**

**F465** Sch. 2 CCR Order 49 rule 10 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

**Local Government (Miscellaneous Provisions) Act 1976(225) E+W**

<sup>F466</sup>**Rule 11** .....

**Textual Amendments**

**F466** Sch. 2 CCR Order 49 rule 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

**Mental Health Act 1983(226) E+W**

**Rule 12.**—(1) In this rule— a section referred to by number means the section so numbered in the Mental Health Act 1983 and “Part II” means Part II of that Act;

“place of residence” means, in relation to a patient who is receiving treatment as an in-patient in a hospital or other institution, that hospital or institution;

“hospital authority” means the managers of a hospital as defined in section 145 (1).

(2) An application to a county court under Part II shall be made by a claim form filed in the court for the district in which the patients' place of residence is situated or, in the case of an application made under section 30 for the discharge or variation of an order made under section 29, in that court or in the court which made the order.

(3) Where an application is made under section 29 for an order that the functions of the nearest relative of the patient shall be exercisable by some other person—

(223) [1993 c. 28](#); section 26 was amended by the [Housing Act 1996 \(c. 52\)](#).

(224) [1982 c. 32](#); sections 19 and 20 were amended by the [National Health Service and Community Care Act 1990 \(c. 19\)](#), section 20, schedule 4, paragraphs 9 and 10; by the [Education Reform Act 1988 \(c. 40\)](#), section 237(2), schedule 13, Part I; by the [Police and Magistrates' Courts Act 1994 \(c. 29\)](#), section 43, schedule 4, Part I, paragraphs 26 and 27; by the [Police Act 1996 \(c. 16\)](#), section 103(1), schedule 7, Part I, paragraph 1, and by the [Police Act 1997 \(c. 50\)](#), section 88, schedule 6, paragraphs 19 and 21; and by [S.I. 1991/724](#) and [1996/3141](#).

(225) [1976 c. 57](#); section 23 was amended by [S.I. 1996/3071](#). Section 35 was amended by the [Local Government Act 1985 \(c. 51\)](#), section 102(2), schedule 17 and by [S.I. 1996/3071](#).

(226) [1983 c. 20](#); section 145(1) was amended by the [Health Authorities Act 1995 \(c. 17\)](#), section 2(1), schedule 1, Part III, paragraph 107; by the [National Health Service and Community Care Act 1990 \(c. 19\)](#), section 66(1), schedule 9, paragraph 24(9); and by the [Mental Health \(Amendment\) Act 1994 \(c. 6\)](#), section 1.

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- (a) the nearest relative shall be made a respondent to the application unless the application is made on the grounds set out in subsection (3)(a) of the said section or the court otherwise orders, and
  - (b) the court may order that any other person, not being the patient, shall be made a respondent.
- (4) On the hearing of the application the court may accept as evidence of the facts stated therein any report made by a medical practitioner and any report made in the course of his official duties by—
- (a) a probation officer, or
  - (b) an officer of a local authority or of a voluntary organisation exercising statutory functions on behalf of a local authority, or
  - (c) an officer of a hospital authority:

Provided that the respondent shall be told the substance of any part of the report bearing on his fitness or conduct which the judge considers to be material for the fair determination of the application.

(5) Unless otherwise ordered, an application under Part II shall be heard and determined by the court sitting in private.

(6) For the purpose of determining the application the judge may interview the patient either in the presence of or separately from the parties and either at the court or elsewhere, or may direct the district judge to interview the patient and report to the judge in writing.

**Mobile Homes Act 1983(227) E+W**

<sup>F467</sup>**Rule 13** .....

**Textual Amendments**

**F467** Sch. 2 CCR Order 49 rule 13 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

<sup>F468</sup>**Postal Services Act 2000] E+W**

**Rule 15.**—(1) An application under <sup>F469</sup>section 92 of the Postal Services Act 2000] for permission to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives shall be made by a claim form.

(2) The respondents to the application shall be the <sup>F470</sup>universal service provider] and the person in whose name the applicant seeks to bring proceedings.

**Textual Amendments**

**F468** Sch. 2 CCR Order 49 rule 15 heading substituted (26.3.2001) by [The Postal Services Act 2000 \(Consequential Modifications No. 1\) Order 2001 \(S.I. 2001/1149\)](#), art. 1(2), **Sch. 1 para. 123(3)(a)**

**F469** Words in Sch. 2 CCR Order 49 rule 15(1) substituted (26.3.2001) by [The Postal Services Act 2000 \(Consequential Modifications No. 1\) Order 2001 \(S.I. 2001/1149\)](#), art. 1(2), **Sch. 1 para. 123(3)(b)**

**F470** Words in Sch. 2 CCR Order 49 rule 15(2) substituted (26.3.2001) by [The Postal Services Act 2000 \(Consequential Modifications No. 1\) Order 2001 \(S.I. 2001/1149\)](#), art. 1(2), **Sch. 1 para. 123(3)(c)**

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**Rentcharges Act 1977(228) E+W**

<sup>F471</sup>**Rule 16** .....

**Textual Amendments**  
**F471** Sch. 2 CCR Order 49 rule 16 revoked (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), **Sch. 3**

<sup>F472</sup>**Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995 and Disability Rights Commission Act 1999] E+W**

**Rule 17.**—(1) In this rule—

- <sup>F473</sup>(a) “the Act of 1975”, “the Act of 1976 ”, “the Act of 1995” and “the Act of 1999” mean respectively the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Disability Rights Commission Act 1999;]
- (b) in relation to proceedings under either of those Acts expressions which are used in the Act concerned have the same meanings in this rule as they have in that Act;
- (c) in relation to proceedings under the Act of 1976 “court” means a designated county court and “district” means the district assigned to such a court for the purposes of that Act.

(2) A claimant who brings a claim under section 66 of the Act of [<sup>F474</sup>1975,] section 57 of the Act of 1976 [<sup>F475</sup>or section 25 of the Act of 1995] shall forthwith give notice to the Commission of the commencement of the proceedings and file a copy of the notice.

(3) CPR Rule 35.15 shall have effect in relation to an assessor who is to be appointed in proceedings under section 66 (1) of the Act of 1975.

(4) Proceedings under section 66, 71 or 72 of the Act of [<sup>F476</sup>1975,] section 57, 62 or 63 of the Act of 1976 [<sup>F477</sup>, section 25 of the Act of 1995 or section 6 of the Act of 1999] may be commenced—

- (a) in the court for the district in which the defendant resides or carries on business; or
- (b) in the court for the district in which the act or any of the acts in respect of which the proceedings are brought took place.

(5) An appeal under section 68 of the Act of [<sup>F478</sup>1975,] section 59 of the Act of 1976 [<sup>F479</sup>or paragraph 10 of Schedule 3 to the Act of 1999] against a requirement of a non-discrimination notice shall be brought in the court for the district in which the acts to which the requirement relates were done.

(6) Where the claimant in any claim alleging discrimination has questioned the defendant under section 74 of the Act of 1975 or section 66 of the Act of 1976—

- (a) either party may make an application to the court in accordance with CPR Part 23 to determine whether the question or any reply is admissible under that section; and
- (b) CPR Rule 3.4, shall apply to the question and any answer as it applies to any statement of case.

(7) Where in any claim the Commission claim a charge for expenses incurred by them in providing the claimant with assistance under section 75 of the Act of [<sup>F480</sup>1975,] section 66 of the Act of 1976 [<sup>F481</sup>or section 7 of the Act of 1999] —

- (a) the Commission shall, within 14 days after the determination of the claim, give notice of the claim to the court and the claimant and thereafter no money paid into court for the

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benefit of the claimant, so far as it relates to any costs or expenses, shall be paid out except in pursuance of an order of the court, and

- (b) the court may order the expenses incurred by the Commission to be assessed whether by the summary or detailed procedure as if they were costs payable by the claimant to his own solicitor for work done in connection with the proceedings.

(8) Where an application is made for the removal or modification of any term of a contract to which section 77 (2) of the Act of [<sup>F482</sup>1975,] section 72 (2) of the Act of 1976 [<sup>F483</sup>or section 26 of the Act of 1995] applies, all persons affected shall be made respondents to the application, unless in any particular case the court otherwise directs, and the proceedings may be commenced—

- (a) in the court for the district in which the respondent or any of the respondents resides or carries on business; or
- (b) in the court for the district in which the contract was made.

**Textual Amendments**

- F472** Sch. 2 CCR Order 49 rule 17 heading substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(a)** (with rule 39)
- F473** Sch. 2 CCR Order 49 rule 17(1)(a) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(b)** (with rule 39)
- F474** Word in Sch. 2CCR Order 49 rule 17(2) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(c)(i)** (with rule 39)
- F475** Words in Sch. 2CCR Order 49 rule 17(2) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(c)(ii)** (with rule 39)
- F476** Word in Sch. 2CCR Order 49 rule 17(4) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(d)(i)** (with rule 39)
- F477** Words in Sch. 2CCR Order 49 rule 17(4) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(d)(ii)** (with rule 39)
- F478** Word in Sch. 2CCR Order 49 rule 17(5) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(e)(i)** (with rule 39)
- F479** Words in Sch. 2CCR Order 49 rule 17(5) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(e)(ii)** (with rule 39)
- F480** Word in Sch. 2CCR Order 49 rule 17(7) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(f)(i)** (with rule 39)
- F481** Words in Sch. 2CCR Order 49 rule 17(7) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(f)(ii)** (with rule 39)
- F482** Word in Sch. 2CCR Order 49 rule 17(8) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(g)(i)** (with rule 39)
- F483** Words in Sch. 2CCR Order 49 rule 17(8) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(g)(ii)** (with rule 39)

**Solicitors Act 1974(229) E+W**

<sup>F484</sup>**Rule 18** .....

**Textual Amendments**

- F484** Sch. 2 CCR Order 49 rule 18 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **73(f)**

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### **Telecommunications Act 1984(230) E+W**

**Rule 18A.**—(1) CPR Rule 35.15 applies to proceedings under paragraph 5 of Schedule 2 to the Telecommunications Act 1984.

### **Applications under section 19 of the Trade Marks Act 1994(231) E+W**

**Rule 18B** The CPR Patents Court Practice direction shall apply with the necessary modifications to proceedings brought under section 19 of the Trade Marks Act 1994 in a county court.

### **Trade Union and Labour Relations Consolidation Act 1992(232) E+W**

**Rule 19.**—(1) Where a complainant desires to have an order of the Certification Officer under section 82 of the Trade Union and Labour Relations Consolidation Act 1992 recorded in the county court, he shall produce the order and a copy thereof to the court for the district in which he resides or the head or main office of the trade union is situate.

(2) The order shall be recorded by filing it, and the copy shall be sealed and dated and returned to the complainant.

(3) The sealed copy shall be treated as if it were the notice of issue in a claim begun by the complainant.

(4) The costs, if any, allowed for recording the order shall be recoverable as if they were payable under the order.

(5) The order shall not be enforced until proof is given to the satisfaction of the court that the order has not been obeyed and, if the order is for payment of money, of the amount remaining unpaid.

### **Trustee Act 1925, s.63(233) E+W**

**Rule 20.**—(1) Any person wishing to make a payment into court under section 63 of the Trustee Act 1925 shall make and file in the office of the appropriate court a witness statement or an affidavit setting out—

- (a) a brief description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose;
- (b) so far as known to him, the names and addresses of the persons interested in or entitled to the money or securities to be paid into court;
- (c) his submission to answer all such inquiries relating to the application of such money or securities as the court may make or direct;
- (d) his place of residence, and
- (e) an address where he may be served with any notice or application relating to such money or securities.

(2) The appropriate court for the purposes of paragraph (1) shall be the court for the district in which the person or any of the persons making the payment into court resides.

(3) The costs incurred in the payment into court shall be assessed by the detailed procedure and the amount of the assessed costs may be retained by the person making the payment into court.

(4) The district judge may require, in addition to the witness statement or affidavit, such evidence as he thinks proper with regard to the matter in respect of which the payment into court is made.

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(230) 1984 c. 12.

(231) 1994 c. 26.

(232) 1992 c. 52.

(233) 1925 c. 19; section 63 was amended by the Administration of Justice Act 1965 (c. 2), section 36(4), schedule 3.

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(5) On the making of the payment into court the court shall send notice thereof to each person mentioned in the witness statement or affidavit pursuant to paragraph (1)(b).

(6) An application for the investment or payment out of court of any money or securities paid into court under paragraph (1) may be made without notice but on the hearing of the application the court may require notice to be served on such person as it thinks fit and fix a day for the further hearing.

(7) No witness statement or affidavit in support of the application shall be necessary in the first instance but the court may direct evidence to be adduced in such manner as it thinks fit.

(8) The application may be heard and determined by the district judge.

(9) Paragraphs (6) to (8) are without prejudice to any provision of the County Court Funds Rules enabling or requiring the court to transfer money from a deposit to an investment account of its own motion.

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#### EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules provide a new code of civil procedure for the civil courts. They replace the Rules of the Supreme Court 1965 and the County Court Rules 1981. As well as the main body of the new rules (Parts 1—48), they also provide for certain specialist proceedings (Part 49) and transitional provisions (Part 51); the details of these are contained in practice directions. Part 50 introduces schedules to the Rules containing those provisions of the former rules of court which for the time being are re-enacted as part of the Civil Procedure Rules but without substantial changes.

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